

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

**Volume 18, Issue 14**  
**Pages 1063 - 1217**

**January 15, 2004**

This issue contains documents officially filed  
through December 19, 2003.

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

Julian Mann III, Director  
Camille Winston, Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Linda Dupree, Editorial Assistant  
Dana Sholes, Editorial Assistant

### I. EXECUTIVE ORDER

Executive Order 54 ..... 1063

### II. PROPOSED RULES

#### Agriculture

Markets..... 1064 - 1067  
Plant Industry ..... 1067 - 1068

#### Cultural Resources

Division of Archives and History ..... 1068 - 1070

#### Environment and Natural Resources

Commission for Health Services ..... 1096 - 1104  
Parks & Recreation..... 1095 - 1096  
Soil & Water Conservation ..... 1093 - 1095

#### Health and Human Services

Mental Health, Developmental Disabilities  
And Substance Abuse Services ..... 1070 - 1076  
Social Services Commission ..... 1076 - 1078

#### Justice

Criminal Justice Education & Training Stds. .... 1078 - 1093

#### Licensing Boards

Real Estate Commission..... 1104 - 1113

### III. APPROVED RULES ..... 1114 - 1202

#### Administration

State Construction

#### Environment and Natural Resources

Environmental Management  
Marine Fisheries

#### Health and Human Services

Division of Facility Services  
Medical Assistance  
Epidemiology Health

#### Justice

Private Protective Services  
Criminal Justice Education & Training Standards

#### Labor

Mine and Quarry Division

#### Licensing Boards

Board of Examiners of Plumbing, Heating and Fire  
Sprinkler Contractors

#### Revenue

License and Excise Tax

#### State Personnel

Office of State Personnel

### IV. CONTESTED CASE DECISIONS

Index to ALJ Decisions..... 1203 - 1208  
Text of Selected Decisions  
02 DHR 0708 ..... 1209 - 1211  
02 DHR 1021 ..... 1212 - 1217

**For the CUMULATIVE INDEX to the NC Register go to:**

<http://oahnt.oah.state.nc.us/register/CI.pdf>

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

# NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

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

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

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

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

### **FILING DEADLINES**

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

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

### **NOTICE OF TEXT**

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

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

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

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER NO. 54  
GOVERNOR'S TASK FORCE ON DRIVING WHILE IMPAIRED**

WHEREAS, the operation of motor vehicles on our highways by persons while impaired constitutes a serious threat to the health and safety of our citizens; and

WHEREAS, a large portion of the fatal crashes on our highways are alcohol related; and the "Booze It and Lose It" program has made driving while impaired a major area of emphasis; and

WHEREAS, the State of North Carolina must consider strong measures designed to deter and prevent the operation of motor vehicles by persons while impaired;

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

Section 1.      Establishment.

The Governor's Task Force on Driving While Impaired is hereby reestablished. The Task Force shall be an ad hoc committee of the Governor's Highway Safety Commission. The Task Force shall be composed of not more than thirty-five members appointed by the Governor to serve at the pleasure of the Governor. The Governor shall designate one of the members as Chair and one as Vice Chair. Additional members shall include, but not be limited to, representatives of law enforcement, the judicial system and the General Assembly.

Section 2.      Meetings.

The Task Force shall meet regularly at the call of the Chair and may hold special meetings at any time at the call of the Chair or the Governor. The Task Force is authorized to conduct public hearings.

Section 3.      Expenses.

Members of the Task Force shall be reimbursed for such necessary travel and subsistence expenses as are authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Governor's Highway Safety Program.

Section 4.      Duties.

The Task Force shall have the following duties:

- (a) Review the General Statutes of North Carolina applicable to driving while impaired;
- (b) Review proposals in other states designed to deter driving while impaired;
- (c) Consider legislative proposals to the North Carolina General Assembly;
- (d) Recommend actions to reduce driving while impaired; and
- (e) Other such duties as assigned by the Chair or the Governor.

Section 5.      Reports.

The Task Force shall present an interim report to the Governor no later than May 14, 2004 and a final report no later than January 14, 2005. The Task Force shall be dissolved when its final report is presented to the Governor.

This Order shall be effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this 4th day of December, 2003.

\_\_\_\_\_  
Michael F. Easley, Governor

ATTEST:

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

**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 that the North Carolina Board of Agriculture intends to repeal the rules cited as 02 NCAC 43L .0104-.0108, .0113-.0116, .0201-.0206, .0401-.0409, .0701-.0702.*

**Proposed Effective Date:** May 1, 2004

**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 January 30, 2004, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Reason for Proposed Action:** These Rules set forth fees for space rental at various farmers markets operated by the Department. These Rules have been superseded by a rental rate schedule adopted by the Board pursuant to G.S. 106-6.1 and are no longer necessary.

**Procedure by which a person can object to the agency on a proposed rule:** Any person may object to the proposed rules by submitting a written statement of objections(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Written comments may be submitted to:** David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 x249, fax (919) 716-0105 and email david.mcleod@ncmail.net.

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the

submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State  
☐ Local  
☐ Substantive (>\$3,000,000)  
☒ None

**CHAPTER 43 – MARKETS**

**SUBCHAPTER 43L – MARKETS**

**SECTION .0100 - FEES: STATE FARMERS' MARKET AT  
RALEIGH**

**02 NCAC 43L .0104 GATE FEE**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0105 PERIOD FOR SHED LEASE**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0106 TEMPORARY OR SEASONAL  
RENTAL BASIS**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0107 LENGTH OF AGREEMENT**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0108 COMMERCIAL TRUCKERS**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0113 GATE FEES**

Authority G.S. 106-530; 106-6.1.

**02 NCAC 43L .0114 ADJUSTMENT OF RENTALS**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0115 ASSESSMENT OF TRUCKS:  
ETC.**

Authority G.S. 106-22; 106-530; 106-6.1.

**02 NCAC 43L .0116 EXEMPTIONS**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**SECTION .0200 - FEES: CHARLOTTE FARMERS  
MARKET**

**02 NCAC 43L .0201      BASE PRICES**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0202      GATE FEES**

*Authority G.S. 106-6.1.*

**02 NCAC 43L .0203      MISCELLANEOUS FEES**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0204      SPACE AVAILABILITY**

*Authority G.S. 106-530; 106-6.1.*

**02 NCAC 43L .0205      SPACE LIMITATIONS**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0206      TRUCK RENT BASIS**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0401      RETAIL BUILDINGS**

*Authority G.S. 106-530; 106-6.1.*

**02 NCAC 43L .0402      GATE FEES**

*Authority G.S. 106-530; 106-6.1.*

**02 NCAC 43L .0403      FARMERS AND TRUCKERS  
SHEDS**

*Authority G.S. 106-530; 106-6.1.*

**02 NCAC 43L .0404      MISCELLANEOUS FEES**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0405      YEARLY DELIVERY PERMIT**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0406      SPACE AVAILABILITY**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0407      SPACE LIMITATIONS**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0408      TRUCK-RENT BASIS**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0409      FEES FOR SPECIAL EVENTS**

*Authority G.S. 106-530; 106-6.1.*

**02 NCAC 43L .0701      PAYMENT OF FEES**

*Authority G.S. 106-22; 106-530; 106-6.1.*

**02 NCAC 43L .0702      GATE FEES**

*Authority G.S. 106-22; 106-530; 106-6.1.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend the rule cited as 02 NCAC 48A .1208.*

**Proposed Effective Date:** *May 1, 2004*

**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 rule by submitting a request in writing no later than January 30, 2004, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

**Reason for Proposed Action:** *The proposed rule change would increase the nursery dealer certification fee from \$10 to \$50, in order to offset reductions in appropriated funds.*

**Procedure by which a person can object to the agency on a proposed rule:** *Any person may object to the proposed rule by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.*

**Written comments may be submitted to:** *David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 – x249, fax (919) 716-0105, and email david.mcleod@ncmail.net.*

**Comment period ends:** *March 15, 2004*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The*

Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State  
☐ Local  
☐ Substantive (>\$3,000,000)  
☒ None

**CHAPTER 48 - PLANT INDUSTRY**

**SUBCHAPTER 48A - PLANT PROTECTION**

**SECTION .1200 - NURSERY CERTIFICATION**

**02 NCAC 48A .1208 NURSERY DEALER CERTIFICATE**

(a) Persons who maintain no regular nursery but who deal in nursery stock grown in regularly certified or registered nurseries and/or collected plants shall be required to possess a nursery dealer certificate. To obtain such a certificate, the nursery dealer must submit an application listing all sources of nursery stock and collected plants to be distributed or sold. It shall be a violation of this Section for a nursery dealer to distribute or sell nursery stock or collected plants which have not been inspected and certified by an inspector in North Carolina or a duly authorized plant pest regulatory official of another state or country.

(b) The annual fee for a nursery dealer certificate shall be fifty dollars (\$50.00) for each location from which nursery stock is sold, bartered, exchanged or given away. This certificate expires December 31 of each year.

(c) All nursery stock and/or collected plants in the custody of any dealer shall be subject to inspection at any time and shall be maintained in certifiable condition. Dealer certificates can be revoked at any time for cause. Records shall be kept of all plant acquisitions and shall be made available to any inspector of the North Carolina Department of Agriculture and Consumer Services upon request.

*Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.*

**TITLE 07 – DEPARTMENT OF CULTURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Cultural Resources intends to adopt the rules cited as 07 NCAC 04R .0916-.0917 and amend the rule cited as 07 NCAC 04R .0909.*

**Proposed Effective Date:** July 1, 2004

**Public Hearing:**

**Date:** March 3, 2004

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

**Location:** Archives & History Building, 3<sup>rd</sup> Floor, Room 305, 109 E. Jones St., Raleigh, NC

**Reason for Proposed Action:** *The proposed action is necessary in order for the Department of Cultural Resources to charge fees for processing historic preservation certification applications. The North Carolina General Assembly enacted legislation this year that allows the Department of Cultural Resources to charge users a fee. The earmarked fee revenue will enable us to hire additional staff in order to improve the efficiency of our programs related to the state historic preservation rehabilitation tax credits. In addition, although the state credit for income-producing projects is contingent upon approval by NPS for the federal credit, we must also create a separate application for income-producing projects in order to charge a state review fee.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be submitted in writing to Jeffrey J. Crow during the comment period. Additional objections may be made verbally and in writing at the public hearing for the rules.*

**Written comments may be submitted to:** *Jeffrey J. Crow, NC Department of Cultural Resources, 4610 Mail Service Center, Raleigh, NC 27699-4610, phone (919) 807-7280, and fax (919) 733-8807.*

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State  
☐ Local  
☐ Substantive (>\$3,000,000)  
☒ None

**CHAPTER 04 - DIVISION OF ARCHIVES AND HISTORY**

**SUBCHAPTER 04R - ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION**

**SECTION .0900 - TAX ACT CERTIFICATION REVIEW**



**07 NCAC 04R .0909 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY**

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of income-producing historic properties.

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of non-income-producing historic properties. The rules .0909 - .0915 of this Section are applicable to these certifications.

(c) The procedures for obtaining certifications are set forth in Rules .0909 - .0915 of this Section. Owners wishing certifications shall provide sufficient documentation to the SHPO to make certification decisions. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions shall be made by the SHPO based upon review by HPO staff of the application and supporting documentation.

(e) Rule .0916 of this Section relates to fees charged for reviewing income-producing and nonincome-producing rehabilitation certification requests.

(f) The SHPO makes certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of income-producing historic properties. Rule .0917 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification requests.

*Authority G.S. 105-129.35; 105-129.36A.*

**07 NCAC 04R .0916 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS**

(a) The North Carolina Department of Cultural Resources shall charge fees for reviewing income-producing and nonincome-producing rehabilitation certification requests in accordance with the schedule in this Rule.

(b) Payment shall be made to North Carolina Department of Cultural Resources. A certification decision by the State Historic Preservation Office shall not be issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.

(c) No fee shall be charged for rehabilitations under twenty-five thousand dollars (\$25,000).

(d) The fee for review of proposed rehabilitation projects over twenty-five thousand dollars (\$25,000) is two hundred fifty dollars (\$250.00). The initial fee for review of a proposed rehabilitation project shall be deducted from the final review fee.

(e) The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, in accordance with the schedule in this Rule

Completed Qualifying Rehabilitation Expenditures	Fee
\$25,000 - \$49,999	\$250
\$50,000 - \$99,999	\$500
\$100,000 - \$149,999	\$750
\$150,000 - \$199,999	\$1,000
\$200,000 - \$299,999	\$1,250
\$300,000 - \$399,999	\$1,750
\$400,000 - \$499,999	\$2,250
\$500,000 - \$999,999	\$2,750
\$1,000,000 - \$4,999,999	\$5,250
\$5,000,000 or more	\$7,750

(f) In the following cases the fee for preliminary review is two hundred fifty dollars (\$250.00) and the fee for final review is computed on the basis of the total completed qualifying rehabilitation expenditures:

- (1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the reviewing authority to have been functionally related historically to serve an overall purpose; or
- (2) In the case of multiple building projects where:
  - (A) there is no historic functional relationship among the structures and which are under the same ownership;
  - (B) properties are located in the same historic district;
  - (C) properties are adjacent or contiguous;
  - (D) properties are of the same architectural type (e.g., rowhouses, loft buildings, commercial buildings); and
  - (E) properties are submitted by the owner for review at the same time.

*Authority G.S. 105-129.35; 105-129.36A.*

**07 NCAC 04R .0917 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC PRESERVATION REHABILITATION PROGRAM**

(a) A taxpayer is not required to apply for or pay the state fee for reviewing an income-producing rehabilitation certification request if the taxpayer is not going to utilize the state tax incentive.

(b) National Park Service certification of a property as historically significant shall be deemed to be certification of a property as historically significant by the State Historic Preservation Officer.

(c) The State Historic Preservation Officer shall certify and forward income-producing rehabilitation projects to the National Park Service for review, and National Park Service review shall constitute final certification. The National Park Service certification shall not be deemed to be project certification by the State Historic Preservation Officer.

(d) Taxpayers are cautioned that deadlines and requirements for state certifications may differ from deadlines and requirements for federal certifications.

*Authority G.S. 105-129.35; 105-129.36A.*

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to amend the rules cited as 10A NCAC 26E .0102, .0104-.0105, .0108, .0111.*

**Proposed Effective Date:** June 1, 2004

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by January 30, 2004.*

**Reason for Proposed Action:** *The proposed amendment for these Rules is necessary as a result of Session Law 2003-335(SB 876).*

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

**Written comments may be submitted to:** *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 733-7011, fax (919) 733-9455, and email cindy.kornegay@ncmail.net.*

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State
- ☐ Local
- ☐ Substantive (>\$3,000,000)
- ☒ None

**CHAPTER 26 – MENTAL HEALTH, GENERAL**

**SUBCHAPTER 26E - MANUFACTURERS:**

**DISTRIBUTORS: DISPENSERS AND RESEARCHERS OF CONTROLLED SUBSTANCES**

**SECTION .0100 - REGISTRATION OF MANUFACTURERS: DISTRIBUTORS: AND DISPENSERS OF CONTROLLED SUBSTANCES**

**10A NCAC 26E .0102 DEFINITIONS**

As used in this Section, the following terms shall have the meanings specified:

- (1) The term "act" means the North Carolina Controlled Substances Act (G.S. Chapter 90, Article 5).
- (2) The term "Commission" means the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services.
- (3) The term "basic class" means as to controlled substances listed in Schedules I, II and VI:
  - (a) each of the opiates including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
  - (b) each of the opium derivatives including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
  - (c) each of the hallucinogenic substances including its salts, isomers and salts of isomers is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
  - (d) each of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
    - (i) opium including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;
    - (ii) apomorphine;
    - (iii) ethylmorphine;
    - (iv) hydrocodone;
    - (v) hydromorphone;
    - (vi) metopon;

- (vii) morphine;
- (viii) oxycodone;
- (ix) oxymorphone;
- (x) thebaine;
- (xi) mixed alkaloids of opium listed in Schedule I of the North Carolina Controlled Substances Act;
- (xii) cocaine; and
- (xiii) ecgonine;
- (e) each of the opiates including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation listed in Schedule II of the North Carolina Controlled Substances Act; and
- (f) methamphetamine including its salts, isomers and salts of isomers when contained in any injectable liquid.
- (4) The term "DEA" means the Federal Drug Enforcement Administration.
- (5) The term "Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Department of Health and Human Services.
- (6) The term "hearing" means any hearing held pursuant to this part of the granting, denial, revocation or suspension of a registration pursuant to G.S. 90-102 and 90-103.
- (7) The term "individual practitioner" means a physician, dentist, veterinarian or other individual licensed, registered or otherwise permitted by the state to dispense a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy or an institutional practitioner.
- (8) The term "institutional practitioner" means a hospital or other person (other than an individual) licensed, registered or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.
- (9) The term "person" includes any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association or other legal entity.
- (10) The terms "register" and "registration" refer only to registration required and permitted by G.S. 90-102.
- (11) The term "registrant" means any person who is registered pursuant to G.S. 90-102.
- (12) The term "office-based opioid treatment" means any controlled substance listed in Schedule III-V dispensed for the maintenance or detoxification treatment of opioid addiction

or for the detoxification treatment of opioid dependence.

- (13) Any term not defined in this Section shall have the definition set forth in G.S. 90-87.

*Authority G.S. 90-100; 143B-147(a)(5).*

#### **10A NCAC 26E .0104 PERSONS REQUIRED TO REGISTER**

(a) Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance in this state shall obtain annually a registration unless exempted by law or pursuant to Rules .0107 through .0109 of this Section.

(b) Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

(c) Any person applying for registration or re-registration shall file, annually, an application for registration with the Department of Health and Human Services and submit the required nonrefundable fee with the application. Categories of applicants and the annual fee for each category are as follows:

CATEGORY	FEE
(1) Clinic	125.00
(2) Hospital	300.00
(3) Nursing Home	100.00
(4) Teaching Institution	100.00
(5) Researcher	125.00
(6) Analytical Laboratory	100.00
(7) Distributor	500.00
(8) Manufacturer	600.00
(9) Office-Based Opioid Treatment	0.00

For any person applying for registration at least six months or less prior to the end of the fiscal year, the required annual fee submitted with the application shall be reduced by one-half of the above listed fee for each category.

*Authority G.S. 90-100; 90-101; 143B-210(9).*

#### **10A NCAC 26E .0105 SEPARATE REGISTRATION FOR INDEPENDENT ACTIVITIES**

(a) The following groups of activities are deemed to be independent of each other:

- (1) manufacturing controlled substances;
- (2) distributing controlled substances;
- (3) dispensing controlled substances listed in Schedules II through V;
- (4) conducting research [other than research described in Subparagraph (6) of this Paragraph] with controlled substances listed in Schedules II through V;
- (5) conducting instructional activities with controlled substances listed in Schedule II through V;
- (6) conducting research with narcotic drugs listed in Schedules II through V for the purpose of continuing the dependence on such drugs of a

narcotic drug dependent person in the course of conducting an authorized clinical investigation in the development of a narcotic addict rehabilitation program pursuant to a notice of claims investigational exemption for a new drug approved by the Food and Drug Administration;

- (7) conducting research and instructional activities with controlled substances listed in Schedules I and VI;
- (8) conducting chemical analysis with controlled substances listed in any schedule; and
- (9) dispensing of controlled substances in Schedule III-V for opioid treatment.

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities except as provided in this Paragraph. Any person when registered to engage in the group activities described in each subparagraph in this Paragraph shall be authorized to engage in the coincident activities described in that subparagraph without obtaining a registration to engage in such coincident activities provided that unless specifically exempted, the individual complies with all requirements and duties prescribed by law for persons registered to engage in such coincident activities:

- (1) A person registered to manufacture any controlled substance or basic class of controlled substance shall be authorized to distribute that substance or class but no other substance or class which the individual is not registered to manufacture.
- (2) A person registered to manufacture any controlled substance listed in Schedules II through V shall be authorized to conduct chemical analysis and preclinical research (including quality control analysis) with narcotic and nonnarcotic controlled substances listed in those Schedules the individual is authorized to manufacture.
- (3) A person registered or authorized to conduct research with a basic class of controlled substances listed in Schedules I and VI shall be authorized to manufacture such class if and to the extent that such manufacture is set forth in the research protocol filed with the Drug Enforcement Administration and to distribute such class to other persons registered or authorized to conduct research with such class or registered or authorized to conduct chemical analysis with controlled substances.
- (4) A person registered or authorized to conduct chemical analysis with controlled substances shall be authorized to manufacture such substances for analytical or instructional purposes, to distribute such substances to other persons registered or authorized to conduct chemical analysis or instructional activities or research with such substances and to persons exempted from registration pursuant to Rule .0109 of this Section and to conduct

instructional activities with controlled substances.

- (5) A person registered or authorized to conduct research [other than research described in Paragraph (a)(6) of this Rule] with controlled substances listed in Schedules II through V shall be authorized to conduct chemical analysis with controlled substances listed in those schedules in which the individual is authorized to conduct research, to manufacture such substances if and to the extent that such manufacture is set forth in a statement filed with the application for registration and to distribute such substances to other persons registered or authorized to conduct chemical analysis, instructional activities or research with such substances and to persons exempted from registration pursuant to Rule .0109 of this Section and to conduct instructional activities with controlled substances.
- (6) A person registered to dispense controlled substances listed in Schedules II through V shall be authorized to conduct research [other than research described in Paragraph (a)(6) of this Rule] and to conduct instructional activities with those substances.

(c) A single registration to engage in any group of independent activities may include one or more controlled substances listed in schedules authorized in that group of independent activities. A person registered to conduct research with controlled substances listed in Schedules I and VI may conduct research with any substance listed in Schedules I and VI for which the individual has filed and approved a research protocol from the Drug Enforcement Administration.

*Authority G.S. 90-100; 90-101; 143B-210(9).*

#### **10A NCAC 26E .0108 EXEMPTION OF INDIVIDUAL PRACTITIONERS**

- (a) The requirement of registration is waived for all physicians, dentists, podiatrists, pharmacists, optometrists and veterinarians practicing as individual practitioners and licensed in North Carolina by their respective boards to the extent authorized by their boards; except as noted in G.S. 90-101 al.
- (b) An individual practitioner (other than an intern, resident or foreigntrained physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government) who is an agent or employee of another practitioner registered to dispense controlled substances may, when acting in the usual course of employment, administer and dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which the individual practices under the registration of the employer or principal practitioner in lieu of being registered.
- (c) An individual practitioner who is an intern, resident or foreign-trained physician or physician on the staff of a Veterans Administration facility or physician who is an agent or employee of the Health Bureau of the Canal Zone Government may

dispense, administer and prescribe controlled substances under the registration of the hospital or other registered institution in which the individual is employed in lieu of being registered, provided that:

- (1) such dispensing, administering or prescribing is done in the usual course of professional practice;
- (2) such individual practitioner is authorized or permitted to do so by the jurisdiction in which the individual is practicing;
- (3) the hospital or other institution by whom the individual is employed has verified that the individual practitioner is so permitted to dispense, administer or prescribe drugs within the jurisdiction;
- (4) such individual practitioner is acting only within the scope of employment in the hospital or institution;
- (5) the hospital or other institution authorizes the intern, resident or foreign-trained physician to dispense or prescribe under the hospital registration and designates a specific internal code number for each intern, resident or foreign physician so authorized. The code number shall consist of numbers, letters or a combination thereof and shall be a suffix to the institution's Drug Enforcement Administration registration number preceded by a hyphen (e.g., AP0123456-10 or AP0123456-A12); and
- (6) a current list of internal codes and the corresponding individual practitioner is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner.

(d) An individual on the staff of a teaching or research institution may handle controlled substances under the registration of the institution in which the individual is employed in lieu of being registered, provided that:

- (1) the institution authorizes the staff member to handle under the institution registration and designates a specific internal code number for each staff member so authorized. The code number shall consist of numbers, letters or a combination thereof and shall be a suffix to the institution's Drug Enforcement Administration registration number preceded by a hyphen (e.g., AP0123456-10 or AP0123456-A12); and
- (2) a current list of internal codes and the corresponding staff members are kept by the institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the individual staff member.

*Authority G.S. 90-100; 90-101; 143B-210(9).*

**10A NCAC 26E .0111 APPLICATION FORMS:  
CONTENTS: SIGNATURE**

(a) Any person required to be registered and is not so registered and is applying for registration:

- (1) to manufacture or distribute controlled substances, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225;
- (2) to dispense controlled substances listed in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224;
- (3) to conduct instructional activities with controlled substances listed in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224;
- (4) to conduct research with controlled substances listed in Schedules II through V other than research described in .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substances;
- (5) to conduct research with narcotic drugs listed in Schedules II through V, as described in .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substance;
- (6) to conduct research with controlled substances listed in Schedules I and VI, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substances;
- (7) to conduct instructional activities with controlled substances listed in Schedules I and VI, shall apply as a researcher on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct instructional activities with controlled substances;
- (8) to conduct chemical analysis with controlled substances listed in any schedule, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225; and
- (9) to dispense controlled substances in Schedule III-V for opioid treatment, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224.

(b) Any person registered and applying for re-registration:

- (1) to manufacture or distribute controlled substances, shall apply on Commission for

- (2) Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (3) to dispense controlled substances in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226;
- (4) to conduct instructional activities with controlled substances listed in Schedules II through VI, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226;
- (5) to conduct research with controlled substances listed in Schedules II through V other than research described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (6) to conduct research with narcotic drugs listed in Schedules II through V, as described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (7) to continue to conduct research with controlled substances listed in Schedules I and VI under one or more approved research protocols, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (8) to continue to conduct instructional activities with controlled substances listed in Schedules I and VI under one or more approved federal instructional statements, shall apply as a researcher on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (9) to conduct chemical analysis with controlled substances listed in any schedule, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227; and
- (9) to dispense controlled substances in Schedule III-V in opioid treatment, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226.

(c) Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Forms 224 and 225 may be obtained by writing to the Director. Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Forms 226 and 227 will be mailed as applicable to each registered person approximately 60 days before the expiration date of registration; if any registered person does not receive such forms within 45 days before the expiration date of registration, the registered person must promptly give notice of such fact and request such forms by writing to the Director.

(d) Each application for registration to handle any basic class of controlled substance listed in Schedules I (except to conduct chemical analysis with such classes) and VI and each application for registration to manufacture a basic class of controlled

substances listed in Schedule II or to conduct research with any narcotic controlled substance listed in Schedule II shall include the Federal Drug Enforcement Administration code number for each class or substance to be covered by such registration.

(e) Each application shall include all information called for in the form unless the item is not applicable, in which case this fact shall be indicated.

(f) An applicant may authorize one or more individuals who would not otherwise be authorized to do so to sign applications for the applicant by filing with the director a power of attorney for each such individual. The power of attorney shall be signed by a person who is authorized to sign applications under this Paragraph and shall contain the signature of the individual being authorized to sign applications. The power of attorney shall be valid until revoked by the applicant.

*Authority G.S. 90-100; 90-102; 143B-147(a)(5).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to amend the rules cited as 10A NCAC 27G .0405..*

**Proposed Effective Date:** June 1, 2004

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by January 30, 2004.*

**Reason for Proposed Action:** *The proposed amendment for this Rule is necessary as a result of Session Law 2003-294(SB 926).*

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

**Written comments may be submitted to:** *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 733-7011, fax (919) 733-9455, and email cindy.kornegay@ncmail.net.*

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a

rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State  
☐ Local  
☐ Substantive (>\$3,000,000)  
☒ None

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

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

**SECTION .0400 - LICENSING PROCEDURES**

**10A NCAC 27G .0405 LICENSE DENIAL,  
AMENDMENT OR REVOCATION**

(a) Denial: DFS may deny an application for license based on the determination that:

- (1) the applicant is not in compliance with rules promulgated under G.S. 122C, for the facility which the applicant is seeking licensure; (2) the applicant is not in compliance with applicable provisions of the Certificate of Need law under G.S. 131E, Article 9 and rules adopted under that law for the facility which the applicant is seeking licensure;
- (3) the Department has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 which was previously held by the applicant and the applicant voluntarily relinquished the license;
- (4) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 which is owned by the applicant;
- (5) the applicant has an individual as part of their governing body or management who previously held a license which was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A and G.S. 110, Article 7 and the rules adopted under these laws; or
- (6) the applicant is an individual who has abused, neglected, misappropriated property, diverted drugs or committed fraud.

(b) Notice: When an application for license of a new facility is denied:

- (1) pursuant to G.S. 150B-22, the applicant shall be given an informal opportunity to provide

reasons why the license should be issued or the matter otherwise settled;

- (2) DFS shall give the applicant written notice of the denial, the reasons for the denial and advise the applicant of the right to request a contested case hearing pursuant to G.S. 150B; and
- (3) the facility shall not operate until a decision is made to issue a license, despite an appeal action.

(c) Amendment: DFS may amend a license to indicate a provisional status whenever DFS determines there are violations of rules, but the violations do not pose an immediate threat to the health, safety or welfare of the clients served. The following applies to provisional status:

- (1) Provisional status shall be approved for not less than 30 days and not more than six months.
- (2) Provisional status shall be effective immediately upon notice to the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises.
- (3) The facility shall inform each client residing or receiving services from the facility or their legally responsible person concerning the facility's provisional status.
- (4) A regular license shall be issued when a facility is determined by DFS to be in compliance with applicable rules.
- (5) If a facility fails to comply with the rules within the time frame for the provisional status, the license shall automatically terminate on the expiration date of the provisional status.
- (6) If a licensee has a provisional status at the time that the licensee submits a renewal application, the license, if renewed, shall also be of a provisional status unless DFS determines that the violations have been corrected.
- (7) A decision to issue a provisional status shall be stayed during the period of an appeal and the licensee may continue to display its license during the appeal.

(d) Revocation: DFS shall revoke a license whenever it finds:

- (1) there has been failure to comply with G.S. 122C;
- (2) there has been failure to comply with rules promulgated under G.S. 122C; and
- (3) such failure to comply endangers the health, safety or welfare of the individuals in the facility.

Except for summary suspensions which are governed by Paragraph (e) of this Rule, DFS shall give the licensee written notice of intent to revoke and the reasons for the proposed action, and the right to request a contested case hearing pursuant to G.S. 150B. If the licensee petitions for a hearing, the revocation shall not take effect until completion of the contested case process, otherwise it shall be effective as specified by DFS in its revocation order.

(e) Summary Suspension:

- (1) Should DFS find that public health, safety or welfare considerations require emergency action, DFS shall issue an order of summary suspension and include the findings in its order.
- (2) DFS shall suspend only those services as necessary to protect the public interest. An order of summary suspension shall be effective on the date specified in the order or on the date of service of the order at the last known address of the licensee, whichever is later.
- (3) The licensee may contest the order by requesting a contested case hearing pursuant to G.S. 150B. The order for summary suspension shall be in full force and effect during any contested case hearing.
- (4) The order may set a date by which the licensee shall remove the cause for the emergency action. If the licensee fails to meet that deadline, DFS may revoke or amend the facility's license.

Authority G.S. 122C-12.1; 122C-23; 122C-24; 122C-26; 122C-27; 143B-147; 150B-3; 150B-12(a); 150B-23(a)(f); 150B-45.

\*\*\*\*\*

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend the rules cited as 10A NCAC 70E .0506; 70I .0101.

**Proposed Effective Date:** May 1, 2004

**Public Hearing:**

**Date:** March 17, 2004

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

**Location:** 325 N. Salisbury St., Albemarle Building, Room 832, Raleigh, NC 27699

**Reason for Proposed Action:** The Social Services Commission (hereafter referred to as the Commission) proposes to amend 10A NCAC 70E .0506 – Revocation or Denial and 10A NCAC 70I .0101 – Licensing Actions, pursuant to a recent action of the 2003 Session of the General Assembly (Senate Bill 926 (S.L. 2003-294)). In broad terms, Senate Bill 926 addresses some concerns the public expressed about provisions in Senate Bill 163 (S.L. 2002-164) and implements a graduated period of licensure denials for residential care facilities and family foster homes. The proposed changes and additions will ensure that rules governing residential care facilities and family foster homes are in compliance with the noted statutory changes. In July 2003, the Commission temporarily amended these rules as a result of action taken by the General Assembly during the 2002 Session in Senate Bill 163 (S.L. 2002-164). In September 2003, the Commission permanently amended these rules as required by law under provisions of the Administrative Procedure Act (APA) in order for the temporary rules to remain in place until the permanent rules could become effective in August 2004. In the meantime, during its 2003 Session, the General Assembly approved Senate Bill 163 that amended portions of S.L. 2002-

164. This new legislation necessitated further amendments to 10A NCAC 70E .0506 and 10A NCAC 70I .0101 before the amended rules could become permanent under the former APA process in place prior to the changes in House Bill 1151 (S.L. 2003-229). To ensure that all the changes required under Senate Bills 163 and 926 have been incorporated into the rules and that they become permanent at the same time, the starting point for these amendments are the rules that were in place prior to temporary action in July 2003. As a result, these amended rules replace the rules approved by the Rules Review Commission at their October 16 and December 18, 2003 meetings.

**Procedure by which a person can object to the agency on a proposed rule:** Anyone wishing to comment on these proposed rules should contact Jane Smith, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, North Carolina 27699-2401. Telephone: 919 733-3055; fax 919 733-9386. Verbal comments may be expressed at the Commission Meeting on March 17, 2004. Any written comments must be received by 10:00 a.m. on March 17, 2004.

**Written comments may be submitted to:** Jane Smith, 2401 Mail Service Center, Raleigh, North Carolina 27699-2401, (919) 733-3055, fax (919) 733-9386, and e-mail [jane.smith@ncmail.net](mailto:jane.smith@ncmail.net).

**Comment period ends:** 10:00 a.m. on March 17, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State
- ☐ Local
- ☐ Substantive (>\$3,000,000)
- ☒ None

**CHAPTER 70 – CHILDREN'S SERVICES**

**SUBCHAPTER 70E - LICENSING OF FAMILY FOSTER HOMES**

**SECTION .0500 - LICENSING REGULATIONS AND PROCEDURES**



**10A NCAC 70E .0506 REVOCATION OR DENIAL**

(a) The Department of Health and Human Services may revoke licenses when an agency authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.

(b) The Department of Health and Human Services may revoke a license when the foster family home is not in compliance with licensing standards.

(c) The Department of Health and Human Services shall base the revocation on the following:

- (1) a child's circumstances;
- (2) a child's permanency plan;
- (3) the nature of the non-compliance; and
- (4) the circumstances of the placement.

(d) When foster parents' license have been revoked, they must submit their license to the agency for it to be returned to the Division of Social Services, Family Support and Child Welfare Services Section.

(e) The Department of Health and Human Services shall deny licensure to an applicant when an applicant meets any of the following conditions:

- (1) the applicant is not in compliance with rules adopted under G.S. 131D, Article 1A;
- (2) the Department has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 which was previously held by the applicant and the applicant voluntarily relinquished the license;
- (3) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 which is owned by the applicant;
- (4) the applicant has an individual as part of its governing body or management who previously held a license which was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, and G.S. 110, Article 7 and the rules adopted under these laws; or
- (5) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256.

(f) The denial of licensure pursuant to Paragraph (f) of this Rule shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.

(g) Appeal procedures specified in 10A NCAC 70L .0102, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department's decision to revoke or deny a license. If the action is reversed on appeal, the application shall be approved back to the date of the denied application if all qualifications are met.

*Authority G.S. 131D-10.3; 131D-10.5; 143B-153.*

**SUBCHAPTER 70I - MINIMUM LICENSING STANDARDS FOR RESIDENTIAL CHILD CARE****SECTION .0100 - GENERAL LICENSING REQUIREMENTS****10A NCAC 70I .0101 LICENSING ACTIONS**

(a) License.

- (1) The Department of Health and Human Services shall issue a license when it determines that the residential child-care facility is in compliance with rules in Subchapters 70I and 70J.
- (2) A license shall remain in effect for one year.
- (3) The Department of Health and Human Services shall automatically provide a 90 day grace period at the expiration date of the license.
- (4) If licensure materials are submitted after the license expires, but within the 90 day grace period, the Department of Health and Human Services shall issue a license one year from the expiration date of the previous license.

(b) Changes in any information on the license.

- (1) The Department of Health and Human Services shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70I and 70J.
- (2) The Department of Health and Human Services shall not change a license during the 90 day grace period.
- (3) A residential child-care facility must notify the Children's Services Section in writing of its request for a change in license, including such information as is necessary to assure that the change is in compliance with the rules in Subchapters 70I and 70J.

(c) Termination.

- (1) When a residential child-care facility voluntarily discontinues child caring operations, either temporarily or permanently, the residential child-care facility must notify the Children's Services Section in writing of the date, reason and anticipated length of closing.
- (2) If a license is not renewed by the end of the 90 day grace period, the Department of Health and Human Services shall automatically terminate the license.

(d) Adverse Licensure Action.

- (1) The Department of Health and Human Services shall deny, suspend or revoke a license when a residential child-care facility is not in compliance with the rules in Subchapters 70I and 70J unless the child-care provider, within 10 working days from the date the child-care facility initially received the deficiency report from the Division of Social Services, submits a plan of correction.

The plan of correction shall specify the following:

- (A) the measures that will be put in place to correct the deficiency;
- (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
- (C) the individual or individuals who will monitor the corrective action; and
- (D) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.

(2) The Department of Health and Human Services shall notify a residential child-care facility in writing of the decision to deny, suspend or revoke a license.

(3) Appeal procedures specified in 10A NCAC 70L .0107, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, are applicable for persons seeking an appeal to the Department's decision to deny, suspend or revoke a license.

(e) Licensure Restriction.

(1) Licensure shall be denied when an applicant meets any of the following conditions:

- (A) owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or
- (B) the applicant is not in compliance with rules adopted under G.S. 131D, Article 1A;
- (C) the Department has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license;
- (D) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7 that is owned by the applicant;
- (E) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, and G.S. 110, Article 7 and the rules adopted under these laws; or
- (F) the applicant is an individual who has a finding or pending investigation by

the Health Care Personnel Registry in accordance with G.S. 131E-256.

- (2) The denial of licensure pursuant to this Paragraph shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at <http://www.ncleg.net/Statutes/Statutes.html>.

*Authority G.S. 131D-10.3; 131D-10.5; 143B-153.*

## 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 .0237-.0240 and amend the rules cited as 12 NCAC 09B .0202-.0203, .0215, .0302, .0404, .0408-.0409, .0414, .0501; 09C .0308, .0601, .0607-.0608; 09F .0102, .0104-.0106.*

**Proposed Effective Date:** May 1, 2004

**Public Hearing:**

**Date:** February 19, 2004

**Time:** 1:00 p.m.

**Location:** Department of Correction, Office of Staff Development and Training, Apex, NC

**Reason for Proposed Action:**

*12 NCAC 09B .0202, .0215, .0237-.0240, .0404, .0408-.0409, .0414; 09C .0308, .0601, .0607-.0608 – The Criminal Justice Education and training Standards Commission has approved the use of LIDAR instruments, along with training and certification requirements for the operation of such instruments.*

*12 NCAC 09B .0203 – The additional requirements for admission of trainees into Basic Law Enforcement Training mirror law enforcement officer certification requirements. This change is designed to prevent applicants who would be ineligible for law enforcement officer certification from attending Basic Law Enforcement Training.*

*12 NCAC 09B .0302 – The Commission has increased the number of years of criminal justice experience required for General Instructor Certification.*

*12 NCAC 09B .0501 – Attendance and successful completion of a Commission-accredited instructor course has been added as a requirement for certification as a school director.*

*12 NCAC 09F .0102, .0104-.0106 – The rules governing the Concealed Carry Handgun Program have been revised to clarify training and certification requirements.*

**Procedure by which a person can object to the agency on a proposed rule:** *The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton St., Raleigh, NC 27602.*

**Written comments may be submitted to:** *Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114*

*West Edenton St., Raleigh, NC 27602, phone (919) 716-6473, fax (919) 716-6752, and email tmarrella@ncdoj.com.*

**Comment period ends:** *March 15, 2004*

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

**Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ **State**  
☐ **Local**  
☐ **Substantive** (>\$3,000,000)  
☒ **None**

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

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

**SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

**12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR**

(a) In planning, developing, coordinating, and delivering each Commission-accredited criminal justice training course, the School Director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter. The "Criminal Justice Instructor Training Course" shall be presented with 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
- (2) Select and schedule instructors who are certified by the Commission;
- (3) Provide each instructor with a current Commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Review each instructor's lesson plans and other instructional materials for conformance to

- (5) Commission standards and to minimize repetition and duplication of subject matter;
  - (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
  - (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
    - (A) effective course delivery;
    - (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
    - (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
  - (7) If appropriate, recommend housing and dining facilities for trainees;
  - (8) Administer the course delivery in accordance with Commission procedures and standards, give consideration to advisory guidelines issued by the Commission, and ensure that the training offered is safe and effective;
  - (9) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated; and
  - (10) Report the completion of each presentation of a Commission-accredited criminal justice training course to the Commission.
- (b) In addition to Paragraph (a) of this Rule, in planning developing, coordinating and delivering each Commission-accredited Basic Law Enforcement Training Course, the School Director shall:
- (1) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed; and
  - (2) Schedule only those instructors certified by the Commission to teach those high liability areas as specified in 12 NCAC 09B .0304(a) as either the lead instructor or in any other capacity; and
  - (3) With the exception of the First Responder, Physical Fitness, Electrical and Hazardous Materials, and topical areas as outlined in 12 NCAC 09B .0304(a) of this Subchapter, schedule one specialized certified instructor for each six trainees while actively engaged in a practical performance exercise; and
  - (4) Schedule one specialized certified instructor for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques"; and

- (5) Not schedule any single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the Basic Law Enforcement Training Course presentation; and
  - (6) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C .0211 along with the following attachments:
    - (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments.
    - (B) a copy of any rules, regulations, and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course; and
    - (C) the Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.
  - (7) Monitor, or designate a certified instructor to monitor, the presentations of all instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments:
    - (A) for probationary instructors, these evaluations shall be prepared on Commission forms and forwarded to the Commission. Based on this evaluation, the School Director shall have the responsibility for recommending approval or denial of requests for General Instructor Certification;
    - (B) for all other instructors, these evaluations shall be prepared on Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request;
    - (C) any designated certified instructor who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated.
  - (8) Administer or designate a staff person to administer appropriate tests as determined necessary at various intervals during course delivery:
    - (A) to determine and record the level of trainee comprehension and retention of instructional subject- matter;
    - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
    - (C) to determine subject or topic areas of deficiency for the application of 12 NCAC 09B .0405(a)(3); and
  - (9) During a delivery of Basic Law Enforcement Training, make available to the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
  - (10) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) which shall include:
    - (A) a "Student Course Completion" form for each individual enrolled on the day of orientation.
    - (B) a "Certification and Test Score Release" form; and
- (c) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-accredited "Criminal Justice Instructor Training Course" the School Director shall:
- (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
  - (2) Schedule at least one evaluator for each six trainees:
    - (A) no evaluator will be assigned more than six trainees during a course delivery.
    - (B) each evaluator, as well as the instructors, must have successfully completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
    - (C) each instructor and evaluator must document successful participation in a program presented by the Justice Academy for purposes of

- familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.
- (3) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation [Form F-10A(ITC)] with the following attachments:
- (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments;
  - (B) the names and social security numbers of all instructors and evaluators; and
  - (C) a copy of any rules, regulations, and requirements for the school.

The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.

- (4) Not more than 10 days after course completion the School Director shall submit to the Commission a Post-Delivery Report [Form F-10B(ITC)] containing the following:
- (A) class enrollment roster;
  - (B) a course schedule with designation of instructors and evaluators utilized in delivery;
  - (C) scores recorded for each trainee on both the 80 minute skill presentation and the final written examination; and
  - (D) designation of trainees who successfully completed the course in its entirety and whom the School Director finds to be competent to instruct.

(d) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-accredited radar, radar and time-distance, time-distance, or lidar speed measurement operator training course or re-certification course, the School Director shall:

- (1) select and schedule radar, time-distance, or lidar speed measurement instrument instructors who are certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction. The following requirements apply to operator certification training:
  - (A) provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
  - (B) require the instructor to complete the motor-skill examination form on each trainee indicating the level of proficiency obtained on each specific instrument; and

- (C) require each instructor to sign each individual form and submit the original to the School Director.
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation:
  - (A) the request shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained in each type of approved speed-measurement instrument; and
  - (B) the Director of the Standards Division shall review the request and notify the School Director of the accepted delivery period unless a conflict exists with previously scheduled programs.
- (3) during the delivery of the training course, make available to the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee; and
- (4) upon completing delivery of the Commission-accredited course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the School Director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery Report of Training Course Presentation. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

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

#### **12 NCAC 09B .0203 ADMISSION OF TRAINEES**

- (a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States. (b) The school may not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment as long as the individual turns 20 years of age prior to the date of the State Comprehensive Examination for the course.
- (c) The school shall give priority admission in accredited criminal justice training courses to individuals holding full-time employment with criminal justice agencies.
- (d) The school may not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the minimum education and experience

requirements for instructor certification under Rule .0302(1) of this Subchapter within three months of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall administer the reading component of a standardized test which reports a grade level for each trainee participating in the Basic Law Enforcement Training Course. The specific type of test instrument shall be determined by the School Director and shall be administered no later than by the end of the first two weeks of a presentation of the Basic Law Enforcement Training Course.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided to the School Director a medical examination report, properly completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division may grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to timely receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual is a high school graduate or has passed the General Educational Development Test indicating high school equivalency. High school diplomas earned through correspondence enrollment are not recognized toward the minimum educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (A) a felony; or
- (B) a crime for which the punishment could have been imprisonment for more than two years; or
- (C) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of application for employment unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission; or
- (D) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction; or
- (E) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or

- (F) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes as specified in Paragraph (i) of this Rule, and such offenses were dismissed or the person was found not guilty, may be admitted into the Basic Law Enforcement Training Course but completion of the Basic Law Enforcement Training Course will not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under G.S. 20 (Motor Vehicles) or other similar laws of other jurisdictions which shall be reported to the School Director expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), the final disposition, and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph shall be applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

(k) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission reserve the right to make the final decisions regarding whether or not law enforcement officer or justice officer certification will be granted to trainees who successfully complete a presentation of the Basic Law Enforcement Training Course.

*Authority G.S. 17C-6; 17C-10.*

**12 NCAC 09B .0215      SUPPLEMENTAL SMI TRAINING**

(a) The supplemental speed measuring instrument (SMI) training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform those tasks essential to function as an instructor or operator using the additional speed measuring instrument(s).

(b) Each applicant for supplemental speed measuring instrument training shall:

- (1) possess a valid radar, time-distance, or lidar speed measuring instrument instructor or operator certification as a result of successful completion of 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0237, or .0238; and
- (2) present the endorsement of a Commission-recognized school director or agency executive officer or his designee.

(c) The supplemental SMI training course required for certification, on the additional instrument(s), shall include but not be limited to the topic areas and number of hours as outlined in The Supplemental SMI Training Course. To qualify for certification, on the additional instrument(s), an applicant shall meet the requirements as outlined in The Supplemental SMI Training Course and meet the requirements of 12 NCAC 09B .0409.

(d) Certification as instructor and/or operator of the additional speed measuring instruments shall expire on midnight of the date of expiration of the instructor and/or operator certification referred to in 12 NCAC 09B .0215(b) and .0310(a).

(e) The "Supplemental SMI Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the supplemental SMI training course for SMI instructors or operators 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  
114 West Edenton Street  
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  
Salemberg, North Carolina 28385

(f) Commission-accredited schools that are accredited to offer the "Supplemental SMI Training Course" for Instructors are: The North Carolina Justice Academy.

(g) In conducting supplemental SMI training, the North Carolina Justice Academy may use manufacturer representatives, certified as speed measuring instrument instructors in another state jurisdiction, to assist with training on new speed measuring instruments and/or systems.

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

**12 NCAC 09B .0237      LIDAR INSTRUCTOR**

**TRAINING COURSE**

(a) The Lidar Instructor Training Course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a lidar instructor. This course shall be for a period not to exceed six consecutive weeks.

(b) The Lidar Instructor Training Course required for lidar instructor certification shall include, but not be limited to, the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor certification, an applicant shall meet the requirements as outlined in The Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) Each applicant for lidar instructor training shall:

- (1) present the endorsement of a Commission-recognized school director or agency executive officer or his designee;
- (2) possess criminal justice General Instructor Certification as required in 12 NCAC 09B .0302; and
- (3) possess a current and valid lidar operator certification.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the lidar instructor training course for lidar instructors 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  
114 West Edenton Street  
Old Education Building  
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  
Salemberg, North Carolina 28385

(e) Commission-accredited schools that are accredited to offer the Lidar Instructor Training Course are: The North Carolina Justice Academy.

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

**12 NCAC 09B .0238      CERTIFICATION TRAINING FOR LIDAR OPERATORS**

(a) The Lidar Operator Training Course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a law enforcement lidar operator. This course shall be for a period not to exceed four consecutive weeks.

(b) Only employed or appointed personnel of a law enforcement agency shall be enrolled in the Lidar Operator Training Course. Such a trainee shall not be certified as a lidar operator until the Basic Law Enforcement Training Course has been successfully completed and probationary or general law enforcement certification has been granted. Sheriffs, deputy sheriffs and federal law enforcement personnel, including but not limited to armed forces personnel, shall be allowed to participate in lidar operator training courses on a space available basis at the



discretion of the school director without having enrolled in or having successfully completed the Basic Law Enforcement Training Course and without being currently certified in a probationary status or holding general law enforcement certification. The Lidar Operator Training Course required for lidar operator certification shall include but not be limited to the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the Lidar Operator Training Course for lidar operators 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  
114 West Edenton Street  
Old Education Building  
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  
Salemberg, North Carolina 28385

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

#### **12 NCAC 09B .0239 RE-CERTIFICATION TRAINING FOR LIDAR INSTRUCTORS**

(a) The Lidar Instructor Re-Certification Training Course shall be designed to provide the instructor with the skills and knowledge to continue to proficiently perform the function of a lidar instructor. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Instructor Re-Certification Training Course shall:

- (1) possess criminal justice General Instructor Certification as required in 12 NCAC 09B .0302; and
- (2) have been certified as a lidar instructor within the three years preceding the completion date of the re-certification training course.

(c) The Lidar Instructor Re-Certification Training Course required for lidar instructor re-certification shall include but not be limited to the topic areas and number of hours as outlined in the Lidar Instructor Training Course. To qualify for lidar instructor re-certification, an applicant shall meet the requirements as outlined in the Lidar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(d) The "Lidar Instructor Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the Lidar Instructor Re-Certification Training Course for lidar instructors 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  
114 West Edenton Street  
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  
Salemberg, North Carolina 28385

(e) Commission-accredited schools that are accredited to offer the Lidar Instructor Re-Certification Training Course are: The North Carolina Justice Academy.

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

#### **12 NCAC 09B .0240 RE-CERTIFICATION TRAINING COURSE FOR LIDAR OPERATORS**

(a) The Lidar Operator Re-Certification Training Course shall be designed to provide the law enforcement officer with the skills and knowledge to continue to proficiently perform the function of a lidar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a Lidar Operator Re-Certification Training Course shall meet the requirements of 12 NCAC 09C .0308(c) and (d).

(c) Federal law enforcement personnel shall be allowed to participate in Lidar Operator Re-Certification Training Courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 09B .0238(b), but such personnel must have successfully completed the Lidar Operator Training Course.

(d) The Lidar Operator Re-Certification Training Course required for lidar operator re-certification shall include but not be limited to the topic areas and number of hours as outlined in the Lidar Operator Training Course. To qualify for lidar operator re-certification, an applicant shall meet the requirements as outlined in the Lidar Operator Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(e) The "Lidar Operator Training Course" as published by the North Carolina Justice Academy is to be applied as basic curriculum for the Lidar Operator Re-Certification Training Course for lidar operators 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  
114 West Edenton Street  
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  
Salemberg, North Carolina 28385

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



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

Commission-accredited instructor  
training course in its entirety.

**12 NCAC 09B .0302 GENERAL INSTRUCTOR  
CERTIFICATION**

Certifications issued in this category after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule 09B .0304, entitled "Specific Instructor Certification". To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the Commission. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
  - (a) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency; and (b) has acquired 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.
- (2) Present evidence showing successful completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
  - (a) applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant successfully passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
  - (b) persons having completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent

Authority G.S. 17C-6.

**SECTION .0400 - MINIMUM STANDARDS FOR  
COMPLETION OF TRAINING****12 NCAC 09B .0404 TRAINEE ATTENDANCE**

(a) Each trainee enrolled in an accredited Basic Law Enforcement Training Course shall attend all class sessions. The school director shall be responsible for monitoring the trainee's regular attendance at criminal justice training courses in which the trainee is enrolled.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed five percent of the total class hours for the course offering. A trainee shall not be eligible for administration of the state comprehensive examination and shall be dismissed from the course if the cumulative total of class absences exceeds five percent regardless of the prior completion of make-up work.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation. The school director shall be responsible for scheduling appropriate instructors and reimbursing those instructors for the purpose of completion of the make up work. Absences which occur during the last forty hours of the training course may be made up in a subsequent delivery; however, the school director shall seek approval from the Standards Division prior to scheduling the make up work.

(d) A school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to or regularly departs early from class meetings or field exercises.

(e) Where a trainee is enrolled in a program as required in 12 NCAC 09B .0212, .0213, .0214, .0215, .0218, .0219, .0220, .0221, .0222, .0236, .0237, .0238, or .0240, and the scheduled course hours exceed the minimum requirements of the Commission, the trainee, upon the authorization of the school director, may be deemed to have satisfactorily completed the required number of hours for attendance provided the trainee's attendance is not less than 100 percent of the minimum instructional hours as required by the Commission.

(f) A trainee enrolled in a presentation of the "Criminal Justice Instructor Training Course" under Rule .0209 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion.

(g) A trainee, enrolled in a presentation of the "Specialized Firearms Instructor Training" course under Rule .0226 of this Subchapter, the "Specialized Driving Instructor Training" course under Rule .0227 of this Subchapter, or the "Specialized Subject Control Arrest Techniques Instructor Training" course under Rule .0232 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Appropriate make-up work must be completed during the current course presentation for all absenteeism.

(h) A trainee, enrolled in a presentation of the "Radar Instructor Training Course" under Rule .0210 of this Subchapter, the "Time-Distance Speed Measurement Instrument Instructor Training Course" under Rule .0211 of this Subchapter, or the "Lidar Speed Measurement Instrument Instructor Course" under Rule .0235 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Appropriate make-up work must be completed during the current course presentation for all absenteeism.

*Authority G.S. 17C-2; 17C-6; 17C-10.*

**12 NCAC 09B .0408 COMPREHENSIVE WRITTEN EXAMINATION -- BASIC SMI CERTIFICATION**

(a) At the conclusion of the classroom instruction portion of a school's offering of any speed measurement instrument operators' courses and re-certification courses, an authorized representative of the Commission shall administer to all candidates for certification as operators a comprehensive written examination.

(b) The examination shall be an objective test covering the topic areas contained in the accredited course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each candidate for certification.

(d) A trainee shall pass the operator training course as required in 12 NCAC 09B .0212, .0213, .0214, or .0238 by achieving 70 percent correct answers.

(e) An operator seeking recertification shall pass the operator training recertification courses as specified in 12 NCAC 9B .0220, .0221, .0222 or .0240 by achieving 75 percent correct answers.

(f) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated 100 percent competence in each motor-skill or performance area of the course curriculum but has failed to achieve the prescribed score, as specified in Paragraph (d) of this Rule, on the Commission's comprehensive written examination may request the director of the Standards Division to authorize a re-examination of the trainee.

- (1) The trainee's request for re-examination shall be made in writing on the Commission's form and shall be received by the Standards Division within 30 days of the examination.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.
- (3) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.
- (4) The trainee will be notified by the Standards Division staff of a place, time, and date for re-examination.
- (5) If the trainee fails to achieve the prescribed score on the re-examination, the trainee may not be recommended for certification and shall

enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

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

**12 NCAC 09B .0409 SATISFACTION OF TRAINING -- SMI OPERATORS**

(a) To satisfy the training requirements for operator certification, a trainee shall complete all of the following:

- (1) achieve a score of 70 percent correct answers on the comprehensive written examination, provided for in 12 NCAC 09B .0408(d).
- (2) demonstrate successful completion of an accredited offering of courses as prescribed under either 12 NCAC 09B .0212, .0213, .0214, .0215, or .0238 as shown by the certification of the school director.
- (3) demonstrate 100 percent proficiency in the motor-skill and performance subject areas as demonstrated to a certified Speed Measurement Instrument (SMI) instructor and further evidenced through documentation on the Commission's SMI forms and by the subscribing instructor's certification of trainee competence.
- (4) present evidence showing prior North Carolina certification in a commission-accredited operator training course as prescribed in 12 NCAC 09B .0212 or 12 NCAC 09B .0213, or present evidence showing prior certification which meets or exceeds North Carolina certification, or present evidence showing completion of 16 hours of supervised field practice within 90 days after completing a commission-accredited radar operator training course as prescribed in 12 NCAC 09B .0212 or 12 NCAC 09B .0213.

(b) Any trainee failing to achieve 100 percent proficiency in the motor-skill area may request written permission from the Director of the Standards Division for re-examination.

- (1) The trainee's request for re-examination shall be made in writing and must be received by the Standards Division within 30 days of the original examination.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.
- (3) A trainee shall have, within 90 days of the original examination, only one opportunity for motor-skill re-examination and must satisfactorily complete each identified area of deficiency on the original motor-skill examination.
- (4) The trainee will be notified by the Standards Division staff of a place, time and date for re-examination.
- (5) If the trainee fails to achieve the prescribed score on the examination, the trainee will not be recommended for certification and shall

enroll and complete a subsequent course offering in its entirety before further examination may be permitted.

(c) To satisfy the training requirements for operator re-certification, an operator seeking re-certification shall:

- (1) Achieve a score of 75 percent correct answers on the comprehensive written examination provided for in 12 NCAC 09B .0408(e).
- (2) Demonstrate successful completion of an accredited offering of courses as prescribed under either 12 NCAC 09B .0218, .0219, .0220, .0221, .0222, .0239, or .0240 as shown by the certification of the school director.
- (3) Satisfy all motor-skill requirements as required in 12 NCAC 09B .0409(a)(3).

(d) At the time a trainee seeking operator re-certification fails to achieve the prescribed requirements on the comprehensive written examination as specified in 12 NCAC 09B .0409(c)(1), certification of the officer automatically and immediately terminates and that officer will not be re-certified until successful completion of a subsequent course offering as prescribed under either 12 NCAC 09B .0212, .0213, .0214, or .0238 before further examination may be permitted.

(e) At the time a trainee seeking operator re-certification fails to achieve the prescribed motor-skill requirements as specified in 12 NCAC 09B .0409(c)(3), certification of the officer automatically and immediately terminates and that officer shall not be re-certified until successful completion of the required motor-skill testing. Provided, however, such an officer may request re-examination as prescribed in 12 NCAC 09B .0409(b).

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

**12 NCAC 09B .0414 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING**

(a) At the conclusion of a school's offering of the "Specialized Firearms Instructor Training" course, "Specialized Driver Instructor Training" course, "Specialized Subject Control Arrest Techniques Instructor Training" course, "Specialized Physical Fitness Instructor Training" course, the "Radar Instructor Training Course," the "Criminal Justice TD/SMI Instructor Training Course," the "Lidar Instructor Training Course", the "Re-Certification Training for Radar Instructors" course, the "Re-Certification Training for TD/SMI Instructors" course, and the "Re-Certification Training for Lidar Instructors" course, in its entirety, the Commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

(c) The Commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves 75 percent correct answers.

(e) A trainee who fails to achieve a score of 75 percent on the Commission's comprehensive written examination shall not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor training course in its entirety before further examination may be permitted.

*Authority G.S. 17C-6; 17C-10.*

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

**12 NCAC 09B .0501 CERTIFICATION OF SCHOOL DIRECTORS**

(a) Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a Commission-accredited criminal justice training course shall be and continuously remain certified by the Commission as a school director.

(b) To qualify for initial certification as a criminal justice school director, an applicant shall:

- (1) Attend and successfully complete a Commission-accredited instructor training course or an equivalent instructor training program as determined by the Commission (if certified after July 1, 2004); and
- (2) Present documentary evidence showing that the applicant:
  - (A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five 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. At least one year of the required five years experience must have been while actively participating in criminal justice training as a Commission-certified instructor; or
  - (B) has been awarded an associate degree and has acquired 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. At least one year of the required four years experience must have been while directly participating in criminal justice training as a Commission-certified instructor; or
  - (C) has been awarded a baccalaureate degree acceptable to any Commission-accredited school in its criminal justice program. In addition, it is recommended that the applicant have some experience as a criminal

- justice officer or some experience in criminal justice training.
- (3) Attend or must have attended the most current offering of the school director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member may be required.
  - (4) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the Commission to make presentation of accredited training programs and for whom the applicant will be the designated school director.
- (c) To qualify for certification as a school director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:
- (1) Document that he/she has been awarded a baccalaureate degree from an accredited institution of higher learning; and
  - (2) Present evidence showing successful completion of a Commission-accredited instructor training course or an equivalent instructor training program as determined by the Commission; and
  - (3) Be currently certified as a criminal justice instructor by the Commission; and
  - (4) Document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

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

**SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

**SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS**

**12 NCAC 09C .0308 SPEED MEASUREMENT INSTRUMENT (SMI) OPERATORS CERTIFICATION PROGRAM**

- (a) Certification shall be issued in one of the following categories:
- (1) radar operator Speed Measurement Instrument (SMI) certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0218, .0219, .0220, .0221, or .0222;
  - (2) radar and time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0219, or .0221;

- (3) time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0211, .0213, .0214, .0219, .0221, or .0222; or
  - (4) lidar speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 09B .0238 or .0240.
- (b) Certification in either category will reflect operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification shall be for a three year period from the date of issue and re-certifications shall be for a three year period from the date of issue, unless sooner terminated by the Commission. At a minimum, the applicant shall meet the following requirements for operator certification or re-certification within 90 days of course completion and upon the presentation of documentary evidence showing that the applicant:
- (1) has successfully completed the training program as required in 12 NCAC 09B .0210, .0211, .0212, .0213, .0214, .0218, .0219, .0220, .0221, .0222, .0237, .0238, .0239, or .0240; and
  - (2) has successfully completed a Commission-accredited basic law enforcement training course as required in 12 NCAC 09B .0400 and is currently certified in a probationary status or holds general law enforcement certification; or
  - (3) if the applicant is a sheriff, deputy sheriff, or other sworn appointee with arrest authority governed by the provisions of G.S. 17E has met and is in total compliance with the then current employment and training standards as established and made effective for such position by the North Carolina Sheriffs' Education and Training Standards Commission.
- (c) Certified operators shall be notified by the Commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a Commission-approved re-certification course within 12 months from the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 09B .0409(a) will be required to obtain operator certification. This prescribed 12 month period shall not extend the operator certification period beyond its specified expiration date. When a re-certification course is successfully completed prior to the expiration of the previous certification, the new certification shall be issued by the Criminal Justice Standards Division effective upon the receipt of the Post-delivery Report of Training Course Presentation.
- (d) Operator re-certification shall be issued only to officers with current law enforcement certification.
- (e) All certifications issued pursuant to this Rule and the standards in effect between November 1, 1981 and July 1, 1982 shall continue with full force and effect; however, said

certifications shall be subject to the provisions of 12 NCAC 09C .0308(c) and (d).

Authority G.S. 17C-6.

## SECTION .0600 - EQUIPMENT AND PROCEDURES

### 12 NCAC 09C .0601 APPROVED SPEED-MEASURING INSTRUMENTS

The following procedures shall be adhered to for approval of speed-measuring instruments:

- (1) Prior to the inclusion as an approved speed-measuring instrument, the manufacturer of said instrument shall certify in writing to the Criminal Justice Standards Division that said instrument meets or exceeds the applicable standards set out in the "Model Performance Specifications for Police Traffic Radar Devices" as published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982) which is hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602

and may be obtained at no cost from the National Highway Traffic Safety Administration at the following address:  
National Highway Traffic Safety Administration  
400 Seventh Street, SW  
Washington, DC 20590

The manufacturer shall provide evidence that the instrument meets or exceeds the applicable standards published by the National Highway Traffic Safety Administration, United States Department of Transportation.

- (2) All speed-measuring instruments shall be evaluated by representatives from the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Department of Crime Control and Public Safety. A summary of the findings shall be submitted in writing to the Criminal Justice Standards Division's Radar Program Administrator.
- (3) A current list of all approved speed-measuring instruments shall be included in Appendix "A" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy.
- (4) The "Speed-Measurement Instrument Operator Training Course Manuals" as published by the

North Carolina Justice Academy are to be applied as the basic curriculum for the speed-measuring instrument operator training courses for speed-measuring instrument operators as administered by the North Carolina Criminal Justice Education and Training Standards Commission. Copies of these publications may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
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.

### 12 NCAC 09C .0607 SPEED-MEASURING INSTRUMENT ACCURACY TEST

The purpose of this Rule is to establish the minimum requirements and test methods for determining the accuracy of speed-measuring instruments used by law enforcement agencies to measure the speed of vehicles for enforcement of speed laws and regulations. All requirements and tests shall conform with G.S. 8-50.2 and G.S. 17C-6.

- (1) Accuracy test standard:
  - (a) Annual tests of all speed-measuring instruments shall be in conformance with G.S. 8-50.2(c). The results of these tests shall be recorded on forms provided by the Commission.
  - (b) Daily tests of all speed-measuring instruments shall be in conformance with G.S. 8-50.2(b)(4) and G.S. 17C-6(13).
- (2) Accuracy requirements and test methods:
  - (a) Annual: - The annual tests for accuracy requirements for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "B" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:  
Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street

Old Education Building  
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

(b) Daily: - The daily tests for accuracy requirements for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "C" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:  
Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
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. 8-50.2; 17C-6.*

#### **12 NCAC 09C .0608 SPEED-MEASURING INSTRUMENT OPERATING PROCEDURES**

The purpose of this Rule is to establish the minimum requirements for operating speed-measuring instruments used by law enforcement officers to measure the speed of vehicles for enforcement of speed laws and regulations. All operating procedures shall conform with G.S. 8-50.2 and 17C-6. The operating procedures for each specific Radar, Time-Distance, and Lidar speed-measuring instrument, as outlined in Appendix "C" of the Supplement for Speed Measurement Instrument Training Courses published by the North Carolina Justice Academy, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
114 West Edenton Street  
Old Education Building  
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. 8-50.2; 17C-6.*

#### **SUBCHAPTER 09F - CONCEALED HANDGUN TRAINING**

##### **SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM**

##### **12 NCAC 09F .0102 TOPICAL AREAS**

The course entitled "Concealed Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student will be able to demonstrate a general knowledge of North Carolina law on concealed handguns, handgun safety, and use of deadly force. The instructor shall use the lesson plan and training videos produced by the North Carolina Justice Academy. The instructor shall determine the student's level of understanding of the relevant legal issues by a written examination.
- (2) Handgun Nomenclature: The students will be able to either verbally or in writing list the primary parts of their personal handgun.
- (3) Handgun Safety: The students will be able to:
  - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
  - (b) list four methods of safely storing the handgun and choose the method most appropriate for their personal use;
  - (c) describe safety issues relating to the safe carry of a handgun; and
  - (d) determine the proper storage of their weapon when there are minors in the home.
- (4) Handgun Fundamentals: The students will be able to:
  - (a) demonstrate how to properly load both a revolver and a semiautomatic handgun;
  - (b) demonstrate how to properly unload both a revolver and a semiautomatic handgun;
  - (c) describe the operational characteristics of their handgun; and
  - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105(7).
- (5) Marksmanship Fundamentals: The student will be able to:
  - (a) demonstrate a proper handgun grip;
  - (b) demonstrate either the Weaver or Isosceles Stance;

- (c) describe the elements of sight alignment and sight picture; and
- (d) demonstrate trigger control in a dry fire exercise.
- (6) Presentation Techniques: The students will be able to demonstrate the draw or presentation with their handgun.
- (7) Cleaning and Maintenance: The students will be able to:
  - (a) demonstrate how to "field strip" the handgun if their weapon can be field stripped;
  - (b) describe how to perform a "Function Check" on their personal handgun; and
  - (c) based on the manufacturer's recommendations, list the lubrication points of their specific handgun.
- (8) Ammunition: The students will be able to list the four components of handgun ammunition.
- (9) Proficiency Drills: The students will be able to:
  - (a) demonstrate how to properly check the handgun in order to ensure that it is safe;
  - (b) demonstrate how to fire the weapon from a ready position;
  - (c) demonstrate the ability to fire the handgun from various distances; and
  - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105(7).

In delivering the "Concealed Handgun Training" course the instructor shall:

- (1) file a copy of the proposed firearms course description, outline, and proof of instructor certification along with a written request to conduct the "Concealed Handgun Training" course for approval by the Commission prior to delivery of any instruction under G.S. 14-415.12;
- (2) file a copy of any modification(s);
- (3) be issued by Commission staff a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal by the Commission;
- (4) affix the student's name to one certificate and issue that certificate to the student who successfully completes the "Concealed Handgun Training" course;
- (5) conduct the training consistent with the guidelines as established in 12 NCAC 09F .0102;
- (6) administer a written examination to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- (7) administer a proficiency examination which shall demonstrate that the student is competent in the actual firing and safe handling of a handgun. Such examination shall include the following:
  - (a) The student shall fire 30 rounds of ammunition at a bulls-eye or silhouette target from three, five and seven yard distances.
  - (b) At each yard distance the student shall fire 10 rounds;
  - (c) 21 of the 30 rounds fired by the student must hit the target.

*Authority G.S. 14-415.12.*

#### **12 NCAC 09F .0104 INSTRUCTOR QUALIFICATIONS**

Instructors shall meet the following qualifications for approval to deliver the "Concealed Handgun Training" course:

- (1) the instructor shall hold one of the following certifications:
  - (a) "Specific Instructor Certification-Firearms" issued by the Commission;
  - (b) Private Protective Services Firearms Trainer Certification; or
  - (c) "Firearms Instructor Certification" in Personal Protection, Basic Pistol, or Police Firearms issued by the National Rifle Association.
- (2) the instructor shall hold a certificate issued by the North Carolina Justice Academy showing successful completion of the course on "Laws Governing Concealed Handgun and Use of Deadly Force."

*Authority G.S. 14-415.12; 14-415.13;*

#### **12 NCAC 09F .0106 SANCTIONS**

- (a) The Commission shall suspend an approved course when the Commission finds that the course has failed to meet or maintain the required standards for approval.
- (b) The Commission shall deny or suspend the approval of instructor status when the Commission finds that the instructor:
  - (1) has failed to meet or maintain the required course and instruction standards approved by the Commission as set forth in 12 NCAC 09F .0102;
  - (2) has failed to submit modification of courses or change in instructor status;
  - (3) has submitted any non-sufficient funds check;
  - (4) has falsified any successful completion of an approved course;

*Authority G.S. 14-415.12.*

#### **12 NCAC 09F .0105 INSTRUCTOR RESPONSIBILITIES**

- (5) has distributed any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor; or
- (6) has taught any "Concealed Handgun Training Program" course or approved certification while the instructor's certification was suspended by the Commission.

(c) Instructors who have lost approved status subject to Subparagraph (b)(1), (2) or (3) of this Rule may reapply for approval upon documentation of compliance after one year has elapsed from the date of suspension of the instructor's certification by the Commission. Instructors who have lost approved status subject to 12 NCAC 09F .0106 (b)(4),(5) or (6) shall have their certification permanently revoked by the Commission.

*Authority G.S. 14-415.12; 14-415.13.*

---

**TITLE 15A – DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to amend the rules cited as 15A NCAC 06E .0102, .0105.*

**Proposed Effective Date:** July 1, 2004

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person requesting that the Soil and Water Conservation Commission conduct a public hearing on any portion of these proposed rules must submit a written request to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614. The request must specify which rule the hearing is being requested on. Mailed written requests must be postmarked no later than January 30, 2004.*

**Reason for Proposed Action:** *On June 30, 2003, the North Carolina General Assembly enacted legislation contained in Section 11.6 of Session Law 2003-284 that changes the statutes governing the implementation of the North Carolina Agriculture Cost Share Program. These amendments to the current rules are being proposed to reflect these changes in the statutes.*

**Procedure by which a person can object to the agency on a proposed rule:** *Persons may submit objections to the proposed permanent rules by contacting Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, voice mail (919) 715-6109, fax (919) 715-3559, and email Vernon.cox@ncmail.net.*

**Written comments may be submitted to:** *Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, voice mail (919) 715-6109, fax (919) 715-3559, and email Vernon.cox@ncmail.net.*

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State
- ☐ Local
- ☐ Substantive (>\$3,000,000)
- ☒ None

**CHAPTER 06 - SOIL AND WATER CONSERVATION  
COMMISSION**

**SUBCHAPTER 06E - AGRICULTURE COST SHARE  
PROGRAM FOR NONPOINT SOURCE POLLUTION  
CONTROL**

**SECTION .0100 - AGRICULTURE COST SHARE  
PROGRAM**

**15A NCAC 06E .0102 DEFINITIONS FOR  
SUBCHAPTER 6E**

- (a) Agriculture Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source as a result of agricultural activities related to crop production, animal production units and land application of waste materials.
- (b) Allocation means the annual share of the state's appropriation to participating districts.
- (c) Applicant means a person(s) who applies for best management practice cost sharing monies from the district.
- (d) Average Costs means the calculated cost, determined by averaging recent actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.
- (e) Best Management Practice (BMP) means a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.
- (f) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.
- (g) Cost Share Agreement means an annual or long term agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The



agreement also states that the recipient will maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district must perform an annual status review during the installation period.

(h) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a BMP in lieu of cost share.

(i) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.

(j) Detailed Implementation Plan means the plan approved by the commission that specifies the guidelines for the current program year; including, bmps that will be eligible for cost sharing and the minimum life expectancy of those practices.

(k) District BMP means a BMP designated by a district to reduce the delivery of agricultural NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.

(l) Encumbered Funds means monies from a district's allocation which have been committed to an applicant after initial approval of the cost share agreement.

(m) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.

(n) In-kind Contribution means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and can include but not be limited to labor, fuel, machinery use, and acceptable supplies and materials.

(o) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. Furthermore, a governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of these Rules if the governmental agency holds an easement in land.

(p) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.

(q) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.

(r) Soil Loss Tolerance (T) means the maximum allowable annual soil erosion rate to maintain the soil resource base, depending on soil type.

(s) Strategy Plan means the annual plan for the N.C. Agriculture Cost Share Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.

(t) Technical Representative of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs. These practices shall be technically reviewed by the Division. The district chairman shall certify that the technical representative has properly planned, designed and inspected the BMPs.

(u) Unencumbered Funds means the portion of the allocation to each district which has not been committed for cost sharing.

*Authority G.S. 139-3; 143-215.74; 143B-294.*

## **15A NCAC 06E .0105 COST SHARE AND INCENTIVE PAYMENTS**

(a) Cost share and incentive payments may be made through Cost Share Agreements between the district and the applicant.

(b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b), and the applicant shall contribute the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.

(c) CSI payments shall be limited to a maximum of three years per farm.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triannually by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivisions (6) and (9) of G.S. 143-215.74(b).

(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. For special funding programs where the applicant relinquishes all production capability on his or her agricultural land for at least 10 years, combined funding may equal up to 100 percent. Agriculture Cost Share Program funding shall not exceed the maximum cost share percentages shown in subdivisions (6), (8), and (9) of G.S. 143-215.74(b).

(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. In the situation where an applicant's farm is not located solely within a county, the entire farm, if contiguous, shall be eligible for cost share payments.

(h) Cost share contracts used on or for local, state or federal government land must be approved by the Commission in order to avoid potential conflicts of interest and to ensure that such contracts are consistent with the purposes of this program.

*Authority G.S. 139-4; 139-8; 143-215.74; 143B-294.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources/Parks and Recreation Authority intends to amend the rules cited as 15A NCAC 12K .0102, .0105.*

**Proposed Effective Date:** June 1, 2004

**Public Hearing:**

**Date:** February 19, 2004

**Time:** 2:00-3:00 p.m.

**Location:** Archdale Building, Ground Floor Hearing Room,  
512 N. Salisbury St., Raleigh, NC

**Reason for Proposed Action:** *The Parks and Recreation Authority is considering an increase in maximum grant award because many local governments have requested the current maximum of \$250,000. Local governments would request additional funds if they were allowed to under the rules. In addition, the funds available for local grants have increased by more than 50 percent.*

**Procedure by which a person can object to the agency on a proposed rule:** *Comments and objections will be accepted through March 15, 2004. Letters must be legible and signed. Please include a phone number. Send comments and objections to Mr. Bayard Alcorn, NC Division of Parks and Recreation, 1615 Mail Service Center, Raleigh, NC 27699-1615 or by email bayard.alcorn@ncmail.net.*

**Written comments may be submitted to:** Bayard Alcorn,  
1615 Mail Service Center, Raleigh, NC 27699.

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State  
☐ Local  
☐ Substantive (>\$3,000,000)  
☒ None

**CHAPTER 12 - PARKS AND RECREATION AREA RULES**

**SUBCHAPTER 12K - PARKS AND RECREATION  
TRUST FUND GRANTS FOR LOCAL GOVERNMENT**

**SECTION .0100 - GENERAL PROVISIONS**

**15A NCAC 12K .0102 ELIGIBLE APPLICANTS**

Annual funding schedule dates shall be the following:

- (1) An announcement letter describing the funding schedule and how to apply shall be mailed to all eligible applicants by September 30. This

information shall be made available to other interested parties who contact the Department of Environment and Natural Resources (Department) at: NC Division of Parks and Recreation, PO Box 27687, Raleigh, North Carolina 27611-7687.

- (2) Local governments may request a maximum of five hundred thousand dollars (\$500,000) in PARTF assistance with each application.
- (3) Applications shall be received by the Department or its designee by 5:00 p.m. on January 31. If the deadline falls on a weekend or holiday, applications are due by 5:00 p.m. on the following business day.
- (4) The Authority shall meet within 120 days of the application deadline to select projects for funding. The Authority will meet within 30 days after the end of the fiscal year to select projects for funding using revenues credited to PARTF during the fourth quarter.

Authority G.S. 113-44.15.

**15A NCAC 12K .0105 EVALUATION OF APPLICATIONS**

- (a) Each completed application shall be evaluated by the Department or its designee on the information provided in the application and in accordance with the PARTF criteria described in Paragraph (d) of this Rule.
- (b) The Authority shall review the project evaluations and other relevant data prepared by the applicant and by Department staff. The Authority shall approve projects for funding.
- (c) All general criteria in Paragraph (d) of this Rule shall be addressed by the applicant. The Department or its designee will review all applications for completeness. Incomplete applications will be returned to the applicant.
- (d) The following general criteria will be used to evaluate projects.

- (1) New public recreation facilities provided by the project;
- (2) The degree of local recreational planning for the project and how the specific elements in the project conform to the plan(s);
- (3) The acquisition or the conservation of unique natural, cultural, recreational, or scenic resources;
- (4) The level of public involvement in developing and supporting the project;
- (5) The applicant's commitment to operating and maintaining the project;
- (6) The suitability of the site for the proposed project development;
- (7) The level of compliance with prior grant agreements; and
- (8) Other factors, such as the geographic distribution of projects, the presence or absence of other funding sources, the population of the applicant, the amount of funds available, and the amount of funds

requested, may also be considered by the Authority in its funding decisions.

*Authority G.S. 113-44.15.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rules cited as 15A NCAC 18A .3501-.3520.*

**Proposed Effective Date:** *May 1, 2004*

**Public Hearing:**

**Date:** *February 12, 2004*

**Time:** *1:00 p.m.*

**Location:** *1330 St. Mary's St., Raleigh, NC*

**Reason for Proposed Action:** *To regulate primitive camps with regard to sanitation requirements.*

**Procedure by which a person can object to the agency on a proposed rule:** *Send all written objections and/or comments to Susan Grayson, Branch Head, DENR/Env. Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 or email sue.grayson@ncmail.net.*

**Written comments may be submitted to:** *Susan Grayson, Branch Head, DENR/Env. Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0926, fax (919) 715-4739 or email sue.grayson@ncmail.net*

**Comment period ends:** *March 15, 2004*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ **State**
- ☒ **Local**
- ☐ **Substantive** (>\$3,000,000)
- ☐ **None**

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A – SANITATION**

**SECTION .3500 – RULES GOVERNING THE  
SANITATION OF PRIMITIVE CAMPS**

**15A NCAC 18A .3501 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Approved" means food which complies with requirements of the NC Department of Agriculture or the US Department of Agriculture and the requirements of the rules of this Section. "Approved" also means equipment determined by the Department to be in compliance with the rules of this Section. Food service equipment which meets and is installed in accordance with National Sanitation Foundation Standards or equal shall be approved. These standards may be obtained from the National Sanitation Foundation, P.O. Box 130140, Ann Arbor, Michigan 48113— 0140 and are also available for inspection at the Division of Environmental Health, 1632 Mail Service Center, Raleigh, NC 27699-1632.
- (2) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources or its authorized representative. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," PO Box 29534, Raleigh, NC 27626-0534.
- (3) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in which food or drink is prepared or served.
- (4) "Environmental Health Specialist" shall mean a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (5) "Equipment" shall mean refrigerators, insulated coolers, buckets, cooking appliances, serving utensils, or any other devices used to serve, hold or prepare food or drink.
- (6) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (7) "Good Repair" means capable of being cleaned, sanitized, and used for the intended purpose.

- (8) "Local Health Director" means the administrative head of a local health department or his authorized representative.
- (9) "Off-site" includes packouts, cookouts, or any activity where food is prepared outside.
- (10) "Permanent sleeping quarters" includes those buildings, cabins, platform tents, covered wagons and teepees that remain in a fixed location during the operating season and are used as primary residences for campers, staff, or user groups.
- (11) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (12) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (13) "Primitive Camp" is a camp not served by any public electrical service providers that provides overnight outdoor primitive camping. Primitive Camps include those camp establishments which provide food or overnight lodging accommodations for 72 consecutive hours or more per week at or from a permanent base camp for groups of children or adults engaged in overnight organized recreational or educational programs. Programs are operated and staffed by the camp and supervision of individual campers is a camp responsibility. This definition does not include campgrounds or other facilities that only rent property or camp sites for camping.
- (14) "Primitive Base Camp" that portion of the primitive camp at a fixed location that contains structures, water supplies, toilets and other facilities necessary for the operation of the camp.
- (15) "Responsible person" means the administrator, operator, owner, or other person in charge of the operation at the time of the inspection. If no individual is the apparent supervisor, then any employee is the responsible person
- (16) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in accordance with Rule .3507 of this Section.
- (17) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.

- (18) "Threat to the Public Health" means circumstances which create a significant risk of serious physical injury or serious adverse health effect.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3502 STANDARDS AND APPROVAL OF PLANS**

(a) Plans, drawn to scale, and specifications for proposed primitive camps or facilities in existing primitive camps shall include a topographic map of the base camp, buildings and equipment, water supply system, waste water disposal system, recreational waters. Plans and specifications shall be submitted to the health department of the county in which the site is located. Plans, drawn to scale, and specifications shall also be submitted to the local health department for any additions or renovations to existing buildings or any new buildings or facilities in existing primitive camps. The local health department shall require a topographic map upon determination that the proposed changes will impact camp sanitation or drinking water supplies. Construction shall not be started until the plans and specifications have been approved by the local health department.

(b) At least 30 days prior to permitting the responsible person who is on site daily shall submit a plan of operation to the local health department to determine compliance with the rules of this Section. The plan shall include the following:

- (1) Scheduled dates of operation;
- (2) Number of campers and staff expected each session;
- (3) Description of general activities and programs the camp will be offering each session;
- (4) Description of how food will be stored, prepared, transported and protected;
- (5) Proof of approved food service training required in Rule .3515(a) of this Section;
- (6) Description of how water will be made available, treated and transported at base camp and in the field;
- (7) Description of how solid waste will be contained and disposed; and
- (8) Methods of all sewage waste disposal.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3503 PERMITS**

(a) No person shall operate a Primitive Camp within the State of North Carolina who does not possess a valid permit issued by the Department. No permit to operate shall be issued until an evaluation by an environmental health specialist shows that the establishment complies with the rules of this Section.

(b) The local health department shall review the operations plan and the facilities to determine compliance with the rules of this Section. Once approved the local health department shall issue a permit for the camp to operate.

(c) Upon transfer of ownership or change of operation the responsible person shall notify the local health department immediately.

(d) Primitive Camps that operate six months or less per calendar year and do not offer activities, programs, services or food to the public for pay during the off-season shall also be required to obtain a seasonal permit for each operating season. No primitive camp required to pay a fee in accordance with G.S. 130A-248 (d) shall pay more than one annual fee unless the permit has been revoked.

- (1) Camps shall submit a seasonal permit application at least 45 days prior to the opening session. The seasonal permit shall include the dates of operation and shall expire six months from the first date of operation. Camp management of Primitive Camps shall provide written documentation to the local health department that the following items have been completed prior to opening:
  - (A) All equipment necessary for food temperature maintenance is operational and clean;
  - (B) Utensils and equipment have been cleaned and sanitized;
  - (C) The cooking and lodging areas are free of vermin, and clean;
  - (D) All camp facilities are in good repair and clean; and
  - (E) The operating plans for the season specified in Rule .3502(b) of this Section have been submitted.
- (2) The local health department shall conduct an evaluation at least 30 days prior to the scheduled opening day of camp to verify the water system is in compliance with Rule .3508 Water Supply, of this Section. If the local health department is unable to meet the water sampling requirement, then the camp shall submit a water sample to a certified lab. Results shall be submitted to the local health department.

(e) Transitional permits shall not be issued to Primitive Camps.  
(f) The Department may impose conditions on the issuance of a permit. Conditions may be specified for one or more of the following areas:

- (1) The number of persons served;
- (2) The categories of food served;
- (3) Modification or maintenance of water supplies, water use fixtures and sanitary sewage systems;
- (4) Use of facilities for more than one purpose;
- (5) Continuation of contractual arrangements upon which basis the permit was issued;
- (6) Submission and approval of plans for renovation; or
- (7) Any other conditions necessary for the Primitive Camp to remain in compliance with the Rules of this Section.

(g) A permit may be suspended or revoked in accordance with G.S. 130A-23. A new permit to operate shall not be issued after revocation or suspension until the camp has been reinspected and determined to be in compliance with the rules of this Section. A reinspection shall be conducted within a reasonable

length of time, not to exceed 30 days, after the request is made by the operator, administrator or other responsible party.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3504 INSPECTIONS AND RE-INSPECTIONS**

(a) For Primitive Camps that operate six months or less per calendar year, an unannounced inspection shall be conducted at least once during the operating season. For Primitive Camps that operate more than six months of each calendar year, an unannounced inspection shall be conducted at least once each six month operating period.

(b) Upon arrival at a Primitive Camp, Environmental Health Specialists shall identify themselves and their purpose in visiting that establishment. Environmental Health Specialists shall inquire as to the identity of the responsible person and invite the responsible person to accompany them during the inspection. If no employee is identified as the responsible person, Environmental Health Specialists shall invite an employee to accompany them on the inspection. Following the inspection, the Environmental Health Specialist shall offer to review the results of the inspection with the responsible person.

(c) Inspections of Primitive Camps shall be done on a form furnished by the Department to local health departments. The form shall provide for but need not be limited to the following information:

- (1) the name and mailing address of the facility;
- (2) the name of person to whom the permit is issued;
- (3) the permit and status of approval given;
- (4) standards of construction and operation as listed in Rules .3505 through .3516 of this Section;
- (5) a short explanation for all deficiencies;
- (6) the signature of the Environmental Health Specialist; and
- (7) the date.

(d) If it is determined that the camp is not operating according to the approved plan of operation, the permit may be suspended or revoked until discrepancies are corrected.

(e) Grade cards shall not be posted.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3505 SPECIFIC REQUIREMENTS FOR PRIMITIVE BASE CAMPS**

Primitive Camp base of operations shall comply with the following:

- (1) Any camp structures such as shelters, storage facilities, food storage facilities, permanent sleeping quarters and sheds, shall be kept clean and in good repair.
- (2) Where bedding including sleeping bags or bed linens is provided by the Primitive Camp, such items shall be washed or laundered between users and kept in good repair.
- (3) All garbage and other solid wastes shall be stored and disposed of in an approved manner

- consistent with local, state and federal laws, rules and ordinances.
- (4) Toilet facilities shall be provided at convenient and accessible locations distributed throughout the base of operations at a rate of not more than 20 campers and staff per toilet seat.
  - (5) All sewage shall be disposed of in an approved manner.
  - (6) Base camps shall comply with Rule .3506 Field Sanitation of this Section.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3506 FIELD SANITATION**

Primitive Camps may conduct cookouts, overnight trips or similar primitive camping activities provided accepted field sanitation standards are maintained in accordance with the provisions of this Section. Written procedures regarding field sanitation standards shall be posted or made readily available for inspection by the Department.

- (1) Off Site Food: Storage, Preparation and Cooking shall meet the following requirements.
  - (a) Temperature control, food preparation and food protection methods shall be implemented to ensure all potentially hazardous foods stored and prepared for off-site cooking maintain temperatures of 45 degrees or less or 140 degrees or higher and are protected from contamination. Written procedures describing the specific off site cooking activity and the proposed temperature control methods shall be submitted to the Department for approval. Any proposed changes to current procedures shall be submitted at least 10 working days prior to the scheduled activity. Specific approvals will remain valid so long as the activity remains part of the camp program unless the Department determines that procedures are not being maintained in accordance with the approval. The owner may request modifications to the original approval by submitting the request at least 10 working days prior to the scheduled activity. Where potentially hazardous foods are prepared off site, written procedures shall also include methods to prevent cross contamination. For the purpose of off-site food storage coolers with ice or ice packs are considered an approved method of temperature control. Off site potentially hazardous foods once cooked shall be consumed within two hours or discarded.

- (b) Potentially hazardous foods shall be thawed:
  - (i) in cold holding units at a temperature not to exceed 45° F (7°C);
  - (ii) under potable running water of a temperature of 70° F (21°C), or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or
  - (iii) as a part of the conventional cooking process.
- (c) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F (60° C) except as follows:
  - (i) poultry, poultry stuffings, stuffed meats, and stuffings containing meat shall be cooked to heat all parts of the food to at least 165° F (74°C) with no interruption of the cooking process;
  - (ii) pork and any food containing pork shall be cooked to heat all parts of the food to at least 150° F (66° C);
  - (iii) ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C);
  - (iv) rare roast beef shall be cooked to an internal temperature of at least 130° F (54° C); and
  - (v) rare beef steak shall be cooked to a temperature of 130° F (54°C) unless otherwise ordered by the immediate consumer.
- (d) Liquid, or uncooked frozen, dry eggs and egg products shall be used only for cooking and baking purposes. This Paragraph does not apply to pasteurized products.
- (e) A food thermometer accurate to +/- 2 degrees F (+/- 1 degree C) shall be available to check food temperatures.
- (2) Off-Site Drinking Water
  - (a) Water transported for off site drinking shall be from an approved source and shall be transported and stored in clean, sanitized containers designated solely for this purpose.

- Where it is not practical to transport drinking water for off site activities, bactericidal treatment measures shall be provided to ensure that drinking water is free from disease causing organisms.
- (b) Water shall be taken from free-flowing streams and springs, however, water may be taken from still sources when free-flowing sources are unavailable. Water to be treated shall be visibly clear and free from debris, trash and organic matter.
- (3) Approved Methods of Bactericidal Treatment of Off-Site Drinking Water
- (a) Boiling: Water shall be brought to a rolling boil for a minimum of 5 minutes.
- (b) Chlorine: A minimum of 2 ppm free chlorine residual must be maintained for a minimum of 30 minutes.
- (c) Iodine: A minimum of 5 drops of 2% tincture of iodine per liter of water. For commercially prepared tablets, use per manufacturer's directions.
- (d) Filtration: Filter systems shall be capable of removing bacteria, cysts, and viruses. Filters shall have an absolute pore size of one micron or smaller.
- (4) Utensils and Equipment shall meet the following requirements:
- (a) All eating, drinking, and cooking utensils, and other items used in connection with the preparation of food shall be kept clean and in good repair.
- (b) All surfaces intended for multi use between campers or staff with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic materials in which there are no open cracks or joints that will collect food particles, slime, and be kept clean.
- (c) Multi-use drinking and eating utensils intended for individual use shall be constructed of not readily corrodible, non toxic materials. Those multi-use drinking and eating utensils which do not meet all the construction provisions of Subitem (b) of this Item, used by only one person and not reassigned to or reused by another individual.
- (d) Where multi-use utensils are used, they shall be assigned to one individual and not shared until cleaned and sanitized by approved methods.
- (5) Cleaning of Utensils and Equipment shall meet the following requirements:
- (a) Utensils and equipment shall be kept clean.
- (b) Water used for cleaning shall meet the requirements of Items (2) and (3) of this Rule.
- (c) Where an approved sanitizing process can not be implemented, each individual's multi-use utensils shall be cleaned separately to prevent cross contamination.
- (d) Multi-use utensils may be cleaned together provided they are washed, rinsed, and sanitized by approved methods.
- (6) Handwashing for food preparers shall be in compliance with Paragraph (c) in Rule .3515 of this Section.
- (7) Toxic materials shall be labeled and stored to prevent contamination of food, equipment and utensils.
- (8) Where permanent human waste disposal facilities which meet the requirements of 15A NCAC 18A .1900 are not provided at an off site activity, written procedures for waste disposal shall be provided to and approved by the Department. Recommendations for the disposal of such waste shall be in accordance with "Leave No Trace" as published by the National Outdoor Leadership School, 288 Main Street, Lander, WY 82520, Army Field Manual, HQ TRADOC, Ft. Monroe, VA 23651, or other nationally recognized programs approved by the Department.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3507 SANITIZING PROCEDURES**

Where required in these Rules, eating and drinking utensils shall be sanitized by one of the following methods:

- (1) Immersion for at least one minute in clean hot water of at least 170° F (77°C). A thermometer accurate to 3° F (5°C) shall be available.
- (2) Immersion for at least two minutes in a chemical bactericide of strength approved by the Department:
- (a) for chlorine products, a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F (24°C);
- (b) for iodophor products, a solution containing at least 12.5 ppm of available iodine and having a pH not higher than 5.0 and having a temperature of at least 75°F (24°C);
- (c) for quaternary ammonium products, a solution containing at least 200 ppm of QAC and having a temperature of at least 75°F (24°C), provided that the

product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

- (d) other equivalent products and procedures approved in 21 CFR 178.1010 "sanitizing solutions from the Foodservice Sanitation Manual" published by the US Food and Drug Administration 21 CFR 178.1010 is adopted by reference in accordance with G.S. 150B-14(c).
- (3) A suitable testing method or equipment shall be available, convenient and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3508 PRIMITIVE BASE CAMP WATER SUPPLY**

- (a) Water supplies shall be provided in accordance with 15A NCAC 18A .1700 Rules Governing the Protection of Water Supplies.
- (b) Water samples for bacteriological analysis from non-community supplies shall be collected by the Department and submitted to the laboratory section of the Department or another laboratory certified by the Department for analysis, and at least annually thereafter for bacteriological analysis.
- (c) Prior to the issuance of a permit, non-community water supplies shall be listed with the Public Water Supply Section, Division of Environmental Health.
- (d) Cross-connections with unapproved water supplies, sewage lines, or other potential sources of contamination are prohibited. Hot and cold water shall be provided to food preparation, utensil and handwashing areas, and any other areas in which water is required for cleaning. Water shall be provided in sufficient quantity to carry out all food preparation, utensil washing, hand washing, cleaning, and other water-using operations.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3509 RECREATIONAL WATERS**

Swimming and wading pools shall be designed, constructed, operated and maintained in accordance with the Rules Governing Public Swimming Pools, 15A NCAC 18A .2500.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3510 DRINKING WATER FACILITIES**

Drinking water facilities shall be provided. Drinking fountains, if provided, shall be of a sanitary angle-jet design, shall be kept clean and shall be properly regulated such that water flow is at least two inches above the mouth piece. This Rule shall not be interpreted as prohibiting the pitcher service of ice water or the service of bottled water.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3511 FOOD SUPPLIES**

All food shall be obtained from sources that comply with all laws relating to food and food labeling and shall be properly identified. Food in hermetically sealed containers shall have been processed in a commercial food processing establishment operated in compliance with G.S. 106-120 through 145. Copies of G.S. 106-120 through 145 may be obtained from the Food and Drug Protection Division, North Carolina Department of Agriculture, 2 West Edenton Street, Raleigh NC, 27601-1094. All food shall be clean, wholesome, free from adulteration and spoilage, safe for human consumption, and shall be handled, served, or transported in such a manner as to prevent contamination, adulteration, and spoilage. Only approved containers and utensils may be used. Foods that are spoiled or otherwise unfit for human consumption shall be immediately disposed of as garbage or returned to the source except as specified in Rule .3518 of this Section. Foods to be returned to the source shall be marked as such and stored in a fashion so as not to contaminate other food.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3512 MILK AND MILK PRODUCTS**

- (a) Only Grade "A" pasteurized milk and milk products shall be used. The term "milk products" shall mean milk products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Department of Environment and Natural Resources, Division of Environmental Health, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632.
- (b) The mixing of cream and milk or the pouring of either into jars, bottles, or other containers for storage therein shall be prohibited.
- (c) Bulk milk dispenser containers, as received from the distributor, shall be properly sealed, labeled with the name and grade of the contents and identity of the distributor. Only the outlet seal shall be broken in the establishment.
- (d) Milk and milk products shall be stored in a sanitary manner and shall be kept refrigerated, except when being served. Milk containers shall not be completely submerged in water. However, nothing in these Rules shall prohibit the placement of these items on ice while on display or being served.
- (e) Dry milk and dry milk products must be reconstituted according to manufacturer's directions and may not be stored for later use.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3513 SHELLFISH**

- (a) All shellfish and crustacea meat shall be obtained from sources in compliance with the Department's rules on shellfish and crustacea. Copies of 15A NCAC 18A .0300 through .0900 may be obtained from the Department. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall be on the list of Interstate Certified Shellfish Shippers as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration. If the source of cooked crustacea meat is outside the state it shall be certified by the regulatory authority of the state or territory of origin, and attested by the presence of an official permit number on the container.



(b) All shucked shellfish and all cooked crustacea meat shall be obtained and stored in the clean single-service shipping containers in which packed at the source. Each original container shall be clearly identified with the name and address of the packer, re-packer, and the abbreviated name of the state. Shucked shellfish unit containers shall be dated in accordance with 15A NCAC 18A .0600.

(c) All shucked shellfish and all cooked crustacea meat shall be stored in the original container. Each original container shall be clearly identified with the name and address of the packer, repacker and the abbreviated name of the state or territory.

(d) All shellstock shall be stored in the containers in which packed at the source. Each original container shall be clearly identified with a uniform tag or label bearing the name and address of the shipper, the certificate number issued by the state or territory regulatory authority, the abbreviated name of the state, the name of the waters from which the shellfish were taken, the kind and quantity of the shellstock in the container, and the name and address of the consignee.

(e) Shellstock shall be stored under refrigeration and in a manner to prevent cross-contamination to or from the shellstock. The re-use of single-service shipping containers and the storage of shucked shellfish in other containers are not allowed.

(f) After each container of shellstock has been emptied, the management shall remove the stub of the tag and retain it for a period of at least 90 days.

(g) With the exception of opening shellfish for immediate consumption on the premises, no shellfish shucking shall be performed unless the establishment holds a valid shellfish shucking permit.

(h) Shellstock washing facilities shall consist of an approved mechanical shellfish washer, or a sink or slab with catch basin, indirectly drained into an approved sewage collection, treatment, and disposal system. The washing shall be done in a clean area, protected from contamination. A can wash facility shall not be used for the washing of shellstock or other foods.

(i) The cooking of shellfish shall be accomplished in an area meeting the requirements of this Section.

(j) Re-use of shells for the serving of food is prohibited. It shall not be considered reuse to remove a shellfish from its shell and return it to that same shell for service to the public. Shells shall be stored in a manner to prevent flies, insects, rodents, and odors.

(k) All establishments that prepare, serve, or sell raw shellfish shall post in a conspicuous place where it may be readily observed by the public prior to consumption of shellfish, the following consumer advisory:

**"Consumer Advisory**

Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system.

Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

*Authority G.S. 130A-248.*

**15A NCAC 18A .3514 ICE HANDLING**

(a) Ice which is to be used in drinks, ice water, tea, and coffee, or in connection with the chilling or serving of food shall be manufactured from an approved water supply and shall be stored and handled in a sanitary manner.

(b) Storage boxes shall be covered, located away from sources of contamination, maintained in good repair, and kept clean. Storage bins or boxes shall be provided with rims and covers designed to exclude spillage and drip.

(c) Ice grinders, pans, and buckets used in preparing chipped or crushed ice shall be protected from contamination, thoroughly cleaned between usages, and kept in good repair; buckets and other containers used in the transportation of ice shall be stored above the floor in a clean place.

(d) Ice shall be dispensed or transferred with a scoop, spoon, or other sanitary method. When not in use, an ice scoop or spoon may be stored in the ice with the handle protruding or on a clean surface. Ice scoops shall not be stored in water. Ice compartments, bowls, buckets, or other containers shall be in good repair; frequently washed and kept free of scum, rust, or other forms of contamination or adulteration and shall be protected from drip, dust, splash, and other means of contamination. Ice shall not be received, used, or accepted when there is evidence that it is not being handled and transported in a sanitary manner.

(e) Ice machines shall be kept clean.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3515 FOOD SERVICE EMPLOYEES**

(a) In order to operate a Primitive Camp the owner, operator, manager or responsible person of the camp who is employed full time in that particular camp must have completed in the past three years a food service sanitation program approved by the Department. The National Restaurant Association's ServSafe Course or any ANSI-accredited program will be considered approved.

(b) No food service employee shall use tobacco in any form while engaged in the preparation, handling or serving of food or washing utensils.

(c) All food service employees shall wash their hands with soap and water thoroughly prior to preparing food or handling of utensils, after each visit to the toilet, and as often as may be necessary to remove soil and contamination.

(d) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or a disease with sudden onset and severe symptoms including cough and nasal discharge, shall work in food service in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

*Authority G.S. 130A-248.*

**15A NCAC 18A .3516 VERMIN CONTROL: PREMISES:**

(a) Only those pesticides shall be used which have been approved for a specific use and properly registered with the Environmental Protection Agency and with the North Carolina

Department of Agriculture and Consumer Services in accordance with the "Federal Insecticide, Fungicide & Rodenticide Act" and the "North Carolina Pesticide Law". Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.

(b) Animal stables, if provided, shall be in a location removed from the main recreation center of activity. All manure shall be stored, removed, or disposed of in such a manner as to minimize the breeding of flies.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3517 MISCELLANEOUS**

(a) Hazardous materials, such as fuel, chemicals, explosives, equipment and apparatuses, shall be handled and stored so as to minimize health hazards in accordance with existing laws, rules and ordinances.

(b) Protective railings, fences, or similar enclosures shall be kept in good repair.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3518 PROCEDURE WHEN INFECTION SUSPECTED**

When the local health department has reason to suspect the possibility of exposure to, or transmission of, infection within a foodhandling operation from any person or from any food or drink, the local health director shall act in accordance with the Communicable Disease Laws and Rules (G.S. 130A-133 through 148, 10A NCAC 41A).

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3519 SEVERABILITY**

If any rule of this Section, or the application thereof to any person or circumstances, is held invalid, the remainder of these Rules, or the application of such provision to other persons or circumstances, shall not be affected thereby.

*Authority G.S. 130A-248.*

#### **15A NCAC 18A .3520 INFORMAL REVIEW PROCESS AND APPEALS PROCEDURE**

(a) If a permit holder disagrees with a decision of an Environmental Health Specialist on the interpretation, application or enforcement of the rules of this Section the permit holder may:

- (1) Request an informal review pursuant to Paragraphs (d) and (e) of this Rule; or
- (2) Initiate an appeal in accordance with G.S. 150B.

(b) The permit holder is not required to complete the alternative dispute resolution prior to initiating an appeal in accordance with G.S. 150B.

(c) When a petition for a contested case is filed, the informal review process shall terminate.

(d) If the permit holder requests an informal review, the request shall be in writing and shall be postmarked or hand-delivered to the local health department within seven days of notice of the decision giving rise to the review. The request shall briefly state

the issues in dispute. In the event the inspection giving rise to the informal review was conducted by the Environmental Health Supervisor in the county or area where the primitive camp is located, or when the county or area has only one Environmental Health Specialist assigned to inspect primitive camps, the Regional Environmental Health Specialist assigned to that county or area shall conduct the local informal review. As soon as possible but at least within 30 days of receipt of the request, the person conducting the review shall contact the permit holder, provide that permit holder an opportunity to be heard on the issues in dispute and issue a written decision addressing the issues raised in the appeal. Copies of the decision shall be mailed to the permit holder and to the State Health Director. That decision shall be binding for the purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (e) of this Rule or by the State Health Director.

(e) Following receipt of the written decision of the Environmental Health Supervisor or his or her representative issued pursuant to Paragraph (d) of this Rule, the permit holder who initiated the informal review may appeal the resulting decision to an Informal Review Officer designated by the Department to be responsible for final decisions on appeals from throughout the state. Notice of such appeal shall be in writing, shall include a copy of the Environmental Health Supervisor's or his or her representative's decision and shall be postmarked or hand-delivered to the Local Health Department and to the Department within seven days of receipt of the written decision issued pursuant to Paragraph (a) of this Rule. Within 35 days of receipt of this appeal, the designated Informal Review Officer shall hold a conference in Wake County. Notice of the time and place of this conference shall be provided to the permit holder and the Environmental Health Supervisor for the county or area where the issue arose. Within 10 days following the date of the conference, the Informal Review Officer shall issue a written decision addressing the issues raised in the appeal and that decision shall be binding for purposes of future inspections of the establishment in question unless modified pursuant to Paragraph (f) of this Rule or by the State Health Director.

(f) Appeals of the decision of the designated Informal Review Officer shall be in accordance with G.S. 150B.

(g) Nothing in this Rule shall impact the right of a permit holder to a reinspection pursuant to Rule .3503 of this Section.

*Authority G.S. 130A-248.*

---

### **TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

#### **CHAPTER 58 - REAL ESTATE COMMISSION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Real Estate Commission intends to adopt the rules cited as 21 NCAC 58A .1801-.1810 and amend the rules cited as 21 NCAC 58A .0104-.0105, .0107-.0108, .0110, .0302, .0503-.0504, .0506; 58B .0601.*

**Proposed Effective Date:** *June 1, 2004*

**Public Hearing:**

**Date:** February 11, 2004

**Time:** 9:00 a.m.

**Location:** 1313 Navaho Dr., Raleigh, NC

**Reason for Proposed Action:** *To adopt rules and to make conforming changes to existing rules which will govern a limited nonresidential commercial license privilege in North Carolina.*

**Procedure by which a person can object to the agency on a proposed rule:** *Contact the rule-making coordinator listed below by email, phone, or letter at the Real Estate Commission's offices at 1313 Navaho Dr., Raleigh, NC 27609.*

**Written comments may be submitted to:** *Pamela Millward, 1313 Navaho Dr., Raleigh, NC 27609, phone (919) 875-3700, fax (919) 981-5023, and email pmillward@ncrec.state.nc.us.*

**Comment period ends:** March 15, 2004

**Procedure for Subjecting a Proposed Rule to Legislative Review:** Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6<sup>th</sup> business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- ☐ State  
☐ Local  
☐ Substantive (>\$3,000,000)  
☒ None

**SUBCHAPTER 58A - REAL ESTATE BROKERS AND SALESMEN**

**SECTION .0100 - GENERAL BROKERAGE**

**21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE**

(a) Every agreement for brokerage services in a real estate transaction shall be in writing. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work

with other agents or without an agent shall be in writing from its formation. A broker or salesperson shall not continue to represent a buyer or tenant without a written agreement when such agreement is required by this rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this Rule, an agreement between licensees to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate sales transaction shall contain the following provision: The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any buyer, prospective buyer, seller or prospective seller. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker or salesperson shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," review it with him or her, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker or salesperson shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter.

(d) A real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. If the first substantial contact occurs by telephone or by means of other

electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the written disclosure to the buyer.

(f) In every real estate sales transaction, a broker or salesperson representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesperson representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesperson to represent the seller, the broker or salesperson so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesperson designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and

- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker or salesperson to represent the buyer, the broker or salesperson so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesperson designated to represent the seller:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker or salesperson designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers and salespersons so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesperson represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesperson shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

*Authority G.S. 41A-3(1b); 93A-3(c); 41A-4(a).*

## **21 NCAC 58A .0105 ADVERTISING**

(a) **Blind Ads.** A licensee shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the licensee's principal only. Every such advertisement shall clearly indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, or street address.

(b) **Registration of Assumed Name.** In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) **Authority to Advertise.**

- (1) A salesperson shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his or her broker's consent and without including in the advertisement the name of the broker or firm with whom the salesperson is associated.
- (2) A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.

(d) Business names. A licensee shall not include the name of a salesperson or an unlicensed person in the name of a sole proprietorship, partnership or non-corporate business formed for the purpose of real estate brokerage.

(e) A person licensed as a limited nonresident commercial broker or salesperson shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina licensee.

*Authority G.S. 55B-5; 66-68; 93A-3(c).*

#### **21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS**

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

- (1) bank statements;
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall clearly identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks provided that such images are legible reproductions of the front and back of the original instruments with no more than four instruments per page and no smaller images than 2.25 x 5.0 inches, and provided that the licensee's bank retains the original checks on file for a period of at least five years and makes them available to the licensee and the Commission upon request;
- (3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall

- be cross-referenced to the corresponding deposit ticket;
- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate;
- (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;
- (7) copies of contracts, leases and management agreements;
- (8) closing statements and property management statements;
- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to

the management of a property owner association; and

- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account or accounts dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format previously described herein for vacation rental tenant security deposit monies and vacation rental advance payments.

#### **21 NCAC 58A .0108 RETENTION OF RECORDS**

Licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated prior to its successful conclusion. In addition to transaction and financial records, such records shall include but not be limited to agreements for brokerage services, disclosure statements, brokerage cooperation agreements, and declarations of affiliation. The licensee shall retain such records for three years after all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties or until the successful or unsuccessful conclusion of the transaction, whichever occurs later. Such records shall include contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements and any other records pertaining to real estate transactions. All such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

*Authority G.S. 93A-3(c).*

#### **21 NCAC 58A .0110 BROKER-IN-CHARGE**

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office or branch office. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole

proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more brokers or salespersons affiliated with him or her in the real estate business. Each broker-in-charge shall make written notification of his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

- (1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of salespersons associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and
- (8) the proper supervision of all brokers and salespersons employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) A broker-in-charge must continually maintain his or her license on active status.

(d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. Upon written request of a

salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, in a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.

(e) A licensed real estate firm which demonstrates on a form prescribed by the Commission that it has qualified for licensure solely for the purpose of receiving compensation for brokerage services furnished by its principal broker through another firm, and that no person is affiliated with it other than its principal broker, shall not be required to designate a broker-in-charge.

(f) Every broker-in-charge shall complete the Commission's broker-in-charge course at least once every five years following the effective date of this Rule. Every broker designated as a broker-in-charge after October 1, 2000 shall complete the Commission's broker-in-charge course within 120 days following designation and at least once every five years thereafter for so long as he or she remains broker-in-charge. If a broker who is a designated broker-in-charge fails to complete the broker-in-charge course within the prescribed time period, the broker-in-charge status of that broker shall be immediately terminated, and the broker must complete the broker-in-charge course before he or she may again be designated as a broker-in-charge.

(g) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

*Authority G.S. 93A-2; 93A-3(c); 93A-4.*

## **SECTION .0300 - APPLICATION FOR LICENSE**

### **21 NCAC 58A .0302 FILING AND FEES**

(a) All applications for a real estate license shall be complete and shall be submitted to the Commission's office accompanied by the application fee. Examination scheduling of applicants who are required to pass the real estate licensing examination shall be accomplished in accordance with Rule .0401 of this Subchapter. An applicant for a real estate salesperson license shall not make application for a broker license while the salesperson application is pending unless the applicant first withdraws the salesperson application.

(b) Except for persons applying for licensure under the provisions of Section .1800 of this Subchapter, the license application fee shall be thirty dollars (\$30.00). Applicants electing to take the licensing examination by computer must pay, in addition to the license application fee, the examination fee charged by the Commission's authorized testing service. Persons applying for licensure under Section .1800 of this Subchapter shall pay the application fee set forth in Rule .1803 of this Subchapter.

(c) An applicant shall update information provided in connection with an application or submit a newly completed application form without request by the Commission to assure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a

licensee in accordance with G.S. 93A-6(b)(1). In the event that the Commission requests an applicant to submit updated information or to provide additional information necessary to complete the application and the applicant fails to submit such information within 90 days following the Commission's request, the Commission shall cancel the applicant's application. An applicant whose license application has been canceled and who wishes to obtain a real estate license must start the licensing process over by submitting a written application to the Commission upon a prescribed form and paying all required fees.

*Authority G.S. 93A-4(a),(d).*

## **SECTION .0500 – LICENSING**

### **21 NCAC 58A .0503 LICENSE RENEWAL; PENALTY FOR OPERATING WHILE LICENSE EXPIRED**

(a) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of forty dollars (\$40.00).

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his or her license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 or Rule .1711 of this Subchapter.

(d) Any person or firm which engages in the business of a real estate broker or salesperson while his, her, or its license is expired is subject to the penalties prescribed in G.S. 93A -6.

*Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; 93A-6.*

### **21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS**

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of G.S. 93A or any rule



promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) Except as provided by Rule .1804 of this Subchapter, a salesperson's license shall, upon initial licensure, be assigned to inactive status. The license of a broker or firm shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson may change the status of his or her license from active to inactive status by submitting a written request to the Commission. Except for salespersons licensed under Section .1800 of this Subchapter, a salesperson's license shall be assigned by the Commission to inactive status when the salesperson is not under the active, personal supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a principal broker. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A salesperson with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506(b) of this Section.

(d) A broker with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the firm and its principal broker. If the principal broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the principal broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's principal broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the principal broker

is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the principal broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker or salesperson under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

*Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6.*

## **21 NCAC 58A .0506 SALESPERSON TO BE SUPERVISED BY BROKER**

(a) This Rule shall apply to all real estate salespersons except those salespersons licensed under the provisions of Section .1800 of this Subchapter.

(b) A salesperson may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status and he or she is supervised by the broker-in-charge of the real estate firm or office where the salesperson is associated. A salesperson may be supervised by only one broker-in-charge at a time.

(c) Upon a salesperson's association with a real estate broker or brokerage firm, the salesperson and the broker-in-charge of the office where the salesperson will be engaged in the real estate business shall immediately file with the Commission a salesperson supervision notification on a form prescribed by the Commission containing identifying information about the salesperson and the broker-in-charge, a statement from the broker-in-charge certifying that he or she will supervise the salesperson in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesperson and broker-in-charge. If the salesperson is on inactive status at the time of associating with a broker or brokerage firm, the salesperson and broker-in-charge shall also file, along with the salesperson supervision notification, the salesperson's request for license activation on a form prescribed by the Commission containing identifying information about the salesperson, the salesperson's statement that he or she has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signatures of the salesperson and the salesperson's proposed broker-in-charge. Upon the mailing or delivery of the required form(s), the salesperson may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the salesperson and broker-in-charge do not receive from the Commission a written acknowledgment of the salesperson supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesperson's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesperson and broker-in-charge are notified that the salesperson is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesperson to immediately cease all activities requiring a real estate license until such time as the continuing

education deficiency is satisfied and a new salesperson supervision notification and request for license activation is submitted to the Commission.

(d) A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson shall actively and personally supervise the salesperson in a manner which reasonably assures that the salesperson performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesperson as prescribed in this Rule may be subject to disciplinary action by the Commission.

(e) Upon the termination of the supervisory relationship between a salesperson and his or her broker-in-charge, the salesperson and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following said termination.

*Authority G.S. 93A-2(b); 93A-3.*

## **SECTION .1800 - LIMITED NONRESIDENT COMMERCIAL LICENSING**

### **21 NCAC 58A .1801 GENERAL PROVISIONS**

(a) Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker or salesperson in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker or salesperson license as provided in this Section.

(b) Corporations, business associations and entities shall be ineligible for licensure under this Section.

(c) Nothing in this Section shall be construed to limit the rights of any person duly licensed as a real estate broker or salesperson in North Carolina under the provisions of G.S. 93A-4 or 93A-9(a).

*Authority G.S. 93A-4.*

### **21 NCAC 58A .1802 DEFINITIONS**

For the purposes of this Section:

- (1) "Commercial Real Estate" means any real property or interest therein, whether freehold or non-freehold, which at the time the property or interest is made the subject of an agreement for brokerage services:
  - (a) is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multifamily residential purposes involving fire or more dwelling units;
  - (b) may lawfully be used for any of the purposes listed in Subitem (1)(a) of this Rule by a zoning ordinance adopted pursuant to the provisions of G.S. 153A, Article 18 or G.S. 160A, Article 19 or which is the subject of a formal application or petition to amend the applicable zoning ordinance to permit any of the uses

listed in Subitem (1)(a) of this Rule which is under consideration by the government agency with authority to approve the amendment; or

- (c) is in good faith intended by the parties to any contract, lease, option or offer to make any contract, lease, or option to be immediately used for any of the purposes listed in Subitem (1)(a) of this Rule

- (2) "Qualifying state" means the state or territory of the United States where an applicant for, and the holder of, a limited nonresident commercial license issued under this Section is licensed in good standing as a real estate broker or salesperson. The qualifying state must be either the state or territory where the applicant or limited nonresident commercial licensee maintains his or her primary place of business as a real estate broker or salesperson. Under no circumstances may North Carolina be a qualifying state.

*Authority G.S. 93A-4.*

### **21 NCAC 58A .1803 REQUIREMENTS FOR LICENSURE; APPLICATION AND FEE**

(a) A person desiring to obtain a broker or salesperson license under this Section shall demonstrate to the Real Estate Commission that:

- (1) he or she is a resident of a state or territory of the United States other than North Carolina;
- (2) he or she is licensed as a real estate broker or salesperson in a qualifying state and that said license is on active status and not in abeyance for any reason. If licensed as a salesperson, he or she shall also demonstrate that he or she is acting under the supervision of a broker in accordance with the applicable governing statutes or regulations in the qualifying state; and
- (3) he or she possesses the requisite honesty, truthfulness, integrity, and moral character for licensure as a broker or salesperson in North Carolina.

A person applying for licensure under this Section shall not be required to show that the state or territory where he or she is currently licensed offers reciprocal licensing privileges to North Carolina brokers and salespersons.

(b) A person desiring to be licensed under this Section shall submit an application prescribed on a form by the Commission and shall show the Commission that he or she has satisfied the requirements set forth in Paragraph (a) of this Rule. In connection with his or her application a person applying for licensure under this Rule shall be required to provide the Commission with a certification of license history from the qualifying state where he or she is licensed. He or she shall also provide the Commission with a report of his or her criminal history from the service approved by the Commission. An

applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(c) of this Subchapter.

(c) The fee for persons applying for licensure under this Section shall be one hundred dollars (\$100.00) and shall be paid in the form of a certified check, bank check, cashier's check, money order, or by credit card. Once paid, the application fee shall be non-refundable.

(d) If the Commission has received a complete application and the required application fee and if the Commission is satisfied that the applicant possesses the moral character necessary for licensure, the Commission shall issue to the applicant a limited nonresident commercial real estate broker or salesperson license corresponding to the license the applicant possesses in the qualifying state.

*Authority G.S. 93A-4.*

#### **21 NCAC 58A .1804 ACTIVE STATUS**

Licenses issued to brokers and salespersons under this Section shall be issued on active status and shall remain valid only so long as the licensee's license in the qualifying state remains valid and on active status. In addition, a license issued to a salesperson under this Section shall remain valid only while the salesperson is acting under the supervision of a real estate broker in accordance with the applicable laws and rules in the qualifying state. A broker or salesperson licensed under this Section shall immediately notify the Commission if his or her license in the qualifying state lapses or expires, is suspended or revoked, made inactive, or is placed in abeyance for any reason.

*Authority G.S. 93A-4.*

#### **21 NCAC 58A .1805 RENEWAL**

(a) A license issued under this Section shall expire on June 30 following issuance unless it is renewed in accordance with the provisions of Rule .0503 and Rule .1711 of this Subchapter.

(b) The Commission shall not renew a license issued under this Section unless the licensee has demonstrated that he or she has complied with the requirements of Paragraph (a) of this Rule and that his or her license in the qualifying state is on active status in good standing and is not lapsed, expired, suspended, revoked, or in abeyance for any reason.

*Authority G.S. 93A-4.*

#### **21 NCAC 58A .1806 LIMITATIONS**

(a) A person licensed under this Section may act as a real estate broker or salesperson in this state only if:

- (1) he or she does not reside in North Carolina;
- (2) the real property interest which is the subject of any transaction in connection with which he or she acts as a broker or salesperson in this state is commercial real estate as that term is defined in Rule .1802 of this Section; and
- (3) he or she is affiliated with a resident North Carolina real estate broker as required in Rule .1807 of this Section.

(b) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act

as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

*Authority G.S. 93A-4.*

#### **21 NCAC 58A .1807 AFFILIATION WITH RESIDENT BROKER**

(a) No person licensed under this Section shall enter North Carolina to perform any act or service for which licensure as a real broker or salesperson is required unless he or she has first entered into a brokerage cooperation agreement and declaration of affiliation with an individual who is a resident in North Carolina licensed as a North Carolina real estate broker.

(b) A brokerage cooperation agreement as contemplated by this Rule shall be in writing and signed by the resident North Carolina broker and the non-resident commercial licensee. It shall, at a minimum, contain:

- (1) the material terms of the agreement between the signatory licenses;
- (2) a description of the agency relationships, if any, which are created by the agreement among the nonresident commercial licensee, the resident North Carolina broker, and the parties each represents;
- (3) a description of the property or the identity of the parties and other information sufficient to identify the transaction which is the subject of the affiliation agreement; and
- (4) a definite expiration date.

(c) A declaration of affiliation shall be written and, in the form prescribed by the Commission, and shall identify the nonresident commercial licensee and the affiliated resident North Carolina licensee. It shall also contain a description of the duties and obligations of each as required by the North Carolina Real Estate License Law and rules duly adopted by the Commission. The declaration of affiliation may be a part of the brokerage cooperation agreement or separate from it.

(d) A nonresident commercial licensee may affiliate with more than one resident North Carolina broker at any time. However, a nonresident commercial licensee may be affiliated with only one resident North Carolina broker in a single transaction.

(e) A resident North Carolina broker who enters into a brokerage cooperation agreement and declaration of affiliation with a nonresident commercial licensee shall:

- (1) verify that the nonresident commercial licensee is licensed in North Carolina;
- (2) actively and personally supervise the nonresident commercial licensee in a manner which reasonably insures that the nonresident commercial licensee complies with the North Carolina Real Estate License Law and rules adopted by the Commission;
- (3) promptly notify the Commission if the nonresident commercial licensee violates the Real Estate License Law or rules adopted by the Commission; and
- (4) insure that records are retained in accordance with the requirements of the Real Estate License Law and rules adopted by the Commission.

(f) The nonresident commercial licensee and the affiliated resident North Carolina broker shall each retain in his or her records a copy of brokerage cooperation agreements and declarations of affiliation from the time of their creation and for at least three years following their expiration. Such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

*Authority G.S. 93A-4.*

**21 NCAC 58A .1808 TRUST MONIES**

A nonresident commercial licensee acting as real estate broker or salesperson in North Carolina shall immediately deliver to the North Carolina resident broker with whom he or she is affiliated all money belonging to others received in connection with the nonresident commercial licensee's acts or services as a broker or salesperson. Upon receipt of said money, the resident North Carolina broker shall cause said money to be deposited in a trust account in accordance with the provisions of Rule .0107 of this Subchapter.

*Authority G.S. 93A-4.*

**21 NCAC 58A .1809 ADVERTISING**

In all advertising involving a nonresident commercial licensee's conduct as a North Carolina real estate broker or salesperson and in any affirmative representation of such person's licensure in North Carolina, the advertising or representation shall clearly identify the nonresident commercial licensee as a "Limited Nonresident Commercial Real Estate Broker (or Salesperson)."

*Authority G.S. 93A-4.*

**21 NCAC 58A .1810 PAYMENT OF FEES**

Commissions, fees, or other compensation earned by a nonresident commercial licensee shall not be paid directly to the licensee if said licensee is employed by or working for a real estate broker or firm. Instead, such fees or compensation shall be paid to the licensee's employing broker or firm.

*Authority G.S. 93A-4.*

**SUBCHAPTER 58B - TIME SHARES**

**SECTION .0600 - PROJECT BROKER**

**21 NCAC 58B .0601 DESIGNATION OF PROJECT BROKER**

The developer of a registered timeshare project shall designate for each project subject to the developer's control a project broker by filing with the Commission an affidavit on the form prescribed. The developer may from time to time change the designated project broker by filing a new designation form with the Commission within ten days following the change. A broker licensed under the provisions of Section .1800 of Subchapter 58A shall not be designated as a project broker.

*Authority G.S. 93A-41(7a); 93A-51; 93A-58(c).*

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting November 20, 2003, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

*These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2004 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.*

**APPROVED RULE CITATION**

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

01	NCAC	30H	.0102*	17:16 NCR
01	NCAC	30H	.0201-.0202*	17:16 NCR
01	NCAC	30H	.0301*	17:16 NCR
01	NCAC	30H	.0404*	17:16 NCR
10A	NCAC	14C	.2702*	18:02 NCR
10A	NCAC	21B	.0310-.0311*	18:03 NCR
10A	NCAC	41A	.0206*	not required G.S. 150B-21.5(a)(5)
12	NCAC	07D	.0202	18:05 NCR
12	NCAC	07D	.0702*	18:05 NCR
12	NCAC	07D	.0802*	18:05 NCR
12	NCAC	07D	.0903	18:05 NCR
12	NCAC	07D	.0907-.0908*	18:05 NCR
12	NCAC	09A	.0201*	not required G.S. 150B-21.5(a)(2)
12	NCAC	09A	.0206*	not required G.S. 150B-21.5(a)(2)
12	NCAC	09C	.0101*	not required G.S. 150B-21.5(a)(2)
12	NCAC	09G	.0501*	not required G.S. 150B-21.5(a)(2)
12	NCAC	09G	.0506*	not required G.S. 150B-21.5(a)(2)
13	NCAC	06	.0309*	18:03 NCR
13	NCAC	07A	.0301	18:03 NCR
15A	NCAC	02B	.0308	17:18 NCR
15A	NCAC	02I	.0602-.0603*	17:20 NCR
15A	NCAC	03H	.0104*	17:23 NCR
15A	NCAC	03I	.0110*	17:23 NCR
15A	NCAC	03J	.0103-.0104*	17:23 NCR
15A	NCAC	03J	.0107*	17:23 NCR
15A	NCAC	03J	.0109	17:23 NCR
15A	NCAC	03J	.0202	17:23 NCR
15A	NCAC	03J	.0206	17:23 NCR
15A	NCAC	03J	.0208*	17:23 NCR
15A	NCAC	03J	.0301*	17:23 NCR
15A	NCAC	03J	.0402	17:23 NCR
15A	NCAC	03K	.0204	17:23 NCR
15A	NCAC	03K	.0401-.0403	17:23 NCR
15A	NCAC	03K	.0404-.0405*	17:23 NCR
15A	NCAC	03L	.0102	17:23 NCR
15A	NCAC	03L	.0202	17:23 NCR
15A	NCAC	03N	.0103*	17:23 NCR
15A	NCAC	03N	.0105*	17:23 NCR
15A	NCAC	03O	.0101*	17:23 NCR
15A	NCAC	03O	.0105*	17:23 NCR
15A	NCAC	03O	.0503*	17:23 NCR
15A	NCAC	03Q	.0201-.0202*	17:23 NCR
15A	NCAC	03R	.0101-.0103*	17:23 NCR
15A	NCAC	03R	.0104	17:23 NCR

15A	NCAC	03R	.0105*	17:23	NCR
15A	NCAC	03R	.0106	17:23	NCR
15A	NCAC	03R	.0109-.0113	17:23	NCR
17	NCAC	04E	.0301*	not required G.S. 150B-1(d)(4)	
21	NCAC	50	.0308*	18:04	NCR
21	NCAC	50	.0402*	18:04	NCR
21	NCAC	50	.0408-.0409*	18:04	NCR
21	NCAC	50	.0502	18:04	NCR
21	NCAC	50	.1014*	18:04	NCR
21	NCAC	50	.1101-.1102*	18:04	NCR
21	NCAC	50	.1104*	18:04	NCR
25	NCAC	01E	.1402*	18:03	NCR
25	NCAC	01E	.1412*	18:03	NCR
25	NCAC	01K	.0312-.0313*	18:03	NCR
25	NCAC	01K	.0315	18:03	NCR
25	NCAC	01K	.0316*	18:03	NCR
25	NCAC	01K	.0318-.0319	18:03	NCR
25	NCAC	01K	.0320-.0324*	18:03	NCR

## **TITLE 1 - DEPARTMENT OF ADMINISTRATION**

### **01 NCAC 30H .0102 INITIATING THE DISPUTE RESOLUTION PROCESS**

(a) Any party to a public construction contract governed by G.S. 143, Article 8 and identified in G.S. 143-128 (f1) and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least fifteen thousand dollars (\$15,000) may submit a written request to the public owner for mediation of the dispute.

(b) Prior to submission of a written request for mediation to the public owner, the party requesting mediation:

- (1) If a prime contractor, it must first submit its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit his written request for mediation to the public owner.
- (2) If the party requesting mediation is a subcontractor, it must first submit its claim to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's informal involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the public owner.
- (3) If the party requesting mediation is the Project Designer, then it must first submit its claim to the public owner to resolve. If the dispute is not resolved with the public owner's informal involvement, then the Project Designers' dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the public owner for mediation.

*History Note: Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b); Temporary Adoption Eff. July 1, 2002; Eff August 1, 2004.*

### **01 NCAC 30H .0201 SELECTION OF MEDIATOR**

(a) The parties may select a mediator certified pursuant to Paragraph (b) of this Rule. The requesting party shall file with the State Construction Office (hereinafter collectively referred to as the "SCO") if a State project or public owner, if a non-State project, a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.

(b) All mediators in the Formal Dispute Resolution Program shall be certified in accordance with the rules certifying mediators in Superior Court in North Carolina except when otherwise allowed by the SCO or public owner upon the request of the parties to the mediation. When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such preferences are not mandatory under these Rules.

(c) The parties may select a mediator who does not meet the certification requirements of these Rules. However, all mediators gain the consent of the SCO or public owner in accordance with these Rules to mediate any dispute.

(d) If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall so notify the SCO or public owner and request, on behalf of the parties, that the SCO or public owner appoint a mediator. The request for appointment shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the SCO or public owner shall appoint a certified attorney mediator. If no preference is

expressed, the SCO or public owner may appoint a certified attorney mediator or a certified non-attorney mediator.

*History Note: Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b); Temporary Adoption Eff. July 1, 2002; Eff. August 1, 2004.*

**01 NCAC 30H .0202 MEDIATION AGREEMENT**

(a) Upon selection of the mediator, the parties shall enter into a mediation agreement. The mediation agreement shall include terms governing the time, place, and scope of the mediation. The agreement shall also include terms regarding the compensation, disqualification, and removal of the mediator.

(b) The deadline for completion of the mediation shall be 60 days after the execution of the mediation agreement. Parties are free to extend the mediation deadline by mutual agreement.

*History Note: Authority G.S. 143-135.26 (10) and (11); S.L. 2001-496, Sec. 14(b); Temporary Adoption Eff. July 1, 2002; Eff. August 1, 2004.*

**01 NCAC 30H .0301 WHERE CONFERENCE IS TO BE HELD**

Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the project is located. The mediator shall be responsible for reserving a place for the conference and for giving notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

*History Note: Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b); Temporary Adoption Eff. July 1, 2002; Eff. August 1, 2004.*

**01 NCAC 30H .0404 FAILURE TO COMPENSATE MEDIATOR**

(a) Any party's failure to compensate the mediators shall subject that party to a withholding of said amount of money from the party's monthly payment by the public owner.

(b) If the public owner is a party to the mediation and it fails to compensate the mediator, it shall be subject to a civil cause of action from the mediator.

*History Note: Authority G.S. 143-135.26(10) and (11); S.L. 2001-496, Sec. 14(b); Temporary Adoption Eff. July 1, 2002; Eff. August 1, 2004.*

---

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

**10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT**

(a) An applicant proposing to acquire an MRI scanner, including a mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) Except for proposals to acquire mobile MRI scanners that serve two or more host facilities, both the applicant and the person billing the patients for the MRI service shall be named as co-applicants in the application form.

(c) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide the following information:

- (1) documentation that the MRI scanner shall be available and staffed for use at least 66 hours per week, with the exception of a mobile MRI scanner;
- (2) projections of the annual number of procedures to be performed for each of the first three years of operation after completion of the project;
- (3) the average charge to the patient, regardless of who bills the patient, for each of the 20 most frequent MRI procedures to be performed for each of the first three years of operation after completion of the project and a description of items included in the charge; if the professional fee is included in the charge, provide the dollar amount for the professional fee;
- (4) if the proposed MRI service will be provided pursuant to a service agreement, the dollar amount of the service contract fee billed by the applicant to the contracting party for each of the first three years of operation; and
- (5) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner.

(d) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.

(e) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall:

- (1) provide a copy of a contract or working agreement with a radiologist or practice group that has experience interpreting images and is trained to interpret images produced by an MRI scanner configured exclusively for mammographic studies;
- (2) document that the applicant performed mammograms without interruption in the provision of the service during the last year; and
- (3) document that the applicant's existing mammography equipment is in compliance with the U.S. Food and Drug Administration Mammography Quality Standards Act.

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

*Eff. February 1, 1994;  
Temporary Amendment Eff. January 1, 2003; January 1, 2002;  
Amended Eff. August 1, 2004; April 1, 2003.*

**10A NCAC 21B .0310 RESERVE**

(a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility for individuals under any Aged, Blind, and Disabled coverage group shall be determined based on standards and methodologies in Title XVI of the Social Security Act except as specified in Paragraphs (k) and (l) of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available.

(b) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.

(c) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:

- (1) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
- (2) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.

(d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(e) When a Medicaid application is filed on behalf of an individual who:

- (1) is alleged to be mentally incompetent,
- (2) has or may have a legal interest in a resource that affects the individual's eligibility, and
- (3) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a

referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence that has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is supported by competent evidence, as specified in Paragraph (h) of this Rule, the resources shall be excluded beginning with the date that such evidence indicates that he became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

(f) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.

(g) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence specified in Paragraph (h) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his death. Any such showing of incompetence is subject to rebuttal by competent evidence as specified in Paragraph (h) of this Rule.

(h) For purposes of this Rule, competent evidence is limited to the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the condition of the individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and if no longer incompetent, when the individual recovered competence.

(i) The limitation of resources held for reserve for the budget unit shall be as follows:

- (1) for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000.00) per budget unit;
- (2) for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and three thousand dollars (\$3000.00) for a budget unit of two.

(j) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:

- (1) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (2) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.



(k) Resources counted in the determination of financial eligibility for categorically needy aged, blind and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) Value of tenancy in common interest in real property shall be not counted.
- (3) Value of life estate interest in real property shall be not counted.
- (4) Value of burial plots shall be not counted.
- (5) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

(l) Resources counted in the determination of financial eligibility for medically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) Value of tenancy in common interest in real property shall be not counted.
- (3) Value of life estate interest in real property is not counted.
- (4) Individuals with resources in excess of the resource limit at the first moment of the month may become eligible at the point that resources are reduced to the allowable limit.
- (5) Value of burial plots shall be not counted.
- (6) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

(m) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases shall be:

- (1) Cash on hand;
- (2) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
- (3) The balance of checking accounts less the current monthly income that had been deposited to meet the budget unit's monthly needs when reserve was verified;
- (4) The portion of lump sum payments remaining after the month of receipt;
- (5) Cash value of life insurance policies owned by the budget unit;
- (6) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
- (7) Patient accounts in long term care facilities;
- (8) Equity in non-essential personal property limited to:
  - (A) Mobile homes not used as home;

- (B) Boats, boat trailers and boat motors;
- (C) Campers;
- (D) Farm and business equipment;
- (E) Equity in vehicles in excess of one motor vehicle per adult;

(n) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:

- (1) Cash on hand;
- (2) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
- (3) The balance of checking accounts less the current monthly income that had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
- (4) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500.00);
- (5) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
- (6) Patient accounts in long term care facilities;
- (7) Equity in non-essential, non-income producing personal property limited to:
  - (A) Mobile home not used as home,
  - (B) Boats, boat trailers and boat motors,
  - (C) Campers,
  - (D) Farm and business equipment,
  - (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

*History Note: Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; S.L. 2002-126; Eff. September 1, 1984; Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1, 1985; Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993; Temporary Amendment Eff. September 13, 1999; Temporary Amendment Expired June 27, 2000; Temporary Amendment Eff. September 12, 2000; Amended Eff. March 19, 2001; Temporary Amendment Eff. April 16, 2001; Amended Eff. August 1, 2002; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.*

**10A NCAC 21B .0311 TRANSFER OF RESOURCES**

In accordance with 42 U.S.C. 1396p(c), an individual who transfers resources and receives compensation that is less than the fair market value shall be ineligible to receive nursing

facility services or in-home health services and supplies, as follows:

- (1) As provided for by P.L. 100-360, Section 303(g) amended by P.L. 100-485, Section 608(d)(16)(D), the provisions of 42 U.S.C. 1396p(c) shall be effective for all transfers of resources, including transfers of tenancy-in-common interest in real property, when requesting nursing facility services, for a level of care in a medical institution equivalent to that of a nursing facility services, or for home and community-based services, except transfers between spouses, occurring on or after July 1, 1988. The provisions of 42 U.S.C. 1396p(c) shall be effective for transfers between spouses, occurring on or after October 1, 1989.
- (2) As allowed under 42 U.S.C. 1396p(c)(2)(D), the provisions of 42 U.S.C. 1396p(c) for ineligibility for nursing services due to transfer of resources shall not be applied:
  - (a) To individuals who transferred resources after July 1, 1988 and before March 15, 1989 and were found eligible prior to March 15, 1989;
  - (b) When it is determined by the agency's judgment that the applicant or recipient is a victim of fraud and did not take the action with the intent of becoming eligible for Medicaid.
- (3) In accordance with 42 USC 1396p(c), an Aged, Blind, or Disabled individual (42 CFR 435.120) or Qualified Medicare Beneficiary as described in (1905(p)(1) in a private living arrangement who transfers resources and receives compensation that is less than fair market value shall be ineligible to receive in-home health services and supplies (1905(a)(7) and 1905(a)(24) of the Social Security Act in accordance with this item. These provisions do not apply to optional State Supplements (42 CFR 435.130). The provisions of 42 USC 1396p(c) shall be effective for all transfers occurring on or after February 1, 2003. As allowed under 42 USC 1396p(c), the provisions for ineligibility for these services due to transfer of resources shall not be applied;
  - (a) to the individuals who referenced in this Paragraph transferred resources prior to February 1, 2003, and were found eligible either before or after February 1, 2003;
  - (b) when it is determined by the agency's judgment that the applicant/recipient is a victim of fraud.

42 C.F.R. 435.121; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; S.L. 2002-126; Eff. September 1, 1984; Amended Eff. December 1, 1991; August 1, 1990; Temporary Amendment Eff. April 21, 2003; March 1, 2003; Amended Eff. August 1, 2004.

**10A NCAC 41A .0206 INFECTION CONTROL - HEALTH CARE SETTINGS**

- (a) The following definitions shall apply throughout this Rule:
- (1) "Health care organization" means hospital; clinic; physician, dentist, podiatrist, optometrist, or chiropractic office; home health agency; nursing home; local health department; community health center; mental health agency; hospice; ambulatory surgical center; urgent care center; emergency room; or any other health care provider that provides clinical care.
  - (2) "Invasive procedure" means entry into tissues, cavities, or organs or repair of traumatic injuries. The term includes the use of needles to puncture skin, vaginal and cesarean deliveries, surgery, and dental procedures during which bleeding occurs or the potential for bleeding exists.
  - (b) Health care workers, emergency responders, and funeral service personnel shall follow blood and body fluid precautions with all patients.
  - (c) Health care workers who have exudative lesions or weeping dermatitis shall refrain from handling patient care equipment and devices used in performing invasive procedures and from all direct patient care that involves the potential for contact of the patient, equipment, or devices with the lesion or dermatitis until the condition resolves.
  - (d) All equipment used to puncture skin, mucous membranes, or other tissues in medical, dental, or other settings must be disposed of in accordance with 10A NCAC 36B after use or sterilized prior to reuse.
  - (e) In order to prevent transmission of HIV and hepatitis B from health care workers to patients, each health care organization that performs invasive procedures shall implement a written infection control policy. The health care organization shall ensure that health care workers in its employ or who have staff privileges are trained in the principles of infection control and the practices required by the policy; require and monitor compliance with the policy; and update the policy as needed to prevent transmission of HIV and hepatitis B from health care workers to patients. The health care organization shall designate a staff member to direct these activities. The designated staff member in each health care organization shall complete a course in infection control approved by the Department. The course shall address:
    - (1) Epidemiologic principles of infectious disease;
    - (2) Principles and practice of asepsis;
    - (3) Sterilization, disinfection, and sanitation;
    - (4) Universal blood and body fluid precautions;
    - (5) Engineering controls to reduce the risk of sharp injuries;
    - (6) Disposal of sharps; and

*History Note:* Authority G.S. 108A-54; 108A-58; P.L. 100-360; P.L. 100-485; 42 U.S.C. 1396p(c);

- (7) Techniques that reduce the risk of sharp injuries to health care workers.
- (f) The infection control policy required by this Rule shall address the following components that are necessary to prevent transmission of HIV and hepatitis B from infected health care workers to patients:
- (1) Sterilization and disinfection, including a schedule for maintenance and microbiologic monitoring of equipment; the policy shall require documentation of maintenance and monitoring;
  - (2) Sanitation of rooms and equipment, including cleaning procedures, agents, and schedules;
  - (3) Accessibility of infection control devices and supplies;
  - (4) Procedures to be followed in implementing 10A NCAC 41A .0202(4) and .0203(b)(4) when a health care provider or a patient has an exposure to blood or other body fluids of another person in a manner that poses a significant risk of transmission of HIV or hepatitis B.

*History Note: Authority G.S. 130A-144; 130A-145;  
Eff. October 1, 1992;  
Amended Eff. December 1, 2003; July 1, 1994; January 4, 1994.*

## **TITLE 12 - DEPARTMENT OF JUSTICE**

### **12 NCAC 07D .0702 FEES FOR UNARMED SECURITY GUARD REGISTRATION**

- (a) Fees for unarmed security guards are as follows:
- (1) twenty five dollars (\$25.00) non-refundable initial registration fee;
  - (2) twenty five dollars (\$25.00) annual renewal, or reissue fee; and
  - (3) ten dollars (\$10.00) transfer fee.
- (b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

*History Note: Authority G.S. 74C-9;  
Eff. June 1, 1984;  
Amended Eff. December 1, 1985;  
Temporary Amendment Eff. January 1, 1990 for a Period of 180 Days to Expire on July 1, 1990;  
ARRC Objection Lodged January 18, 1990;  
Amended Eff. December 1, 2003; July 1, 1990.*

### **12 NCAC 07D .0802 FEES FOR ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

- (a) Fees for armed security guard registration permits are as follows:
- (1) thirty dollars (\$30.00) non-refundable initial registration fee;
  - (2) thirty dollars (\$30.00) annual renewal, or reissue fee; and
  - (3) ten dollar (\$10.00) application fee.
- (b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

*History Note: Authority G.S. 74C-9;  
Eff. June 1, 1984;  
Amended Eff. December 1, 1985;  
Temporary Amendment Eff. January 1, 1990 for a Period of 180 Days to Expire on July 1, 1990;  
ARRC Objection Lodged January 18, 1990;  
Amended Eff. December 1, 2003; July 1, 1990.*

### **12 NCAC 07D .0907 PRE-DELIVERY REPORT FOR FIREARMS TRAINING COURSES**

Firearms Trainers shall submit to the Board, a pre-delivery report for all firearms training courses required by 12 NCAC 07D .0807 not less than five days prior to commencing any firearms training course. This report shall be submitted on a Board form and shall contain the following information:

- (1) Certified Firearms Trainer's name, address, and contact telephone number;
- (2) Date, time, and location of classroom training;
- (3) Date, time, and location of range qualification;
- (4) Classroom and range telephone number(s);
- (5) Number of students anticipated; and
- (6) Certified Firearms Trainer's signature.

*History Note: Authority G.S. 74C-5; 74C-13;  
Temporary Adoption Eff. October 2, 2002;  
Temporary Adoption Expired July 29, 2003;  
Eff. December 1, 2003.*

### **12 NCAC 07D .0908 POST-DELIVERY REPORT FOR FIREARMS TRAINING COURSES**

Firearms Trainers shall submit to the Board a post-delivery report for all firearms training courses required by 12 NCAC 07D .0807 not less than 20 days after completion of the firearms training. The report shall be submitted on a Board form and shall contain the following information:

- (1) Certified Firearms Trainer's name;
- (2) Date, time, and location of classroom training;
- (3) Date, time, and location of range qualification;
- (4) Full name of the students who completed the firearms training course;
- (5) Classroom exam score for each student completing the firearms training course;
- (6) Range score for each student completing the firearms training course;
- (7) Certified Firearms Trainer's signature.

*History Note: Authority G.S. 74C-5; 74C-13;  
Temporary Adoption Eff. October 2, 2002;  
Temporary Adoption Expired July 29, 2003;  
Eff. December 1, 2003.*

### **12 NCAC 09A .0201 INVESTIGATION OF VIOLATION OF RULES**

(a) If any criminal justice agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of the rules in this Chapter, the Commission may take action to correct the violation and to ensure that similar violations do not occur.

(b) Before taking action against an agency, school, or individual for a violation, the Standards Division shall investigate the alleged violation and present a report of its findings to the Probable Cause Committee of the Commission.

(c) The Probable Cause Committee shall convene prior to the next regular meeting of the Commission, shall consider the report of the Standards Division, and shall make a determination as to whether or not probable cause exists that the Commission's rules have been violated.

(d) The Probable Cause Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) request the Attorney General to authorize an investigation by the State Bureau of Investigation of the alleged violation;
- (3) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to Rule .0107 of this Subchapter and 26 NCAC 03; or
- (4) determine the appropriate sanctions against the violator pursuant to the Commission's rules.

*History Note:* Authority G.S. 17C-6; 17C-10;  
Eff. January 1, 1981;  
Amended Eff. March 1, 2004; November 1, 1993; July 1, 1990.

#### **12 NCAC 09A .0206 SUMMARY SUSPENSIONS**

(a) The Commission, by and through the Probable Cause Committee, may summarily suspend the certification of a criminal justice officer or instructor before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Probable Cause Committee, the public health, safety, or welfare requires this emergency action of summary suspension. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Probable Cause Committee, may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification; or
- (2) the certified officer fails to satisfactorily complete the in-service training requirements as prescribed in 12 NCAC 09E.

(b) For the purpose of considering a summary suspension of certification, the Probable Cause Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the Department head of the criminal justice agency or the executive officer of the institution shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the Commission.

*History Note:* Authority G.S. 17C-6; 17C-10; 150B-3;  
Eff. January 1, 1981;  
Amended Eff. March 1, 2004; July 1, 1990;  
July 1, 1989; October 1, 1985; August 15, 1981.

#### **12 NCAC 09C .0101 ADMINISTRATION OF PROGRAMS**

(a) The Standards Division shall administer and enforce all programs of the Commission regarding certification and implementation of standards.

(b) The administrative duties of the Standards Division include:

- (1) preparing and distributing a compilation of the rules in this Chapter, to persons, agencies, and institutions subject thereto;
- (2) creating and distributing forms to aid application for certification and reporting of programs conducted under the rules in this Chapter;
- (3) developing and administering comprehensive examinations to provide a basis for the decision to certify criminal justice officers;
- (4) monitoring and evaluating the activities of persons, agencies, and institutions subject to the rules in this Chapter;
- (5) providing technical assistance to agencies and institutions regarding their substantive and procedural responsibilities under the rules in this Chapter;
- (6) investigating and reporting to the Probable Cause Committee violations of and deviations from the rules in this Chapter by any person, agency, or institution;
- (7) maintaining records of application, qualification, and program reports filed with the Commission under the rules in this Chapter;
- (8) collecting information relevant to the programs of the Commission from persons, agencies, and institutions subject to the rules in this Chapter;
- (9) compiling and maintaining the official records of Commission meetings and acts;
- (10) transmitting notice of Commission actions to all persons, agencies, and institutions affecting by Commission action;
- (11) initiating judicial proceedings at the direction of the Commission to enjoin an offending or non-complying criminal justice agency from violation of the rules in this Chapter; and
- (12) divulging to authorized requestors information in the personnel and program files of the Commission.

*History Note:* Authority G.S. 17C-9;  
Eff. January 1, 1981;  
Amended Eff. March 1, 2004.

#### **12 NCAC 09G .0501 INVESTIGATION OF VIOLATION OF RULES**

(a) If any corrections agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of the rules in this Subchapter, the Commission may take action to correct the violation and to ensure that similar violations do not occur.

(b) Before taking action against an agency, school, or individual for a violation, the Standards Division shall investigate the alleged violation and present a report of its findings to the Probable Cause Committee of the Commission.

(c) The Probable Cause Committee shall convene prior to the next regular meeting of the Commission, shall consider the report of the Standards Division, and shall make a determination as to whether or not probable cause exists that the Commission's rules have been violated.

(d) The Probable Cause Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) request the Attorney General to authorize an investigation by the State Bureau of Investigation of the alleged violation;
- (3) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to 12 NCAC 09G .0103; or
- (4) determine the appropriate sanctions against the violator pursuant to the Commission's rules.

*History Note: Authority G.S. 17C-6; 17C-10;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Amended Eff. March 1, 2004.*

#### **12 NCAC 09G .0506 SUMMARY SUSPENSIONS**

(a) The Commission, by and through the Probable Cause Committee, may summarily suspend the certification of a corrections officer or instructor before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Probable Cause Committee, the public health, safety, or welfare requires this emergency action of summary suspension. The Commission has determined that the following condition specifically affects the public health, safety, or welfare and therefore it, by and through the Probable Cause Committee, may utilize summary suspension: when the person has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification.

(b) For the purpose of considering a summary suspension of certification, the Probable Cause Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the North Carolina Department of Correction shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the Commission.

*History Note: Authority G.S. 17C-6; 17C-10; 150B-3;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Amended Eff. January 1, 2004.*

---

### **TITLE 13 - DEPARTMENT OF LABOR**

#### **13 NCAC 06 .0309 DISCRIMINATION AGAINST MINERS**

Any miner or representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of the provisions of G.S. 95-241 may, within 180 days after such violation occurs, apply to the commissioner for a review of such alleged discharge or discrimination. Such application shall be in writing and shall contain the complainant's name, address, title, when employed, the company name, the mine name, and the mine address. The application also shall specify the date the alleged discharge or discrimination took place and shall set forth in specific detail the reason why the miner or representative of miners believes he has been discharged or discriminated against in violation of the provisions of G.S. 95-241.

*History Note: Authority G.S. 74-24.15; 95-245;  
Eff. February 1, 1976;  
Readopted Eff. September 30, 1977;  
Amended Eff. December 1, 2003.*

---

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

#### **15A NCAC 02I .0602 PROCEDURE FOR SUBMISSION OF PETITION**

(a) All requests for a declaratory ruling shall be filed with the Director of the appropriate Division of the Department of Environment and Natural Resources, and 25 complete copies shall also be sent to the Recording Clerk of the Commission:

Director  
Division of Air Quality  
1641 Mail Service Center  
Raleigh, NC 27699-1641

Director  
Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617

Director  
Division of Water Resources  
1611 Mail Service Center  
Raleigh, NC 27699-1611

EMC Recording Clerk  
1617 Mail Service Center  
Raleigh, NC 27699-1617

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute to a given factual situation;
- (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order, or statute must include a statement of the specific facts to a given factual situation and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of declaratory rulings in a single request.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Chairman.

*History Note: Authority G.S. 150B-4;  
Eff. August 1, 2004.*

#### **15A NCAC 02I .0603 DISPOSITION OF REQUEST**

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of this Section, and he shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department staff or any other person; and
- (3) hear oral arguments from the petitioner(s) and Department staff or their legal counsel.

(c) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.

(d) "Good cause" as set out in Paragraph (c) of this Rule shall include:

- (1) finding that there has been a similar determination in a previous contested case or declaratory ruling;

- (2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (3) finding that no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented; or
- (4) finding that the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.

(e) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the given state of facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
- (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
- (3) the Commission changes the declaratory ruling prospectively; or,
- (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environment and Natural Resources and the party requesting the ruling.

(h) The requesting party may agree to allow the Commission to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.

(i) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

*History Note: Authority G.S. 150B-4;  
Eff. August 1, 2004.*

#### **15A NCAC 03H .0104 MAPS AND MARKING**

(a) Maps or charts showing the boundaries of the areas identified in Subchapter 15A NCAC 03R and 03Q .0202 are

available for inspection at the Morehead City Office of the Division of Marine Fisheries.

(b) The Division of Marine Fisheries shall mark the boundaries of areas identified in 15A NCAC 03R and 03Q.0202 with signs insofar as may be practical. No removal or relocation of any such marker or sign shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such removal or relocation or the absence of any marker or sign affect the applicability of any rule pertaining to any such body of water or portion thereof. Where there is conflict between signs and 15A NCAC 03R or 03Q .0202 boundaries, rule boundaries shall prevail.

*History Note:* Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;  
Eff. August 1, 2004.

**15A NCAC 03I .0110 MILITARY DANGER ZONES AND RESTRICTED AREAS**

(a) Pursuant to Title 33 United States Code Section 3, the United States Army Corps of Engineers has adopted regulations which restrict access to and activities within certain areas of coastal and inland fishing waters. Federal Rules codified at 33 CFR 334.410 through 334.450 designate danger zones and restricted areas, within North Carolina coastal waters. These areas are designated in 15A NCAC 03R .0102. Only the applicable military commanders listed in the federal regulations have authority to authorize navigation or fishing access to these designated areas. All military danger zone and restricted area closures shall be enforced by the appropriate federal agency. If reasonable use of these areas by the food fishing industry is allowed or a permit process implemented by the appropriate military authorities to allow access in accordance with 33 U.S.C. Section 3 or the appropriate federal authority allows access to danger zones or restricted areas, all applicable fisheries statutes, N.C. Marine Fisheries Commission rules, and proclamations issued by the Fisheries Director, other than those allowing access, shall apply within these areas.

(b) The military danger zones and restricted areas are shown on navigational charts and specifically described in the Coastal Pilot and the Code of Federal Regulations (CFR). Copies of the CFR provisions are available on the internet at [www.access.gpo.gov/nara/cfr/index.html](http://www.access.gpo.gov/nara/cfr/index.html) or at the Division of Marine Fisheries, P.O. Box 769, Morehead City, NC 28557. These areas are also designated in 15A NCAC 3R .0102.

*History Note:* Authority G.S. 113-134; 113-182; 113-228; 143B-289.52;  
Eff. January 1, 1991;  
Amended Eff. March 1, 1994;  
Recodified from 15A NCAC 3I .0010 Eff. December 17, 1996;  
Amended Eff. August 1, 2004; May 1, 1997.

**15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS**

(a) It is unlawful to use a gill net with a mesh length less than 2½ inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any

portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length.
- (4) Specify means/methods.
- (5) Specify net number and length.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets, which are not connected together at the top line, shall be considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in Paragraph (c) of this Rule, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Owner's N.C. motor boat registration number, or
- (2) Owner's U.S. vessel documentation name.

(d) It is unlawful to use gill nets:

- (1) Within 200 yards of any pound net set with lead and either pound or heart in use;
- (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South Carolina line, unless such net is used in accordance with the following conditions:

- (1) No more than two gill nets per boat may be used at any one time;
- (2) Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
- (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.

(f) It is unlawful to use drift gill nets in violation of 15A NCAC 03J .0101(2) and Paragraph (e) of this Rule.

(g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R .0112.

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from

May 1 through October 31 in the internal coastal and joint waters of the state designated in 15A NCAC 03R .0112.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. August 1, 1998; March 1, 1996; March 1, 1994;*  
*July 1, 1993; September 1, 1991;*  
*Temporary Amendment Eff. October 2, 1999; July 1, 1999;*  
*October 22, 1998;*  
*Amended Eff. April 1, 2001;*  
*Temporary Amendment Eff. May 1, 2001;*  
*Amended Eff. August 1, 2004; August 1, 2002.*

**15A NCAC 03J .0104 TRAWL NETS**

(a) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 500 pounds of finfish from December 1 through February 28 and 1,000 pounds of finfish from March 1 through November 30.

(b) It is unlawful to use trawl nets:

- (1) In internal coastal waters, from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour before sunrise on Monday.
- (2) For the taking of oysters;
- (3) In Albemarle Sound and its tributaries;
- (4) In the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (6) of 15A NCAC 03R .0106 to peeler crab trawling; and
- (5) From December 1 through February 28 from one hour after sunset to one hour before sunrise in the following areas:
  - (A) In Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N-76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N-76° 34.5135' W;
  - (B) In Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N – 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N – 76° 35.9333' W;
  - (C) In Bay River, west of a line beginning on Bay Point at a point 35° 11.0858' N – 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N – 76° 32.2593' W;
  - (D) In Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N – 76° 48.2240' W; running southerly to the Cherry Branch side

of the Neuse River Ferry to a point 34° 56.3658' N – 76° 48.7110' W; and  
 (E) In New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation.

(c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 03L .0103 and .0202.

(d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.

(e) It is unlawful to use shrimp trawls for recreational purposes unless the trawl is marked by attaching to the codend (tailbag), one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Gear owner's current motor boat registration number; or
- (2) Owner's U.S. vessel documentation name.

(f) It is unlawful to use shrimp trawls for the taking of blue crabs in internal waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:

- (1) For individuals using shrimp trawls authorized by a Recreational Commercial Gear License, 50 blue crabs, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board.
- (2) For commercial operations, crabs may be taken incidental to lawful shrimp trawl operations provided that the weight of the crabs shall not exceed:
  - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
  - (B) 300 pounds, whichever is greater.

(g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

*History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52;*  
*Eff. February 1, 1991;*  
*Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994;*  
*February 1, 1992;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. August 1, 2004; August 1, 2000.*

**15A NCAC 03J .0107 POUND NET SETS**

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.

(b) It is unlawful to use pound net sets in coastal fishing waters without the permittee's identification being clearly printed on a



sign no less than six inches square, securely attached to the outermost stake of each end of each set. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include the pound net set permit number and the permittee's last name and initials.

(c) It is unlawful to use pound net sets, or any part thereof, except for one location identification stake or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set shall be deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder, herring, or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set;
- (6) Other finfish pound net set.

(d) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. The applicant shall be notified of such denial in writing. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if the Director determines that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director:

- (1) The application must be in the name of an individual and shall not be granted to a corporation, partnership, organization or other entity;
- (2) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with public navigation or with existing, traditional uses of the area other than navigation, and will not violate 15A NCAC 03J.0101 and .0102;
- (3) The proposed pound net set will not interfere with the rights of any riparian or littoral

landowner, including the construction or use of piers;

- (4) The proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area. Except in Chowan River as referenced in 15A NCAC 03J .0203, proposed new pound net set locations shall be a minimum of 1,000 yards as measured in a perpendicular direction from any point on a line following the permitted location of existing pound net sets;
- (5) The applicant has in the past complied with fisheries rules and laws and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;
- (6) The proposed pound net set is in the public interest; and
- (7) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets.

Approval shall be conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Subparagraphs (1) through (7) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, except that pound net sets approved prior to January 1, 2003 do not have to meet the 1,000 yard minimum distance requirement specified in Subparagraph (d)(4) of this Rule. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site,

and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h) It is unlawful to transfer a pound net set permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a pound net set permit in the new permittee's name. The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under G.S. 28A. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

(i) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j) In Core Sound, it is unlawful to use pound net sets in the pound net sets prohibited areas designated in 15A NCAC 03R .0113 except that only those pound net set permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule.

(k) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:

- (A) Specify size, number, and location.
- (B) Specify mesh length, but not more than six inches.
- (C) Specify time or season.
- (D) Specify areas.

- (2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound south and east of a line beginning at a point 35° 57.3950' N - 76° 00.8166' W on Long Shoal Point; running easterly to a point 35° 56.7316' N - 75° 59.3000' W near Marker "5" in Alligator River; running northeasterly along the Intracoastal Waterway to a point 36° 09.3033' N - 75° 53.4916' W near Marker "171" at the mouth of North River; running northwesterly to a point 36° 09.9093' N - 75° 54.6601' W on Camden Point. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

(l) Pound net sets are subject to inspection at all times.

(m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.

(n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.

(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

*History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-221; 143B-289.52*  
*Eff. January 1, 1991;*  
*Amended Eff. April 1, 1999; March 1, 1996; March 1, 1994;*  
*September 1, 1991; January 1, 1991;*  
*Temporary Amendment Eff. September 1, 2000; August 1, 2000;*  
*Amended Eff. August 1, 2002; April 1, 2001;*  
*Temporary Amendment Eff. February 10, 2003;*  
*Amended Eff. August 1, 2004.*

#### **15A NCAC 03J .0208 NEW RIVER**

It is unlawful to use trawl nets upstream of the Highway 172 Bridge over New River from 9:00 P.M. through 5:00 A.M. when opened by proclamation from August 16 through November 30.

*History Note: Authority G.S. 113-134; 113-182;*  
*143B-289.52;*  
*Eff. August 1, 1998;*  
*Amended Eff. August 1, 2004.*

#### **15A NCAC 03J .0301 POTS**

(a) It is unlawful to use pots except during time periods and in areas specified herein:

- (1) From November 1 through April 30, except that all pots shall be removed from internal

waters from January 24 through February 7. Fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 24 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 if it is determined that such waters are free of pots.

- (2) From May 1 through October 31, north and east of the Highway 58 Bridge at Emerald Isle:
  - (A) In areas designated in 15A NCAC 03R .0107(a);
  - (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas in 15A NCAC 03R .0107(b); or any part thereof, for the use of pots.
- (3) From May 1 through October 31 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.

(b) It is unlawful to use pots:

- (1) in any navigation channel marked by State or Federal agencies; or
- (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) gear owner's current motorboat registration number; or
- (2) gear owner's U.S. vessel documentation name; or
- (3) gear owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths inch bar.

(f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1 inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.

(g) It is unlawful to use crab pots in coastal waters unless each pot contains no less than two unobstructed escape rings that are at least 2 5/16 inches inside diameter and located in the opposite

outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement in order to allow the harvest of peeler crabs or mature female crabs and may impose any or all of the following restrictions:

- (1) Specify areas, and
- (2) Specify time.

(h) It is unlawful to use more than 150 pots per vessel in Newport River.

(i) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(j) User Conflicts:

- (1) The Fisheries Director may, with the prior consent of the Marine Fisheries Commission, by proclamation close any area to the use of pots in order to resolve user conflict. The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.

- (2) Any person(s) desiring to close any area to the use of pots may make such request in writing addressed to the Director of the Division of Marine Fisheries. Such requests shall contain the following information:

- (A) A map of the proposed closed area including an inset vicinity map showing the location of the proposed closed area with detail sufficient to permit on-site identification and location;
- (B) Identification of the user conflicts causing a need for closing the area to the use of pots;
- (C) Recommended method for resolving user conflicts; and
- (D) Name and address of the person(s) requesting the closed area.

- (3) Person(s) making the requests to close an area shall present their request at the public meeting.

- (4) The Fisheries Director shall deny the request or submit a proposed proclamation granting the request to the Marine Fisheries Commission for their approval.

- (5) Proclamations issued closing or opening areas to the use of pots under Paragraph (j) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 03R .0107 as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule as of the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Paragraph (j) of this Rule.

(k) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

(l) It is unlawful to use pots with leads or leaders to take shrimp. For the purposes of this Rule, leads or leaders are defined as any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish is not a pot.

*History Note:* Authority G. S. 113-134; 113-173; 113-182; 113-221; 143B-289.52;  
*Eff.* January 1, 1991;  
*Amended Eff.* August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992; September 1, 1991;  
*Temporary Amendment Eff.* July 1, 1999;  
*Amended Eff.* August 1, 2000;  
*Temporary Amendment Eff.* September 1, 2000;  
*Amended Eff.* August 1, 2004; August 1, 2002.

**15A NCAC 03K .0404 DREDGES/MECHANICAL METHODS PROHIBITED AND OPEN SEASON**

It is unlawful to use mechanical methods for oystering or clamming to take Rangia clams or their shells:

- (1) within 100 feet of any pier;
- (2) within any established bed of submerged aquatic vegetation as defined in 15A NCAC 03I .0101 or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately;
- (3) in areas designated in 15A NCAC 03R .0108, except on shellfish leases and franchises with a Permit to Use Mechanical Methods for Oysters and Clams on Shellfish Leases and Franchises.
- (4) in areas designated in 15A NCAC 03K .0204(3) and 03R .0103; and
- (5) except in areas and at times specified by proclamation as authorized by 15A NCAC 03K .0201 and 03K .0302.

*History Note:* Authority G.S. 113-134; 113-201; 143B-289.52;  
*Eff.* August 1, 2004.

**15A NCAC 03K .0405 OYSTERS, MUSSELS, HARD CLAMS PROHIBITED**

While taking Rangia clams or their shells from a prohibited (poluted) area it is unlawful to possess any other shellfish.

*History Note:* Authority G.S. 113-134; 113-201; 143B-289.52;  
*Eff.* August 1, 2004.

**15A NCAC 03N .0103 NURSERY AREA BOUNDARIES**

- (a) Primary and secondary nursery areas are designated in 15A NCAC 03R .0103, .0104, and .0105.
- (b) Unless otherwise specified by the rule, primary nursery areas described in 15A NCAC 03R .0103 encompass all waters from the described line in the direction indicated in rule up to the headwaters of the waterbody or Inland-Coastal boundary lines, whichever area is first encountered. Unless otherwise specified by the rule, permanent and special secondary nursery areas designated in 15A NCAC 03R .0104 and .0105 encompass all waters from the described line in the direction indicated in rule

up to the primary nursery area lines, Inland-Coastal boundary lines or the headwaters of the waterbody, whichever area is first encountered.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
*Eff.* January 1, 1991;  
*Amended Eff.* September 1, 1991;  
*Recodified from* 15A NCAC 03N .0003 *Eff.* May 1, 1997;  
*Amended Eff.* August 1, 2004; May 1, 1997.

**15A NCAC 03N .0105 PROHIBITED GEAR, SECONDARY NURSERY AREAS**

- (a) It is unlawful to use trawl nets for any purpose in any of the permanent secondary nursery areas designated in 15A NCAC 03R .0104.
- (b) It is unlawful to use trawl nets for any purpose in any of the special secondary nursery areas designated in 15A NCAC 03R .0105, except that the Fisheries Director, may, by proclamation, open any or all of the special secondary nursery areas, or any portion thereof, listed in 15A NCAC 03R .0105 to shrimp or crab trawling from August 16 through May 14 subject to the provisions of 15A NCAC 03L .0100 and .0200.

*History Note:* Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;  
*Eff.* January 1, 1991;  
*Amended Eff.* September 1, 1991;  
*Recodified from* 15A NCAC 03N .0005 *Eff.* May 1, 1997;  
*Amended Eff.* August 1, 2004; May 1, 1997.

**15A NCAC 03O .0101 PROCEDURE AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS**

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the Division, the licensee's signature on the application must be notarized;
- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
- (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years;
- (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of

- documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
  - (6) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
  - (7) For nonresidents, certification of the state of residency;
  - (8) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
  - (9) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
  - (10) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
  - (11) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant must provide valid certification as a North Carolina certified shellfish dealer.
- (b) To obtain a License to Land Flounder from the Atlantic Ocean:
- (1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:
    - (A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and
    - (B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and
    - (C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.
  - (2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.
  - (3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.
  - (4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.
  - (5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the Morehead City Office of the Division of Marine Fisheries for processing.
  - (6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.
  - (7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.
- (c) To obtain a Recreational Fishing Tournament License to Sell Fish, the following information is required for a proper application:
- (1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature must be notarized on the application.
  - (2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport, or if purchased by mail, a copy thereof.
  - (3) The tournament organizer must apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament.
- (d) To obtain a Land or Sell License, the following information is required for a proper application:
- (1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application must be notarized on the application;
  - (2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;
  - (3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of

documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall be:
  - (A) a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and
  - (B) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or
  - (C) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
  - (D) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
  - (A) North Carolina voter registration card; or
  - (B) Current North Carolina Driver's License; or
  - (C) Current North Carolina Certificate of Domicile; or
  - (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
  - (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information will be deemed incomplete and will not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the renewal application by the licensee, a responsible party or person holding a power of attorney;

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates must be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee must provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party will certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

*History Note: Authority G.S. 113-134; 113-168; 113-168.1; 113-168.2; 113-168.3; 113-168.4; 113-168.5; 113-168.6; 113-169; 113-169.2; 113-169.3; 113-169.4; 113-169.5; 113-171.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1997; March 1, 1994; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. April 1, 2001;*

*Amended Eff. August 1, 2004; August 1, 2002;*

**15A NCAC 030 .0105 BAIT AND MUSSEL DEALERS**

(a) Persons dealing in minnows, live shrimp, or both minnows and live shrimp for bait purposes, who are subject to licensing requirements under G.S. 113-169.3 are required to purchase only the license applicable to finfish dealers. A bona fide dealer in shrimp, licensed under the provisions of G.S. 113-169.3, may, however, deal in minnows as well as live shrimp for bait purposes, as an incident of his operations under his shrimp dealer's license.

(b) Persons dealing in mussels who are subject to licensing requirements under the provisions of G.S. 113-169.3 are required to purchase only the license applicable to clam dealers and meet the shellfish dealer certification requirements in 15A NCAC 030.0101(a)(11).

*History Note: Authority G.S. 113-134; 113-169.3; 143B-289.52;*

*Eff. January 1, 1991;*

*Temporary Amendment Eff. July 1, 1999;*

*Amended Eff. August 1, 2004; August 1, 2000.*

**15A NCAC 030 .0503 PERMIT CONDITIONS; SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such reports shall be filed on forms provided by the Division and shall include but not be limited to a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under

a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 031.0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
  - (i) Atlantic Ocean;
  - (ii) Albemarle Sound Management Area for Striped Bass which is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N – 75° 39.5736'W to Rhodoms

- Point 36° 00.2146' N – 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N – 75° 43.6585' W; to Long Point 36° 02.4971' N – 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W across to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W;
- (iii) Central Area which is defined as all internal coastal waters of Carteret, Craven, Beaufort, and Pamlico counties; White Oak and Pungo rivers; and Pamlico Sound south of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W (southern boundary of the Albemarle Sound Management Area for Striped Bass) to the county boundaries;
- (iv) Southern Area which is defined as all internal coastal waters of Pender, Onslow, New Hanover, and Brunswick counties.
- (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined as Albemarle Sound and all its joint water tributaries including Roanoke River, up to the Hwy. 258 bridge; Eastmost and Middle Rivers, and Cashie River below Sans Souci Ferry; Currituck Sound and all its joint water tributaries; Roanoke and Croatan Sounds and all their joint water tributaries, including Oregon Inlet, east of a line from Baum Point 35° 55.1602' N – 75° 39.5736' W to Rhodoms Point 36° 00.2146' N – 75° 43.6399' W and east of a line from Eagleton Point 36° 01.3178' N – 75° 43.6585' W to Long Point 36° 02.4971' N – 75° 44.2261' W at the mouth of Kitty Hawk Bay and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W, to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W; Croatan Sound south of a line at the Highway 64/264 bridge at Manns Harbor and north of a line from Roanoke Marshes Point 35° 48.3693' N – 75° 43.7232' W across to the north point of Eagle Nest Bay 35° 44.1710' N – 75° 31.0520' W.
- (4) Atlantic Ocean Flounder Dealer Permit:
- (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location must be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining



an Atlantic Ocean American Shad Dealer Permit.

(c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.

(d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:

- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
- (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
- (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
- (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
- (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at [www.nmfs.gov](http://www.nmfs.gov) and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 03J .0107.

(f) Aquaculture Operations/Collection Permits:

- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
- (2) It is unlawful:
  - (A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
  - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.

(C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

- (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
- (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
- (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who shall be acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Collection Permit:

- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
- (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
- (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
  - (A) without the required license(s) for such sale;
  - (B) to anyone other than a licensed North Carolina fish dealer; and
  - (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who shall be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

*History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52; Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000;*

*Eff. April 1, 2001;*

*Amended Eff. August 1, 2004; August 1, 2002;*

**15A NCAC 03Q .0201 SPECIFIC CLASSIFICATION OF WATERS**

The boundary lines of internal coastal waters which are specifically classified as inland, joint, or coastal fishing waters by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission are described in 15A NCAC 03Q .0202 under the coastal counties in which such waters or portions thereof are located. Indentation indicates the waterbody named is tributary to the next preceding waterbody named and not so indented. The specific classification applies to the main stem of the described waterbody. A waterbody that is not specifically classified as inland, joint, or coastal fishing waters in 15A NCAC 03Q .0202 carries the same classification as that assigned to the waterbody of which it is tributary. The coastal fishing water are found within the area bound by a line running parallel to the shoreline three miles offshore in the Atlantic Ocean and the joint or inland fishing water boundary in internal waters that is listed. The joint waters are found within the area bound by the joint fishing water boundaries described in the rule and the inland water boundaries described. The inland waters are found within the area bound by the inland fishing water boundary description and the headwaters of that particular waterbody.

*History Note: Authority G.S. 113-132; 113-134;*

*143B-289.52;*

*Eff. January 1, 1991;*

*Amended Eff. August 1, 2004.*

**15A NCAC 03Q .0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS**

Descriptive boundaries for Coastal-Joint-Inland Waters referenced in 15A NCAC 03Q .0201 are as follows:

- (1) Beaufort County
  - (a) Pamlico -Tar River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 32.2167' N - 77° 02.8701' W; running southwesterly along the east side of the railroad bridge to a point on the south shore 35° 32.0267' N - 77° 03.5179' W;
    - (i) All Manmade tributaries - All manmade tributaries within Pamlico – Tar River in Beaufort County are designated as Joint.
  - (b) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067'

W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.

- (i) Flax Pond Bay - All waters within this waterbody are designated as Coastal.
- (ii) Upper Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 31.8946' W - 76° 32.1231' W; running northeasterly to a point on the east shore 35° 31.9656' N - 76° 32.0114' W.
- (iii) Lower Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.4188' N - 76° 35.3924' W; running northeast to a point on the east shore 35° 32.4691' N - 76° 35.2748' W.
- (iv) George Best Creek - All waters within this waterbody are designated as Coastal.
- (v) Toms Creek - All waters within this waterbody are designated as Coastal.
- (vi) Pantego Creek – Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 31.9908' N – 76° 36.6105' W; running southerly along the Breakwater to a point 35° 31.6628' N – 76° 36.9840' W; running southwesterly to a point on the south shore 35° 31.5653' N – 76° 37.3832' W.
- (vii) Pungo Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 29.9986' N - 76° 40.3564' W; running southerly to a point on the south shore 35° 29.8887' N - 76° 40.3262' W.
  - (A) Vale Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 31.0370' W - 76° 38.9044' W;

- running  
northeasterly to a  
point on the east  
shore 35° 31.0528'  
N - 76° 38.8536' W.
- (B) Scotts Creek -  
Inland Waters north  
and Coastal Waters  
south of a line  
beginning at a point  
on the west shore  
35° 30.4264' N -  
76° 40.1156' W;  
running easterly to  
a point on the east  
shore 35° 30.4264'  
N - 76° 39.9430' W.
- (C) Smith Creek -  
Inland Waters west  
and Coastal Waters  
east of a line  
beginning at a point  
on the north shore  
35° 30.2844' N -  
76° 40.2941' W;  
running southerly  
to a point on the  
south shore 35°  
30.1982' N - 76°  
40.2621' W.
- (viii) Woodstock (Little) Creek -  
Inland Waters south and  
Coastal Waters north of a  
line beginning at a point on  
the west shore 35° 30.5291'  
N - 76° 38.1600' W; running  
easterly to a point on the east  
shore 35° 30.4852' N - 76°  
38.0278' W.
- (ix) Jordan Creek - Inland  
Waters west and Coastal  
Waters east of a line  
beginning at a point on the  
north shore 35° 27.7256' N -  
76° 36.2159' W; running  
southerly to a point 35°  
27.5587' N - 76° 36.2704'  
W; following the eastern  
shore to a point 35° 27.4651'  
N - 76° 36.3294' W; running  
southerly to a point on the  
south shore 35° 27.3429' N -  
76° 36.4498' W.
- (x) Satterthwaite Creek - Inland  
Waters northwest and  
Coastal Waters southeast of  
a line beginning at a point on  
the north shore 35° 25.2994'  
N - 76° 35.4281' W; running  
southerly to a point on the
- south shore 35° 25.1284' N -  
76° 35.4949' W.
- (xi) Wright Creek - Inland  
Waters southwest and  
Coastal Waters northeast of  
a line beginning at a point on  
the west shore 35° 24.8664'  
N - 76° 35.4240' W; running  
southeasterly to a point on  
the east shore 35° 24.7995'  
N - 76° 35.3086' W.
- (c) North Creek - Joint Waters north and  
Coastal Waters south of a line  
beginning at a point on the west shore  
35° 25.1667' N - 76° 40.1042' W;  
running easterly to a point on the east  
shore 35° 25.0971' N - 76° 39.6340'  
W.
- (d) St. Clair Creek - Inland Waters north  
and Coastal Waters south of a line  
beginning at a point on the west shore  
35° 25.7691' N - 76° 42.6406' W;  
running easterly to a point on the east  
shore 35° 25.7695' N - 76° 42.5967'  
W.
- (e) Mixon Creek - Inland Waters north  
and Coastal Waters south of a line  
beginning at a point on the west shore  
35° 25.7601' N - 76° 46.5971' W;  
running easterly to a point 35°  
25.7304' N - 76° 46.2547' W;  
following the southern shoreline to a  
point 35° 25.6878' N - 76° 46.2034'  
W; running southeasterly to a point  
35° 25.6606' N - 76° 46.1892' W;  
following the southern shoreline to a  
point 35° 25.6267' N - 76° 46.1494'  
W; running southeasterly to a point  
on the east shore 35° 25.6166' N - 76°  
46.1361' W.
- (f) Bath Creek - Inland Waters north and  
Coastal Waters south of a line  
beginning at a point on the west shore  
35° 27.1685' N - 76° 49.4087' W;  
running northeasterly to a point on  
the east shore 35° 27.2371' N - 76°  
49.0969' W.
- (g) Duck Creek - Inland Waters northeast  
and Coastal Waters southwest of a  
line beginning at a point on the west  
shore 35° 27.5395' N - 76° 52.0074'  
W; running southerly to a point on  
the east shore 35° 27.4401' N - 76°  
51.9827' W.
- (h) Mallard Creek - Inland Waters north  
and Coastal Waters south of a line  
beginning at a point on the west shore  
35° 27.6461' N - 76° 53.6398' W;  
running easterly to a point on the east

- shore 35° 27.6425' N - 76° 53.5816' W.
- (i) Upper Goose Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 28.5346' N - 76° 56.0229' W; running southeasterly to a point on the east shore 35° 28.4014' N - 76° 55.8714' W.
  - (j) Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 29.1023' N - 76° 57.3738' W; running easterly to a point on the east shore 35° 29.1059' N - 76° 57.1188' W.
  - (k) Herring Run (Runyan Creek) - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.1615' N - 77° 02.3606' W; running southeasterly to a point on the east shore 35° 32.1340' N - 77° 02.3438' W.
  - (l) Chocowinity Bay - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 35° 29.4751' N - 77° 01.8507' W; running northeasterly to a point on the east shore 35° 29.8780' N - 77° 01.3169' W.
  - (m) Calf Tree Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 29.2268' N - 77° 01.2973' W; running southeasterly to a point on the south shore 35° 29.2115' N - 77° 01.2831' W.
  - (n) Hills Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 28.5227' N - 77° 00.2664' W; running easterly to a point on the east shore 35° 28.5193' N - 77° 00.2270' W.
  - (o) Blounts Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 26.2010' N - 76° 58.1716' W; running southerly to a point on the south shore 35° 26.1369' N - 76° 58.1671' W.
  - (p) Nevil Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 26.1117' N - 76° 54.5233' W; running southeasterly to a point on the east shore 35° 26.0966' N - 76° 54.5045' W.
  - (q) Barris Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 24.8423' N - 76° 49.9928' W; running easterly to a point on the east shore 35° 24.8451' N - 76° 49.9745' W.
  - (r) Durham Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 23.7824' N - 76° 49.3016' W; running easterly to a point on the east shore 35° 23.7821' N - 76° 48.8703' W.
  - (s) Huddles Cut - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 22.5817' N - 76° 44.8727' W; running easterly to a point on the east shore 35° 22.5782' N - 76° 44.8594' W.
  - (t) Huddy Gut - All waters within this waterbody are designated as Coastal.
  - (u) South Creek - Inland Waters south and Coast Waters north of a line beginning at a point on the west shore 35° 18.9589' N - 76° 47.4298' W; running easterly to a point on the east shore 35° 18.9994' N - 76° 47.3007' W.
  - (i) Tooleys Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.7080' N - 76° 44.8937' W; running northeasterly to a point on the east shore 35° 20.7440' N - 76° 44.8324' W.
  - (ii) Drinkwater Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.1441' N - 76° 45.8262' W; running easterly to a point on the east shore 35° 20.1333' N - 76° 45.7530' W.
  - (iii) Jacobs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 35° 20.1420' N - 76° 45.8395' W; running southwesterly to a point on the south shore 35° 20.0692' N - 76° 45.8912' W.
  - (iv) Jacks Creek - Inland Waters north and Coastal Waters south of a line beginning at a

- point on the north shore 35° 19.5455' N - 76° 47.0155' W; running southwesterly to a point on the south shore 35° 19.4986' N - 76° 47.0741' W.
- (v) Whitehurst Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.2878' N - 76° 47.4778' W; running southerly to a point on the south shore 35° 19.2295' N - 76° 47.4430' W.
- (vi) Little Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 18.9873' N - 76° 45.9292' W; running easterly to a point on the east shore 35° 19.0209' N - 76° 45.8258' W.
- (vii) Short Creek - Inland Waters southeast and Coastal Waters northwest of a line beginning at a point on the north shore 35° 20.1228' N - 76° 44.6031' W; running southwesterly to a point on the south shore 35° 20.0527' N - 76° 44.6667' W.
- (viii) Long Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.3050' N - 76° 44.3444' W; running northeasterly to a point on the east shore 35° 20.4185' N - 76° 43.8949' W.
- (ix) Bond Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4231' N - 76° 42.0469' W; running southeasterly to a point on the east shore 35° 20.2539' N - 76 ° 41.8254' W.
- (x) Muddy Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.1523' N - 76° 41.2074' W; running northeasterly to a point on the east shore 35° 20.2413' N - 76° 41.0572' W.
- (v) Davis Creek - Inland Waters south Coastal Waters north of a line beginning at a point on the west shore 35° 20.7032' N - 76° 40.3404' W; running easterly to a point on the east shore 35° 20.7112' N - 76° 40.1637' W.
- (w) Strawhorn Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4091' N - 76° 39.0998' W; running northeasterly to a point on the east shore 35° 20.4750' N - 76° 38.8874' W.
- (x) Lower Goose Creek – All waters within this waterbody are designated as Coastal.
- (i) Lower Spring Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.7932' N - 76° 37.5347' W; running southerly to a point on the south shore 35° 19.4670' N - 76° 37.4134' W.
- (ii) Peterson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 18.7722' N - 76° 37.5059' W; running northeasterly to a point on the east shore 35° 18.8406' N - 76° 37.4111' W.
- (iii) Snode Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 18.2787' N - 76° 37.4679' W; running southwesterly to a point on the south shore 35° 18.0821' N - 76° 37.5544' W.
- (iv) Campbell Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 17.1203' N - 76° 37.9248' W; running southerly to a point on the south shore 35° 16.8807' N - 76° 37.9101' W.
- (A) Smith Creek – All waters within this waterbody are designated as Inland.
- (v) Hunting Creek - Inland Waters south and Coastal

- |      |   |     |   |
|------|---|-----|---|
|      | Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.   |     | running easterly to a point on the east shore 36° 00.9542' N - 77° 13.0320' W.  |
| (2)  | Bertie County   |     |   |
| (a)  | Albemarle Sound - All waters in this waterbody are designated as Coastal.   |     |   |
| (i)  | All Manmade Tributaries - All manmade tributaries within this waterbody for Bertie County are designated as Joint.  |     |   |
| (ii) | Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W. | (D) | Apple Tree Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 00.4174' N - 77° 12.3252' W; running southeasterly to a point on the south shore 36° 00.3987' N - 77° 12.3088' W. |
| (A)  | Sandy Run (Norfleet Gut) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.       | (E) | Indian Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 59.0794' N - 77° 11.4926' W; running southerly to a point on the south shore 35° 59.0597' N - 77° 11.4967' W.         |
| (B)  | Quinine - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 09.6041' N - 77° 15.9091' W; running easterly to a point on the east shore 36° 09.6068' N - 77° 15.8912' W.                             | (F) | Coniott Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 56.6562' N - 77° 04.2860' W; running southwesterly to a point on the south shore 35° 56.6397' N - 77° 04.3066' W.    |
| (C)  | Wire Gut - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 00.9580' N - 77° 13.0755' W;   | (G) | Conine Creek - All waters in this waterbody are designated as Joint.  |
|      |   | (H) | Old Mill Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 53.9483' N - 76° 55.3921' W; running southeasterly to a point on the east shore 35° 53.9378' N - 76° 55.3710' W.   |

- |       |  |   |
|-------|--|---|
| (iii) | (I) Cut Cypress Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 35° 51.9465' N - 76° 53.5762' W; running southeasterly to a point on the south shore 35° 51.9229' N - 76° 53.5556' W. |   |
|       | (J) Broad Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 52.5265' N - 76° 50.3993' W; running southerly to a point on the south shore 35° 52.4262' N - 76° 50.3791' W.                     | (B) Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.0568' N - 76° 45.2632' W; running easterly to a point on the east shore 35° 55.0543' N - 76° 45.1309' W.     |
|       | (K) Thorofare - All waters within this waterbody are designated as Joint.  | (C) Grinnel Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 55.3147' N - 76° 44.5010' W; running southerly to a point on the south shore 35° 55.2262' N - 76° 44.5495' W.  |
|       |  | (iv) Middle River - All waters within this waterbody are designated Joint.  |
|       | (A) Cashoke Creek - Inland Waters west   | (v) Eastmost River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.5024' N - 76° 42.4877' W; running westerly to a point on the east shore 35° 56.4070' N - 76° 42.7647' W. |
|       |  | (vi) Mud Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 53.2880' N - 76° 45.4463' W; running southwesterly to a point on the south shore 35° 53.2527' N - 76° 45.4678' W.   |
|       |  | (b) Black Walnut Swamp - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 59.4680' N - 76° 40.9556'   |
|       |  |   |
|       |  |   |
|       |  |   |

- W; running southerly to a point on the south shore 35° 59.3946' N - 76° 40.9629' W.
- (c) Salmon Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 36° 00.4648' N - 76° 42.3513' W; running southeasterly to a point on the south shore 36° 00.3373' N - 76° 42.1499' W.
- (d) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
- (i) Barkers Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 14.0709' N - 76° 44.2451' W; running southerly to a point on the south shore 36° 14.0492' N - 76° 44.2456' W.
- (ii) Willow Branch - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 04.7206' N - 76° 43.7667' W; running southeasterly to a point on the south shore 36° 04.7138' N - 76° 43.7580' W.
- (iii) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (3) Bladen County
- (a) Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2628' N - 78° 17.6390' W; running northeasterly along the Lock and Dam # 1 to a point on the east shore 34° 24.2958' N - 78° 17.5634' W.
- (i) Natmore Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2841' N - 78° 16.4405' W; running easterly to a point on the east shore 34° 24.2852' N - 78° 16.4039' W.
- (4) Brunswick County
- (a) Calabash River And Tributaries - All waters within this waterbody in Brunswick County are designated as Coastal.
- (b) Saucepan Creek - All waters within this waterbody are designated as Coastal.
- (c) Shallotte River - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 33° 58.3412' N - 78° 23.1948' W; running northeasterly to a point on the north shore 33° 58.3518' N - 78° 23.1816' W.
- (i) Mill Dam Branch - All waters within this waterbody are designated as Coastal.
- (ii) Squash Creek - All waters within this waterbody are designated as Coastal.
- (iii) Mill Pond - All waters within this waterbody are designated as Coastal
- (iv) Charles Branch - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 58.6276' N - 78° 21.2919' W; running easterly to a point on the east shore 33° 58.6257' N - 78° 21.2841' W.
- (v) Grisset Swamp - All waters within this waterbody are designated as Coastal.
- (vi) Little Shallotte River And Tributaries - All waters within this waterbody are designated as Coastal.
- (d) Lockwood Folly River- Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the north shore 34° 00.6550' N - 78° 15.8134' W; running southeasterly along the south side of NC Hwy 211 bridge to a point on the south shore 34° 00.6285' N - 78° 15.7928' W.
- (i) Stanberry Creek - All waters within this waterbody are designated as Coastal.
- (ii) Pompeys Creek - All waters within this waterbody are designated as Coastal.



- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>(iii) Maple Creek - All waters within this waterbody are designated as Coastal.</li> <li>(iv) Rubys Creek - All waters within this waterbody are designated as Coastal.</li> <li>(v) Big Doe Creek - All waters within this waterbody are designated as Coastal.</li> <li>(vi) Lennons Creek - All waters within this waterbody are designated as Coastal.</li> <li>(vii) Mercers Mill Pond Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 57.7498' N - 78° 12.3532' W; running southeasterly to a point on the east shore 33° 57.7439' N - 78° 12.3440' W.</li> </ul> | <ul style="list-style-type: none"> <li>(iv) Lilliput Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 04.1924' N - 77° 56.5361' W; running southerly to a point on the south shore 34° 04.1487' N - 77° 56.5447' W.</li> </ul>  |
| <ul style="list-style-type: none"> <li>(e) Elizabeth River - All waters within this waterbody are designated as Coastal.</li> <li>(i) Ash Creek - All waters within this waterbody are designated as Coastal.</li> </ul>   | <ul style="list-style-type: none"> <li>(v) Sandhill Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 06.9584' N - 77° 57.0085' W; running southeasterly to a point on the south shore 34° 06.9371' N - 77° 56.9943' W.</li> </ul>   |
| <ul style="list-style-type: none"> <li>(f) Beaverdam Creek - All waters within this waterbody are designated as Coastal.</li> </ul>  | <ul style="list-style-type: none"> <li>(vi) Town Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 07.7492' N - 77° 57.3445' W; running southerly to a point on the south shore 34° 07.7034' N - 77° 57.3431' W.</li> </ul>  |
| <ul style="list-style-type: none"> <li>(g) Dutchman Creek - All waters within this waterbody are designated as Coastal.</li> <li>(i) Calf Gully Creek - All waters within this waterbody are designated as Coastal.</li> <li>(ii) Jumpin Run - All waters within this waterbody are designated as Coastal.</li> <li>(iii) Fiddlers Creek - All waters within this waterbody are designated as Coastal.</li> </ul>  | <ul style="list-style-type: none"> <li>(vii) Mallory Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 09.9868' N - 77° 58.2023' W; running southerly to a point on the south shore 34° 09.9618' N - 77° 58.2133' W.</li> </ul>  |
| <ul style="list-style-type: none"> <li>(h) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W.</li> <li>(i) Carolina Power And Light Intake Canal - All waters within this waterbody are designated as Coastal.</li> <li>(ii) Walden Creek - All waters within this waterbody are designated as Coastal.</li> <li>(iii) Orton Creek - Inland Waters west and Coastal Waters east of a line beginning at a point</li> </ul>             | <ul style="list-style-type: none"> <li>(viii) Brunswick River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 34° 10.7281' N - 77° 57.7793' W; running northeasterly to a point on the north shore 34° 10.9581' N - 77° 57.6452' W.</li> <li>(A) Alligator Creek - For the southernmost entrance into the Brunswick River: Inland Waters east and Joint Waters west of a line beginning at a point</li> </ul> |

- on the south shore  
 34° 13.5040' N -  
 77° 58.6331' N;  
 running  
 northwesterly to a  
 point on the north  
 shore 34° 13.5472'  
 N - 77° 58.6628' N.  
 For the  
 northernmost  
 entrance into the  
 Brunswick River:  
 Inland Waters east  
 and Joint Waters  
 west of a line  
 beginning at a point  
 on the south shore  
 34° 14.4300' N -  
 77° 59.2346' N;  
 running northerly to  
 a point on the north  
 shore 34° 14.4618'  
 N - 77° 59.2300' N.
- (B) Jackeys Creek -  
 Inland Waters west  
 and Joint Waters  
 east of a line  
 beginning at a point  
 on the south shore  
 34° 11.9400' N -  
 77° 58.5859' W;  
 running northerly to  
 a point on the north  
 shore 34° 11.9565'  
 N - 77° 58.5859'  
 W.
- (C) Sturgeon Creek -  
 Inland Waters west  
 and Joint Waters  
 east of a line  
 beginning at a point  
 on the north shore  
 34° 14.6761' N -  
 77° 59.4145' W;  
 running southerly  
 to a point on the  
 south shore 34°  
 14.6404' N - 77°  
 59.4058' W.
- (ix) Cartwheel Creek - Inland  
 Waters west and Joint  
 Waters east of a line  
 beginning at a point  
 on the north shore 34° 15.7781' N -  
 77° 59.3852' W; running  
 southerly to a point on the  
 south shore 34° 15.7564' N -  
 77° 59.3898' W.
- (x) Indian Creek - Inland Waters  
 west and Joint Waters east of
- a line beginning at a point on  
 the north shore 34° 17.0441'  
 N - 78° 00.3662' W; running  
 southwesterly to a point on  
 the south shore 34° 17.0006'  
 N - 78° 00.3977' W.
- (xi) Hood Creek - Inland Waters  
 west and Joint Waters east of  
 a line beginning at a point on  
 the north shore 34° 20.3713'  
 N - 78° 04.7492' W; running  
 southwesterly to a point on  
 the south shore 34° 20.3393'  
 N - 78° 04.7373' W.
- (xii) Northwest Creek - All  
 waters within this waterbody  
 are designated as Inland.
- (5) Camden County
- (a) Albemarle Sound – All waters within  
 this waterbody are designated  
 Coastal.
- (i) All Manmade Tributaries –  
 All waters within this  
 waterbody are designated as  
 Joint.
- (ii) Pasquotank River – Inland  
 Waters north and Joint  
 Waters south of a line  
 beginning at a point on the  
 west shore 36° 18.0768' N –  
 76° 13.0979' W; running  
 easterly along the south side  
 of the Highway 158 Bridge  
 to a point on the east shore  
 36° 18.0594' N - 76°  
 12.9620' W. Joint Waters  
 west and Coastal Waters east  
 of a line beginning at a point  
 on the north shore 36°  
 11.4282' N - 76° 01.2876'  
 W; running southwesterly to  
 a point on the south shore  
 36° 08.7563' N - 76°  
 03.6991' W
- (A) Raymond Creek -  
 Inland Waters north  
 and Joint Waters  
 south of a line  
 beginning at a point  
 on the west shore  
 36° 14.0746' W -  
 76° 03.3952' W;  
 running easterly to  
 a point on the east  
 shore 36° 14.0711'  
 N - 76° 03.3668' W.
- (B) Portohonk Creek -  
 Inland Waters  
 northeast and Joint  
 Waters southwest

- |       |   |     |  |
|-------|---|-----|--|
|       | of a line beginning<br>at a point on the<br>west shore 36°<br>15.0519' N - 76°<br>05.2793' W;<br>running  |     | running<br>southeasterly to a<br>point on the east<br>shore 36° 11.5587'<br>N - 75° 56.9160' W.  |
|       |   | (C) | Broad Creek -<br>Inland Waters west<br>and Joint Waters<br>east of a line<br>beginning at a point<br>on the north shore<br>36° 12.2197' N -<br>75° 57.2685' W;<br>running southerly<br>to a point on the<br>south shore 36°<br>11.6766' N - 75°<br>57.2254' W. |
| (C)   | Areneuse Creek -<br>Inland Waters north<br>and Joint Waters<br>south of a line<br>beginning at a point<br>on the west shore<br>36° 17.3133' N -<br>76° 08.1655' W;<br>running   | (D) | Hunting Creek -<br>Inland Waters<br>southwest and Joint<br>Waters northeast of<br>a line beginning at<br>a point on the north<br>shore 36° 15.0480'<br>N - 75° 57.5820'<br>W; running  |
|       | southeasterly to a<br>point on the east<br>shore 36° 17.1313'<br>N - 76° 08.1655' W.  |     | southeasterly to a<br>point on the south<br>shore 36° 14.9308'<br>N - 75° 57.4635' W.  |
| (iii) | North River - Inland Waters<br>west and Joint Waters east of<br>a line beginning at a point on<br>the north shore 36° 18.7703'<br>N - 75° 58.7384' W; running   | (E) | Abel Creek - Inland<br>Waters west and<br>Joint Waters east of<br>a line beginning at<br>a point on the north<br>shore 36° 15.9530'<br>N - 75° 58.0348'<br>W; running  |
|       | southerly to a point on the<br>south shore 36° 18.4130' N -<br>75° 58.7228' W. Joint<br>Waters north and Coastal<br>Waters south of a line<br>beginning at a point on the<br>west shore 36° 09.8986' N -<br>75° 54.6771' W; running |     | southerly to a point<br>on the south shore<br>36° 15.8553' N -<br>75° 58.0842' W.  |
|       | easterly to a point on the east<br>shore 36° 10.0108' N - 75°<br>52.0431' W.  | (F) | Back Landing<br>Creek - Inland<br>Waters northwest<br>and Joint Waters<br>southeast of a line<br>beginning at a point<br>on the north shore<br>36° 16.4746' N -<br>76° 07.6377' W;<br>running  |
| (A)   | Wading Gut -<br>Inland Waters south<br>and Joint Waters<br>north of a line<br>beginning at a point<br>on the west shore<br>36° 10.6054' N -<br>75° 55.9529' W;<br>running   |     | southwesterly to a<br>point on the south<br>shore 36° 16.2030'<br>N - 76° 57.8897' W.  |
|       | southeasterly to a<br>point on the east<br>shore 36° 10.5777'<br>N - 75° 55.8654' W.  | (G) | Public Creek -<br>Inland Waters west<br>and Joint Waters   |
| (B)   | Little Broad Creek -<br>Inland Waters south<br>and Joint Waters<br>north of a line<br>beginning at a point<br>on the west shore<br>36° 11.6530' N -<br>75° 57.2035' W;  |     |  |

- east of a line beginning at a point on the north shore 36° 17.2462' N - 75° 58.2774' W; running southerly to a point on the south shore 36° 17.2121' N - 75° 58.2788' W.
- (H) Cow Creek -Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.8667' N - 75° 58.3483' W; running southerly to a point on the marsh island 36° 17.7600' N - 75° 58.3300' W; running southerly following the eastern shoreline of the island to a point 36° 17.7122' N - 75° 58.3273' W; running southwesterly to a point on the south shore 36° 17.6522' N - 75° 58.3543' W.
- (I) Great Creek - Mouth: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.1045' N - 75° 58.4289' W; running southerly to a point on the south shore 36° 17 9882' N - 75° 58.4458' W. On north shore of Great Creek within the fourth tributary: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 18.1729' N - 75° 58.9137' W; running southeasterly to a point on the south shore 36° 18.1640' N - 75° 58.9022' W.
- (j) Indiantown Creek – All waters within this waterbody are designated as Inland.
- (6) Carteret County
- (a) Neuse River - All waters in this waterbody are designated as Coastal.
- (i) Adams Creek - All waters in this waterbody are designated as Coastal.
- (A) Back (Black) Creek - All waters in this waterbody are designated as Coastal.
- (B) Cedar Creek - All waters in this waterbody are designated as Coastal
- (ii) Garbacon Creek - All waters in this waterbody are designated as Coastal.
- (iii) South River - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 34° 53.5068' N - 76° 31.1233' W; running northeasterly to a point on the east shore 34° 53.4494' N - 76° 31.3032' W.
- (A) Big Creek - All waters in this waterbody are designated as Coastal.
- (B) Southwest Creek - All waters in this waterbody are designated as Coastal.
- (C) West Fork - All waters in this waterbody are designated as Inland.
- (D) East Creek - All waters in this waterbody are designated as Inland.
- (E) Eastman Creek - All waters in this waterbody are designated as Coastal.

- (iv) Browns Creek - All waters in this waterbody are designated as Coastal.
  - (b) North River And Tributaries - All waters in this waterbody are designated as Coastal.
    - (i) Panter Cat Creek - All waters in this waterbody are designated as Coastal.
    - (ii) Cypress Creek - All waters in this waterbody are designated as Coastal.
  - (c) Newport River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 45.2478' N - 76° 46.4479' W; running southerly to a point on the south shore 34° 45.1840' N - 76° 46.4488' W.
    - (i) Core Creek - All waters in this waterbody are designated as Coastal.
    - (ii) Harlowe Creek - All waters in this waterbody are designated as Coastal.
    - (iii) Bogue Sound And Tributaries - All waters in this waterbody are designated as Coastal.
  - (d) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N -77° 11.4711' W; running easterly to a point on the east shore 34° 48.1620' N -77° 11.4244' W.
    - (i) Pettiford Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 42.6935' N - 77° 04.0745' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 42.6569' N - 77° 04.0786' W.
    - (ii) Little Hadnotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.0839' N - 77° 06.5931' W; running northerly to an easterly point on the east shore 34° 45.0867' N - 77° 06.5780' W.
    - (iii) Hadnotts Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 45.9908' N - 77° 05.7847' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 45.9738' N - 77° 05.7810' W.
  - (iv) Neds Creek - All waters in this waterbody are designated as Coastal.
  - (v) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N -77° 09.9160' W.
- (7) Chowan County
- (a) Albemarle Sound - All waters within this waterbody in Chowan County are designated as Coastal.
    - (i) All Manmade Tributaries - All manmade tributaries are designated as Joint.
    - (ii) Yeopim River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.1203' N - 76° 29.5051' W; running southerly to a point on the south shore at Norcum Point 36° 05.0571' N - 76° 29.4657' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 04.7426' N - 76° 24.2536' W; running southwesterly to a point on the south shore 36° 04.1136' N - 76° 24.5365' W.
    - (iii) Queen Anne Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.3757' N - 76° 36.3629' W; running southerly to a point on the south shore 36° 03.3551' N - 76° 36.3574' W.
    - (iv) Pembroke Creek (Pollock Swamp) - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 36° 03.2819' N - 76° 37.0138' W.

- W; running northeasterly to a point on the east shore 36° 03.4185' N - 76° 36.6783' W.
- (v) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
- (A) Rocky Hock Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 06.6879' N - 76° 41.3804' W; running southeasterly to a point on the south shore 36° 06.6096' N - 76° 41.3026' W.
- (B) Dillard (Indian) Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 14.2234' N - 76° 41.5901' W; running southerly to a point on the south shore 36° 14.2023' N - 76° 41.5855' W.
- (C) Stumpy Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 16.6440' N - 76° 40.4251' W; running southerly to a point on the south shore 36° 16.6255' N - 76° 40.4196' W.
- (D) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
- (8) Columbus County
- (a) Cape Fear River – All waters within this waterbody of Columbus County are designated as Joint.
- (i) Livingston Creek – Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.1518' N – 78° 12.0358' W; running easterly to a point on the east shore 34° 21.1420' N – 78° 12.0018' W.
- (ii) Waymans Creek – Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 34° 22.9861' N – 78° 14.5266' W; running southeasterly to a point on the east shore 34° 22.9838' N – 78° 14.5236' W.
- (9) Craven County
- (a) Neuse River - Inland Waters west and Joint Waters east of a line at Pitch Kettle Creek beginning at a point on the north shore 35° 16.9793' N - 77° 15.5529' W; running south to a point on the south shore 35° 16.9237' N - 77° 15.5461' W. Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the east shore 35° 07.7096' N - 77° 01.6749' W; running southwesterly along the southern side of the Southern Railroad bridge to a point on the west shore 35° 07.1530' N - 77° 02.5570' W.
- (i) Adams Creek - All waters in this waterbody are designated as Coastal.
- (A) Back Creek – All waters in this waterbody are designated as Coastal.
- (ii) Courts Creek - Inland Waters east Joint Waters west of a line beginning at a point on the north shore 34° 56.6958' N - 76° 42.7175' W.

- |       |   |        |  |
|-------|---|--------|--|
|       | W; running southwesterly to a point on the south shore 34° 56.6606' N - 76° 42.7450' W.   |        | north shore 35° 05.5723' N - 77° 02.0677' W; running southerly to a point on the south shore 35° 05.5316' N - 77° 02.0745' W.  |
| (iii) | Long Branch - Inland Waters south and Coastal Waters north of a line beginning on the west shore 34° 55.6189' N - 76° 43.8180' W; running easterly to a point on the east shore 34° 55.6175' N - 76° 43.7846' W.                      | (viii) | Trent River – Inland Waters west and Joint Waters east of a line at Wilson Creek beginning at a point on the north shore 35° 04.05490' N - 77° 06.0987' W; running southerly to a point on the south shore 35° 04.3837' N - 77° 06.1230' W. Joint Waters west and Coastal Waters east of a line on the western side of the Highway 70 Trent River Bridge beginning at a point on the north shore 35° 06.2136' N - 77° 02.1968' W; running southerly to a point on the south shore 35° 05.9351' N - 77° 02.2645' W. |
| (iv)  | Clubfoot Creek - All waters in this waterbody are designated as Coastal.  |        | (A) Brice Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 04.5114' N - 77° 03.6433' W; running easterly to a point on the east shore 35° 04.5634' N - 77° 03.4469' W.  |
|       | (A) Gulden Creek - All waters in this waterbody are designated as Coastal.  |        |  |
|       | (B) Mitchell Creek - All waters in this waterbody are designated as Coastal.  |        |  |
|       | (C) Morton Mill Pond - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 51.9245' N - 76° 45.7754' W; running southerly to a point on the south shore 34° 51.7799' N - 76° 45.8184' W. | (ix)   | Jack Smith Creek - Inland Waters southwest and Joint Waters northeast of a line beginning on the west shore 35° 07.5482' N - 77° 03.1613' W; running southeasterly to a point on the east shore 35° 07.5320' N - 77° 03.1338' W.   |
| (v)   | Hancock Creek - Coastal Waters east and Inland Waters west of a line beginning on the north shore at 34° 56.3420' N - 76° 51.2809' W; running southerly to a point on the south shore at 34° 56.2731' N - 76° 51.3034' W.             | (x)    | Bachelor Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 09.0099' N - 77° 04.5858' W; running southerly to a point on the south shore 35° 08.9085' N - 77° 04.7172' W.  |
| (vi)  | Slocum Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore at 34° 57.1875' N - 76° 53.7648' W; running southwesterly to a point on the south shore 34° 57.1334' N - 76° 53.8069' W.  | (xi)   | Dollys Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 13.6303' N - 77° 09.9847' W; running southerly to a point on the   |
| (vii) | Scott Creek - Inland Waters west and Coastal Waters east of a line from a point on the  |        |  |

- south shore 35° 13.5937' N - 77° 09.9778' W.
- (xii) Greens Thoroughfare - Easternmost entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 13.7807' N - 77° 09.9224' W; running southwesterly to a point on the south shore 35° 13.7587' N - 77° 09.9728' W. Westernmost entrance: Inland Waters south and Joint Waters north of a line beginning on the west shore 35° 14.1398' N - 77° 11.5530' W; running easterly to a point on the east shore 35° 14.1481' N - 77° 11.5036' W.
- (xiii) Greens Creek - Inland Waters west and Joint Waters east of a line beginning on the north shore 35° 14.1883' N - 77° 11.8862' W; running southeasterly to a point on the south shore 35° 14.1389' N - 77° 11.7535' W.
- (xiv) Turkey Quarter Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 15.6738' N - 77° 14.6823' W; running southeasterly to a point on the east shore 35° 15.6534' N - 77° 14.6470' W.
- (xv) Pitch Kettle Creek - All waters within this waterbody are designated as Inland.
- (xvi) Taylors Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 14.3719' N - 77° 10.8050' W; running southwesterly to a point on the south shore 35° 14.3300' N - 77° 10.8352' W.
- (xvii) Pine Tree Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 12.6663' N - 77° 07.4285' W; running southwesterly to a point on the south shore 35° 12.7033' N - 77° 07.3594' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 12.8553' N - 77° 07.8300' W; running easterly to a point on the east shore 35° 12.8372' N - 77° 07.7934' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 13.2012' N - 77° 08.7753' W; running southeasterly to a point on the east shore 35° 13.1714' N - 77° 08.7071' W.
- (xviii) Stumpy Creek - Southern entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 11.5752' N - 77° 06.1866' W; running southwesterly to a point on the south shore 35° 11.5550' N - 77° 06.2411' W. Northern entrance: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.9377' N - 77° 06.7263' W; running southeasterly to a point on the south shore 35° 11.9169' N - 77° 06.7044' W.
- (xix) Swift Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.5972' N - 77° 06.0562' W; running easterly to a point on the east shore 35° 11.5816' N - 77° 05.9861' W.
- (xx) Mill Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 08.5041' N - 77° 02.3400' W; running south easterly to a point on the south shore 35° 08.4711' N - 77° 02.3176' W.
- (xxi) Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 05.7648' N - 77° 00.5191' W; running south easterly to a point on the south shore at



- 35° 05.6803' N - 77° 00.4179' W.
- (xxii) Northwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.5096' N - 76° 58.2604' W; running northeasterly to a point on the east shore at 35° 03.5948' N - 76° 58.0297' W.
- (xxiii) Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly along the Tideland EMC power lines to a point on the east shore at 35° 04.4705' N - 76° 56.2115' W.
- (10) Currituck County
- (a) Albemarle Sound - All waters within Albemarle Sound in Currituck County are designated as Coastal.
- (i) All Manmade Tributaries - All Manmade Tributaries to Albemarle Sound in Currituck County are designated as Joint.
- (ii) North River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703' N - 75° 58.7384' W; running southerly to a point on the south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east shore 36° 10.0108' N - 75° 52.0431' W.
- (A) Duck Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 12.4056' N - 75° 54.2967' W; running southeasterly to a point on the east shore 36° 12.1865' N - 75° 54.0298' W.
- (B) Barnett Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 14.2405' N - 75° 55.0112' W; running southeasterly to a point on the south shore 36° 14.0956' N - 75° 54.9774' W.
- (C) Lutz Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 14.7397' N - 75° 55.4914' W; running southeasterly to a point on the east shore 36° 14.4948' N - 75° 55.1989' W.
- (D) Goose Pond - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 15.5152' N - 75° 57.0936' W; running easterly to a point on the east shore 36° 15.4016' N - 75° 56.7842' W. Also south of a line beginning at a point on the west shore 36° 16.0334' N - 75° 57.1018' W; running easterly to a point on the east shore 36° 16.0301' N - 75° 57.0629' W.
- (E) Deep Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 17.1576' N - 75° 56.7594' W; running southerly to a point on the south shore 36°

- 16.9846' N - 75° 56.6802' W.
- (F) Narrow Ridges Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 18.3249' N - 75° 57.8910' W; running southerly to a point on the south shore 36° 18.1388' N - 75° 57.9029' W.
- (G) Bump Landing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 19.3757' N - 75° 57.9057' W; running southerly to a point on the south shore 36° 19.2496' N - 75° 57.9107' W.
- (H) Taylor Bay - All waters within Taylor Bay are designated Joint.
- (I) Intracoastal Waterway From Taylor Bay To Coinjock Bay - All waters within the IWW are designated Joint.
- (J) Indiantown Creek - All waters within this waterbody are designated Inland.
- (b) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore of Currituck Sound 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
- (i) All Manmade Tributaries - All manmade tributaries within this waterbody are designated as Joint.
- (ii) Coinjock Bay - All waters within this waterbody are designated as Joint.
- (iii) Nelson (Nells) Creek - Northern entrance: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 16.5806' N - 75° 52.1168' W; running northeasterly to a point on the east shore 36° 16.6410' N - 75° 51.9580' W. Southern entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 15.9816' N - 75° 51.7245' W; running southerly to a point on the south shore 36° 15.8640' N - 75° 51.6897' W.
- (iv) Hog Quarter Creek - Northernmost entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 07.7400' N - 75° 48.6254' W; running southerly to a point on the south shore 36° 07.7210' N - 75° 48.6135' W. Southernmost entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 07.4118' N - 75° 48.4986' W; running southerly to a point on the south shore 36° 07.3532' N - 75° 48.5110' W.
- (v) Parkers Creek - Inland Waters northwest and Joint Waters southeast of a line beginning on the west shore 36° 22.1079' N - 75° 55.5459' W; running northeasterly to a point on the east shore 36° 22.1607' N - 75° 55.4512' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 22.3928' N - 75° 55.6970' W; running northeasterly to a point on the east shore 36° 22.4011' N - 75° 55.6782' W.
- (vi) North Landing River - All waters in this waterbody are designated as Joint.
- (A) Northwest River - Inland Waters west

and Joint Waters east of a line beginning at a point on the north shore of 36° 30.8374' N - 76° 04.8770' W; running southerly to a point on the south shore 36° 30.7061' N - 76° 04.8916' W.

(I) Gibbs Canal - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 32.2322' N - 76° 01.8923' W; running southerly to a point on the south shore 36° 32.1997' N - 76° 01.8937' W.

(II) Tull Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 30.0991' N - 76° 04.8587' W; running southeasterly to a point on the south shore 36° 29.9599' N - 76° 04.7126' W.

(B) West Landing - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 30.9867' N - 76° 02.5868' W; running easterly to a point on the east shore 36° 31.0045' N - 76° 02.3780' W.

(11) Dare County

(a) Alligator River - Coastal Waters north and Joint Waters south of a line

beginning at a point on the west shore 35° 54.2903' N - 76° 01.6818' W; running along the south side of the US 64 bridge to a point on the east shore 35° 53.6835' N - 75° 58.8578' W.

(i) Whipping Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 41.23930' N - 76° 00.2481' W; running southerly to a point on the south shore 35° 41.3717' N - 76° 00.2554' W.

(ii) Swan Creek and Lake - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 40.2674' N - 76° 00.7360' W; running southerly to a point on the south shore 35° 40.2420' N - 76° 00.7548' W.

(iii) Milltail Creek - Inland Waters east and Joint Waters west a line beginning at a point on the north shore 35° 41.3717' N - 76° 00.2554' W; running southerly to a point on the south shore 35° 41.3930' N - 76° 00.2481' W.

(iv) Laurel Bay Lake (Creek) - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 52.4036' N - 75° 58.8560' W; running southerly to a point on the south shore 35° 52.3960' N - 75° 58.8528' W.

(v) East Lake - Coastal Waters west and Inland Waters east of a line beginning at a point on the north shore 35° 56.1676' N - 75° 55.2603' W; running southerly to a point on the south shore 35° 55.4727' N - 75° 55.5043' W. Joint Waters north and Inland Waters south of a line beginning at a point on the west shore 35° 58.6402' N - 75° 52.1855' W; running easterly to a point on the east shore 35° 58.5887' N - 75° 51.7080' W.

- (b) Albemarle Sound - All waters in this waterbody in Dare County are designated as Coastal.
  - (i) All Manmade Tributaries - All manmade tributaries in Dare County for this waterbody are designated as Joint.
  - (ii) Kitty Hawk Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 03.1967' N - 75° 44.3087' W; running easterly to a point on the east shore 36° 03.1871' N - 75° 44.2716' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.1338' N - 75° 44.2423' W; running southerly to a point on the south shore 36° 03.0919' N - 75° 44.2533' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.9960' N - 75° 44.2840' W; running southerly to a point on the south shore 36° 02.9592' N - 75° 44.2291' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.4964' N - 75° 44.2089' W; running southerly to a point on the south shore 36° 01.3270' N - 75° 43.6422' W.
  - (iii) Peter Mashoes Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 57.2344' N - 75° 48.3087' W; running southerly to a point on the south shore 35° 56.7805' N - 75° 48.3563' W.
  - (iv) Tom Mann Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 58.5296' N - 75° 52.8982' W; running easterly to a point on the east shore 35° 58.5175' N - 75° 53.6851' W.
  - (v) Collington Harbor - Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 01.0828' N - 75° 43.6070' W; running southerly to a point on the south shore 36° 01.0510' N - 75° 43.6015' W.
- (c) Croatan Sound - All waters in this waterbody in Dare County are designated as Coastal.
  - (i) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
  - (ii) Spencer Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.4205' N - 75° 45.0645' W; running southerly to a point on the south shore 35° 51.3876' N - 75° 45.0640' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.5597' N - 75° 45.0141' W; running southerly to a point on the south shore 35° 51.4624' N - 75° 45.0498' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.6783' N - 75° 44.9125' W; running southerly to a point on the south shore 35° 51.5693' N - 75° 45.0109' W.
  - (iii) Calahan Creek (Callaghan Creek) - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.1312' N - 75° 45.1327' W; running southwesterly to a point on the south shore 35° 51.0953' N - 75° 45.1629' W.
  - (d) Roanoke Sound - All waters in this waterbody in Dare County are designated as Coastal.
    - (i) Buzzard Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 59.6662' N - 75° 41.8400' W; running easterly to a point on the east shore 35° 59.4376' N - 75° 40.5770' W.

- (e) Pamlico Sound - All waters in this waterbody in Dare County are designated as Coastal.
    - (i) Stumpy Point Bay - All waters in this waterbody are designated as Coastal.
      - (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
    - (ii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W
      - (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
      - (B) Pains Bay - All waters in this waterbody are designated as Coastal.
        - (I) Pains Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 36.4464' N - 75° 49.0420' W; running easterly to a point on the east shore 35° 36.4439' N - 75° 49.0324' W.
        - (C) Deep Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 37.8971' N - 75° 51.3125' W; running easterly to a point on the east shore 35° 37.8840' N - 75° 51.2928' W.
  - (f) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
    - (i) All Manmade Tributaries - All manmade tributaries are designated as Joint.
    - (ii) Martin Point Creek (Jean Guite Creek) - Inland Waters south Joint Waters north of a line beginning at a point on the west shore 36° 07.6716' N - 75° 44.9656' W; running easterly to a point on the east shore 36° 07.7568' N - 75° 44.6823' W.
- (12) Gates County
- (a) Chowan River - All waters within this waterbody for Gates County are designated as Joint.
    - (i) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
    - (ii) Bennetts Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.3499' N - 76° 42.0286' W; running northeasterly to a point on the east shore 36° 18.4057' N - 76° 41.6986' W.
    - (iii) Beef Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 20.3235' N - 76° 44.6401' W; running easterly to a point on the east shore 36° 20.3070' N - 76° 44.5797' W.
    - (iv) Sarem Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 21.7259' N - 76° 46.4085' W; running southerly to a point on the south shore 36° 21.6748' N - 76° 46.4392' W
    - (v) Shingle (Island) Creek - Inland Waters north and

- Joint Waters south of a line beginning at a point on the north shore of the westernmost entrance into Chowan River 36° 21.8449' N - 76° 48.0940' W; running southeasterly to a point on the south shore 36° 21.7831' N - 76° 48.0427' W. At the easternmost entrance to the creek: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 21.8469' N - 76° 47.2668' W; running northeasterly to a point on the east shore 36° 21.9062' N - 76° 47.1862' W.
- (vi) Barnes Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the western shore 36° 21.8820' N - 76° 48.6419' W; running easterly to a point on the east shore 36° 21.8978' N - 76° 48.5902' W.
- (vii) Spikes Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 22.6515' N - 76° 50.8882' W; running northeasterly to a point on the east shore 36° 22.6684' N - 76° 50.8493' W.
- (viii) Buckhorn Creek (Run Off Swamp) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 22.9682' N - 76° 51.9172' W; running easterly to a point on the east shore 36° 22.9614' N - 76° 51.8870' W.
- (ix) Mud Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 23.5134' N - 76° 53.9131' W; running easterly to a point on the east shore 36° 23.5132' N - 76° 53.8815' W.
- (x) Somerton Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.7177' N - 76° 54.8327' W; running easterly to a point on the east shore 36° 31.7143' N - 76° 54.7810' W.
- (13) Halifax County
- (a) Roanoke River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5264' N - 77° 23.0223' W; running northeasterly along the south side of the Highway 258 Bridge to a point on the east shore 36° 12.5674' N - 77° 22.9724' W.
- (i) Kehukee Swamp - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.1942' N - 77° 18.9596' W; running southwesterly to a point on the south shore 36° 05.1670' N - 77° 18.9761' W.
- (ii) Clarks Canal - Inland Waters north and Joint Waters south of a line of a line beginning at a point on the west shore 36° 04.6165' N - 77° 19.5817' W; running easterly to a point on the east shore 36° 04.6215' N - 77° 19.5643' W.
- (14) Hertford County
- (a) Chowan River - All waters within this waterbody for Hertford County are designated as Joint.
- (i) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (ii) Swain Mill (Taylor Pond) Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.5808' N - 76° 43.4729' W; running southerly to a point on the south shore 36° 18.5616' N - 76° 43.4706' W.
- (iii) Goose Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 19.5838' N - 76° 44.5971' W; running southerly to a point on the

- south shore 36° 19.5375' N - 76° 44.5925' W.
- (iv) Wiccacon River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 20.5439' N - 76° 45.4550' W; running southeasterly to a point on the south shore 36° 20.4684' N - 76° 45.3392' W.
- (v) Hodges Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 21.2459' N - 76° 46.3421' W; running southerly to a point on the south shore 36° 21.1823' N - 76° 46.3243' W.
- (vi) Catherine Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 22.9579' N - 76° 53.1994' W; running southeasterly to a point on the east shore 36° 22.9456' N - 76° 53.1742' W.
- (vii) Harris (Hares) Mill Creek - All waters within this waterbody are designated as Inland.
- (viii) Meherrin River - All waters within this waterbody are designated as Joint.
- (A) Potecasi Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 36° 26.1234' N - 76° 57.5262' W; running southeasterly to a point on the east shore 36° 26.1005' N - 76° 57.4960' W.
- (B) Liverman Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 26.7244' N - 76° 58.2797' W; running easterly to a point on the east shore 36° 26.7086' N - 76° 58.2499' W.
- (C) Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the south shore 36° 28.3307' N - 77° 05.6369' W.
- (D) Banks Creek - All waters in this waterbody are designated as Inland.
- (ix) Buckhorn Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.9519' N - 76° 55.2580' W; running easterly to a point on the east shore 36° 31.9628' N - 76° 55.2429' W.
- (15) Hyde County
- (a) Pamlico Sound - All waters within this waterbody in Hyde County are designated as Coastal.
- (i) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.
- (A) Rutman Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 33.1874' N - 76° 27.4090' W; running easterly to a point 35° 33.1759' N - 76° 27.2525'

- |     |  |      |  |
|-----|--|------|--|
|     | W; running<br>northeasterly to a<br>point on the east<br>shore 35° 33.2455'<br>N - 76° 26.9119' W.   |      | beginning at a point<br>on the north shore<br>35° 30.0080' N -<br>76° 26.7759' W;<br>running southerly<br>to a point on the<br>south shore 35°<br>29.9574' N - 76°<br>26.7750' W.  |
| (B) | Wilkerson Creek -<br>Inland Waters south<br>and Joint Waters<br>north of a line<br>beginning at a point<br>on the west shore<br>35° 33.1251' N -<br>76° 27.2328' W;<br>running northerly to<br>a point 35° 33.1553'<br>N - 76° 27.2447'<br>W; running easterly<br>to a point on the<br>east shore 35°<br>33.3286' N - 76°<br>26.2019' W. | (G)  | Smith Creek -<br>Inland Waters south<br>and Coastal Waters<br>north of a line<br>beginning at a point<br>on the west shore<br>35° 30.2812' N -<br>76° 29.7546' W;<br>running<br>southeasterly to a<br>point on the east<br>shore 35° 30.1904'<br>N - 76° 29.4657' W. |
| (C) | Atlantic<br>Intracoastal<br>Waterway From<br>Wilkerson Creek<br>To Alligator River<br>At Winn Bay – All<br>waters within this<br>part of the IWW are<br>designated as Joint.   | (H)  | Fishing Creek -<br>Inland Waters east<br>and Coastal Waters<br>west of a line<br>beginning at a point<br>on the west shore<br>35° 30.2400' N -<br>76° 35.0143' W;<br>running<br>southeasterly to a<br>point on the east<br>shore 35° 30.0645'<br>N - 76° 34.8211' W. |
| (D) | Horse Island Creek<br>- Inland Waters east<br>and Joint Waters<br>west of a line<br>beginning at a point<br>on the north shore<br>35° 32.1965' N -<br>76° 28.0462' W;<br>running southerly<br>to a point on the<br>south shore 35°<br>32.1480' N - 76°<br>28.0705' W.  | (I)  | Slades Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.   |
| (E) | Tarklin Creek -<br>Inland Waters east<br>and Joint Waters<br>west of a line<br>beginning at a point<br>on the north shore<br>35° 31.1553' N -<br>76° 28.1478' W;<br>running<br>southeasterly to a<br>point on the south<br>shore 35° 31.0974'<br>N - 76° 28.0984' W.   | (J)  | Fortescue Creek -<br>All waters within<br>this waterbody are<br>designated as<br>Coastal.  |
| (F) | Scranton Creek –<br>Inland Waters east<br>and Joint Waters<br>west of line   | (ii) | Rose Bay - All waters within<br>this waterbody are<br>designated as Coastal.   |
|     |  | (A)  | Rose Bay Creek -<br>All waters within<br>this waterbody are<br>designated as<br>Coastal.   |
|     |  | (B)  | Rose Bay Canal -<br>Inland Waters east<br>and Joint Waters<br>west of a line<br>beginning at a point<br>on the north shore<br>35° 28.5607' N -   |



- 76° 19.6545' W;  
running southerly  
to a point on the  
south shore 35°  
28.5509' N - 76°  
19.6572' W. Joint  
Waters north and  
Coastal Waters  
south of a line  
beginning at a point  
on the west shore  
35° 27.8491' W -  
76° 24.2198' W;  
running easterly to  
a point on the east  
shore 35° 27.8404'  
N - 76° 24.2065' W.
- (iii) Swan Quarter Bay - All  
waters within this waterbody  
are designated as Coastal.
- (A) Oyster Creek - All  
waters within this  
waterbody are  
designated as  
Coastal.
- (iv) Juniper Bay - All waters  
within this waterbody are  
designated as Coastal.
- (A) Juniper Bay Creek -  
Joint Waters east  
and Coastal Waters  
west of a line  
beginning at a point  
on the north shore  
35° 23.2472' N -  
76° 14.8754' W;  
running  
southwesterly to a  
point on the south  
shore 35° 23.1738'  
N - 76° 14.9794' W.
- (B) Juniper Bay Creek  
Canal - Inland  
Waters north and  
Joint Waters south  
of a line beginning  
at a point on the  
west shore 35°  
23.8618' N - 76°  
13.1044' W;  
running easterly to  
a point on the east  
shore 35° 23.8677'  
N - 76° 13.0888' W.
- (v) Lake Mattamuskeet - All  
waters in this waterbody are  
designated as Inland.
- (A) Outfall Canal -  
Inland Waters north  
and Joint Waters
- south of a line  
beginning at a point  
on the west shore  
35° 26.6017' N -  
76° 10.1715' W;  
running easterly to  
a point on the east  
shore 35° 26.6093'  
N - 76° 10.1513' W.  
Joint Waters north  
and Coastal waters  
south of a line  
beginning at a point  
on the west shore  
35° 21.4945' N -  
76° 06.5336' W;  
running  
northeasterly to a  
point on the east  
shore 35° 21.5480'  
N - 76° 06.4819' W.
- (B) Lake Landing  
Canal - Inland  
Waters north and  
Joint Waters south  
of a line beginning  
at a point on the  
west shore 35°  
28.7878' N - 76°  
04.5867' W;  
running easterly to  
a point on the east  
shore 35° 28.7910'  
N - 76° 04.5726' W.  
Joint Waters north  
and Coastal waters  
south of a line  
beginning at a point  
on the west 35°  
25.9529' N - 76°  
03.6785' W;  
running easterly to  
a point on the east  
shore 35° 25.9568'  
N - 76° 03.6566' W.  
Joint Waters north  
and Coastal Waters  
south of a line  
beginning at a point  
on the west shore  
35° 25.9666' N -  
76° 03.5856' W;  
running easterly to  
a point on the east  
shore 35° 25.9819'  
N - 76° 03.5600' W.
- (C) Waupopin Canal -  
Inland Waters west  
and Joint Waters  
east of a line

- beginning at a point on the north shore 35° 31.8413' N - 76° 01.7779' W; running southerly to a point on the south shore 35° 31.8283' N - 76° 01.7637' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 31.5557' N - 75° 58.8725' W; running easterly to a point on the east shore 35° 31.5648' N - 75° 58.8555' W.
- (D) Rattlesnake Canal - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 26.6965' N - 76° 00.8079' W; running easterly to a point on the east shore 35° 26.7116' N - 76° 00.7749' W.
- (E) All Other Manmade Tributaries To Lake Mattamuskeet – All manmade tributaries of this waterbody are designated as Inland.
- (vi) Middletown Creek - All waters within this waterbody are designated as Coastal.
- (vii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W.
- (A) All Manmade Tributaries – All manmade tributaries of this waterbody are designated as Joint.
- (B) Broad Creek - All waters within this waterbody are designated as Coastal.
- (C) Flag Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 37.3782' N - 75° 53.0699' W; running easterly to a point on the east shore 35° 37.3894' N - 75° 53.0593' W.
- (D) Cumberland Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 38.3026' N - 75° 53.3010' W; running southerly to a point on the south shore 35° 38.2692' N - 75° 53.3038' W.
- (b) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W.
- (i) Swan Creek and Lake - All waters within this waterbody are designated as Inland.
- (16) Jones County
- (a) White Oak River – Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running easterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Grants Creek - All waters within this waterbody are designated as Inland.
- (ii) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N - 77° 09.9160' W.
- (17) Martin County

- |   |   |
|---|---|
| <p>(a) Roanoke River – All waters within this waterbody in Martin County are designated as Joint.</p> <p>(i) Prices Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 57.3701' N - 77° 11.9815' W; running southerly to a point on the south shore 35° 57.3552' N - 77° 11.9796' W.</p> <p>(ii) Rainbow Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.9334' N - 77° 11.3246' W; running easterly to a point on the east shore 35° 55.9275' N - 77° 11.3136' W.</p> <p>(iii) Conoho Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 52.5439' N - 77° 02.6673' W; running easterly to a point on the east shore 35° 52.5407' N - 77° 02.6280' W.</p> <p>(iv) Sweetwater Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the west shore 35° 51.6464' N - 77° 00.5090' W; running southeasterly to a point on the east shore 35° 51.6252' N - 77° 00.4879' W.</p> <p>(A) Peter Swamp – All waters within this waterbody are designated as Inland.</p> <p>(v) Devils Gut - All waters in this waterbody are designated as Joint</p> <p>(A) Upper Deadwater Creek - All waters in this waterbody are designated Joint.</p> <p>(B) Lower Deadwater Creek - All waters in this waterbody are designated Joint.</p> <p>(C) Gardner Creek - Inland Waters south and Joint Waters north of a line</p> | <p>beginning at a point on the west shore 35° 50.1599' N - 76° 56.0211' W; running easterly to a point on the east shore 35° 50.1633' N - 76° 55.9899' W.</p> <p>(vi) Roses Creek - Inland Waters southeast and Joint Waters northwest of a line beginning at a point on the north shore 35° 50.1683' N - 76° 50.9664' W; running southwesterly to a point on the south shore 35° 50.1363' N - 76° 56.9907' W.</p> <p>(vii) Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the western shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W.</p> <p>(18) New Hanover County</p> <p>(a) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W.</p> <p>(i) Lords Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 05.1562' N - 77° 55.3816' W; running southerly to a point on the south shore 34° 05.1303' N - 77° 55.4008' W.</p> <p>(ii) Todds Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 07.4791' N - 77° 55.5175' W; running southeasterly to a point on the south shore 34° 07.4578' N - 77° 55.5116' W.</p> <p>(iii) Barnards Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the</p> |
|---|---|

- |       |  |     |  |
|-------|--|-----|--|
|       | north shore 34° 09.4347' N - 77° 56.5969' W; running southerly to a point on the south shore 34° 09.3887' N - 77° 56.5791' W.  |     | beginning at a point on the north shore 34° 16.0366' N - 77° 56.8405' W; running   |
| (iv)  | Greenfield Lake Outlet - Greenfield Lake Outlet Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 12.7210' N - 77° 57.2058' W; running southerly to a point on the south shore 34° 12.7075' N - 77° 57.2085' W.   | (B) | Ness Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 17.1741' N - 77° 57.2460' W; running           |
| (v)   | Tommer Creek - For the southernmost entrance into the Cape Fear: Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the west shore 34° 15.6397' N - 77° 58.9608' W; running northeasterly to a point on the east shore 34° 15.6589' N - 77° 58.9338' W. For the northernmost entrance into the Cape Fear: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 16.6630' N - 77° 59.4699' W; running northeasterly to a point on the east shore 34° 16.6767' N - 77° 59.4506' W. | (C) | Dock Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 18.1274' N - 77° 57.3847' W; running           |
| (vi)  | Catfish Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 16.7546' N - 77° 59.3751' W; running southeasterly to a point on the south shore 34° 16.7118' N - 77° 59.3870' W.   | (D) | Fishing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 19.1613' N - 77° 57.2460' W; running        |
| (vii) | Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.  | (E) | Prince George Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.8481' N - 77° 57.0066' W; running |
| (A)   | Smiths Creek - Inland Waters east and Joint Waters west of a line  |     | northeasterly to a point on the east   |

- |      |   |        |   |
|------|---|--------|---|
|      | shore 34° 21.8778' N - 77° 57.9755' W.  | (20)   | Onslow County   |
| (F)  | Sturgeon Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 22.6796' N - 77° 51.6018' W ; running northeasterly to a point on the east shore 34° 22.6931' N - 77° 51.5776' W.  | (a)    | Beasleys Creek (Barlow Creek) - All waters within this waterbody are designated as Coastal.   |
| (G)  | Island Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 23.2509' N - 77° 47.3377' W ; running northeasterly to a point on the north shore 34° 23.3322' N - 77° 49.3208' W.  | (b)    | Kings Creek - All waters within this waterbody are designated as Coastal.   |
|      |   | (c)    | Turkey Creek - All waters within this waterbody are designated as Coastal.  |
|      |   | (d)    | Mill Creek - All waters within this waterbody are designated as Coastal.  |
|      |   | (e)    | New River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.1654' N - 77° 26.1222' W; running easterly along the southern side of the US Hwy 17 bridge to a point on the east shore 34° 45.2007' N - 77° 25.9790' W. |
| (19) | Northampton County  | (i)    | Wheeler Creek - All waters within this waterbody are designated as Coastal.   |
| (a)  | Roanoke River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5264' N - 77° 23.0223' W; running northeasterly along the south side of the Highway 258 Bridge to a point on the east shore 36° 12.5674' N - 77° 22.9724' W. | (ii)   | Everett Creek - All waters within this waterbody are designated as Coastal.   |
| (i)  | Sandy Run (Norfleet Gut) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.   | (iii)  | Stones Creek - All waters within this waterbody are designated as Coastal.  |
| (b)  | Meherrin River - All waters of Meherrin River up to the Virginia state line within Northampton County are designated as Joint.  | (iv)   | Muddy Creek - All waters within this waterbody are designated as Coastal.   |
| (i)  | Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the south shore 36 ° 28.3307' N - 77° 05.6369' W.   | (v)    | Mill Creek - All waters within this waterbody are designated as Coastal.  |
|      |   | (vi)   | Lewis Creek - All waters within this waterbody are designated as Coastal.   |
|      |   | (vii)  | Southwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 40.8723' N - 77° 26.2399' W; running northeasterly to a point on the east shore 34° 40.9112' N - 77° 26.1758' W.                                      |
|      |   | (viii) | Brinson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 44.0945' N - 77° 26.4335' W; running southerly to a point on the south shore 34° 44.0654' N - 77° 26.4239' W.  |
|      |   | (ix)   | Northeast Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 34° 44.0778' N - 77° 21.2640' W; running  |

- southeasterly along the southern side of the railroad bridge to a point on the east shore 34° 44.0446' N - 77° 21.2126' W.
  - (x) Wallace Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 40.9604' N - 77° 21.5698' W; running southwesterly along the western side of the first bridge upstream from the mouth, to a point on the south shore 34° 40.8576' N - 77° 21.4787' W.
  - (xi) Codels Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.8845' N - 77° 20.4533' W; running southerly to a point on the south shore 34° 38.8691' N - 77° 20.4515' W.
  - (xii) French Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.4059' N - 77° 20.2619' W; running southerly to a point on the south shore 34° 38.2566' N - 77° 20.3233' W.
  - (xiii) Duck Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 38.0179' N - 77° 20.5169' W; running southwesterly to a point on the south shore 34° 37.9172' N - 77° 20.6520' W.
- (f) Freeman (Browns) Creek - All waters within this waterbody are designated as Coastal.
- (g) Bear Creek - All waters within this waterbody are designated as Coastal.
- (h) Queens Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 42.1815' N - 77° 11.5690' W; running easterly to a point on the east shore 34° 42.2273' N - 77° 11.4193' W.
  - (A) Parrotts Swamp - All waters within this waterbody are
- designated as Coastal.
  - (i) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running northeasterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
  - (i) Stevens Creek - All waters within this waterbody are designated as Coastal.
  - (ii) Holland Mill (Mill Pond) Creek - All waters within this waterbody are designated as Coastal.
  - (iii) Webbs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 34° 45.7559' N - 77° 10.1321' W; running southwesterly to a point on the south shore 34° 45.7404' N - 77° 10.1486' W.
  - (iv) Freemans Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 46.9791' N - 77° 10.3935' W; running southerly to a point on the south shore 34° 46.9663' N - 77° 10.3999' W.
  - (v) Calebs Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 48.1354' N - 77° 11.4688' W; running southeasterly to a point on the south shore 34° 48.1192' N - 77° 11.4546' W.
  - (vi) Grants Creek - All waters within this waterbody are designated as Inland.
- (21) Pamlico County
  - (a) Pamlico River - All waters within this waterbody are designated as Coastal.
  - (i) Lower Goose Creek - All waters within this waterbody are designated as Coastal.
    - (A) Dixons Creek - All waters within this waterbody are designated as Coastal.
    - (B) Patons Creek - All waters within this waterbody are

- |       |  |       |  |
|-------|--|-------|--|
|       | designated as Coastal.   |       | designated as Coastal.   |
| (C)   | Wilson Creek - All waters within this waterbody are designated as Coastal.   | (b)   | Pamlico Sound - All waters within this waterbody are designated as Coastal.  |
| (D)   | Eastham Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 17.8205' N - 76° 35.1828' W; running southerly to a point on the south shore 35° 17.6797' N - 76° 35.1840' W. | (i)   | Porpoise Creek - All waters within this waterbody are designated as Coastal.   |
| (E)   | Upper Spring Creek - All waters within this waterbody are designated as Coastal.   | (ii)  | Drum Creek - All waters within this waterbody are designated as Coastal.   |
| (F)   | Intracoastal Waterway from Upper Spring Creek To Gale Creek - All waters within this waterbody are designated as Coastal.  | (iii) | Bay River - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 08.4601' N - 76° 45.9173' W; running southeasterly to a point on the south shore 35° 08.4436' N - 76° 45.8885' W.     |
| (G)   | Hunting Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.  | (A)   | Gale Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 13.3142' N - 76° 36.7089' W; running southwesterly to a point on the south shore 35° 13.2964' N - 76° 36.7222' W.      |
| (ii)  | Oyster Creek - All waters within this waterbody are designated as Coastal.   | (B)   | Chadwick Creek - All waters within this waterbody are designated as Coastal.   |
| (iii) | Clark Creek - All waters within this waterbody are designated as Coastal.  | (C)   | Bear Creek - All waters within this waterbody are designated as Coastal.   |
| (A)   | Middle Prong - All waters within this waterbody are designated as Coastal.   | (D)   | Vandemere Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 12.0330' N - 76° 40.7460' W; running northeasterly to a point on the east shore 35° 12.0433' N - 76° 40.7235' W. |
| (B)   | James Creek - All waters within this waterbody are   | (I)   | Long Creek - All waters within this  |

- |      |  |        |  |
|------|--|--------|--|
|      | waterbody<br>are<br>designated<br>as Coastal.  | (vi)   | Rices Creek - All waters<br>within this waterbody are<br>designated as Coastal.          |
| (E)  | Smith Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.  | (vii)  | Ball Creek - All waters<br>within this waterbody are<br>designated as Coastal.           |
| (F)  | Chapel Creek -<br>Inland Waters north<br>and Coastal Waters<br>south of a line<br>beginning at a point<br>on the west shore<br>35° 10.0076' N -<br>76° 42.4909 ' W;<br>running easterly to<br>a point on the east<br>shore 35° 10.0096'<br>N - 76° 42.4722' W.       | (viii) | Cabin Creek - All waters<br>within this waterbody are<br>designated as Coastal.          |
| (G)  | Raccoon Creek -<br>All waters within<br>this waterbody are<br>designated as<br>Coastal.  | (ix)   | Riggs Creek - All waters<br>within this waterbody are<br>designated as Coastal.          |
| (H)  | Trent Creek -<br>Inland Waters south<br>and Coastal Waters<br>north of a line<br>beginning at a point<br>on the west shore<br>35° 06.2738' N -<br>76° 43.1071' W;<br>running<br>southeasterly to a<br>point on the east<br>shore 35° 06.2603'<br>N - 76° 43.0741' W. | (x)    | Spring Creek - All waters<br>within this waterbody are<br>designated as Coastal.         |
| (I)  | Thomas Creek -<br>Inland Waters east<br>and Coastal Waters<br>west of a line<br>beginning at a point<br>on the north shore<br>35° 07.2024 ' N -<br>76° 43.0929' W;<br>running southerly<br>to a point on the<br>south shore 35°<br>07.1610' N - 76°<br>43.0947' W.   | (xi)   | Long Creek - All waters<br>within this waterbody are<br>designated as Coastal.           |
| (iv) | Masons Creek - All waters<br>within this waterbody are<br>designated as Coastal.   | (c)    | Neuse River - All waters within this<br>waterbody are designated as Coastal.             |
| (v)  | Moore Creek - All waters<br>within this waterbody are<br>designated as Coastal.  | (i)    | Swan Creek - All waters<br>within this waterbody are<br>designated as Coastal.           |
|      |  | (ii)   | Lower Broad Creek - All<br>waters within this waterbody<br>are designated as Coastal.    |
|      |  | (A)    | Greens Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.   |
|      |  | (B)    | Pittman Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.  |
|      |  | (C)    | Burton Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.   |
|      |  | (D)    | Brown Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.    |
|      |  | (I)    | Spice Creek -<br>All waters<br>within this<br>waterbody are<br>designated as<br>Coastal. |
|      |  | (E)    | Gideon Creek - All<br>waters within this<br>waterbody are<br>designated as<br>Coastal.   |
|      |  | (F)    | Tar Creek - All<br>waters within this<br>waterbody are                                   |



- |        |  |        |   |
|--------|--|--------|---|
|        | designated as Coastal.   |        | point on the east shore 34° 58.4154' N - 76° 47.4371' W.  |
| (G)    | Parris Creek - All waters within this waterbody are designated as Coastal.   | (x)    | Little Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.5175' N - 76° 49.5822' W; running southeasterly to a point on the east shore 34° 58.5086' N - 76° 49.5680' W. |
| (iii)  | Orchard Creek - All waters within this waterbody are designated as Coastal.  |        |   |
| (iv)   | Pierce Creek - All waters within this waterbody are designated as Coastal.   | (xi)   | Mill Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 59.6024' N - 76° 51.1276' W; running easterly to a point on the east shore 34° 59.5955' N - 76° 51.0864' W.        |
| (v)    | Whitaker Creek - All waters within this waterbody are designated as Coastal.   |        |   |
| (vi)   | Smith Creek - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore at the Oriental Bridge 35° 01.5149' N - 76° 41.9549' W; running southwesterly to a point on the south shore 35° 01.3391' N - 76° 42.1774' W. | (xii)  | Beard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.3293' N - 76° 52.1855' N; running easterly to a point on the east shore 35° 00.3055' N - 76° 51.9012' W.       |
| (vii)  | Greens Creek - All waters within this waterbody are designated as Joint.   |        |   |
| (A)    | Kershaw Creek - All waters within this waterbody are designated as Joint.  | (xiii) | Lower Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 01.5781' N - 76° 54.1580' W; running easterly to a point on the east shore 35° 01.5566' N - 76° 54.0248' W.  |
| (viii) | Dawson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 00.3371' N - 76° 45.6513' W; running southerly to a point on the south shore 35° 00.1492' N - 76° 45.6202' W.                                    | (xiv)  | Goose Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.4414' N - 76° 55.1170' W; running easterly to a point on the east shore 35° 03.3567' N - 76° 54.9728' W.       |
| (A)    | Tarkiln Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.4124' N - 76° 45.5392' W; running easterly to a point on the east shore 35° 00.4289' N - 76° 45.4472' W.                                    | (xv)   | Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly to a point on the east shore 35° 04.4705' N - 76° 56.2115' W. |
| (ix)   | Gatlin Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.4165' N - 76° 47.4645' W; running easterly to a  | (22)   | Pasquotank County   |

- (a) Albemarle Sound - All waters within this waterbody in Pasquotank County are designated Coastal.
- (i) All Manmade Tributaries - All manmade tributaries of Pasquotank County are designated as Joint.
- (ii) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5237' N - 76° 16.9418' W; running southeasterly to a point on the east shore 36° 12.2950' N - 76° 17.1405' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
- (A) Symonds Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 10.2898' N - 76° 14.1801' W; running southeasterly to a point on the south shore 36° 10.2042' N - 76° 14.0368' W.
- (iii) Big Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 09.3267' N - 76° 08.2562' W; running southerly to a point on the south shore 36° 08.9730' N - 76° 08.3175' W. Joint waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 07.9621' N - 76° 07.1818' W; running easterly to a point on the east shore 36° 08.2706' N - 76° 06.2525' W.
- (iv) Pasquotank River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.0768' N - 76° 13.0979' W; running easterly along the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore 36° 08.7563' N - 76° 03.6991' W.
- (A) Little Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 11.5209' N - 76° 04.6517' W; running southerly to a point on the south shore 36° 10.9973' N - 76° 04.5149' W.
- (B) New Begun Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 13.3298' N - 76° 08.2878' W; running southerly to a point on the south shore 36° 13.0286' N - 76° 08.1820' W.
- (I) Paling Creek - All waters in this waterbody are designated as Inland.
- (II) James Creek - All waters in this waterbody are designated as Inland.
- (C) Charles Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 17.8090' N - 76° 13.0732' W; running easterly to

- a point on the east  
shore 36° 17.8024'  
N - 76° 13.0407' W.
- (23) Pender County
- (a) Cape Fear River – All waters within this waterbody for Pender County are designated as Joint.
- (i) Thorofare – For the easternmost entrance into the Black River: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 34° 22.0493' N - 78° 04.4435' W; running northeasterly to a point on the east shore 34° 22.0783' N - 78° 04.4123' W. For the westernmost entrance into the Cape Fear River: Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 21.9197' N - 78° 07.0527' W; running southeasterly to a point on the south shore 34° 21.8618' N - 78° 06.9992' W
- (ii) Black River - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 34° 22.0783' N - 78° 04.4123' W; running southeasterly to a point on the south shore 34° 21.9950' N - 78° 04.2864' W.
- (iii) Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.
- (A) Cowpen Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 22.1417' N - 77° 59.3357' W; running southerly to a point on the south shore 34° 22.1298' N - 77° 59.3426' W.
- (B) Long Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the west shore 34° 22.7149' N - 77° 58.2797' W; running northeasterly to a point on the east shore 34° 22.7428' N - 77° 58.2348' W.
- (C) Turkey Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 22.8465' N - 77° 57.4827' W; running southerly to a point on the south shore 34° 22.7895' N - 77° 57.4452' W.
- (D) Old Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.5249' N - 77° 52.1493' W; running northeasterly to a point on the east shore 34° 22.5327' N - 77° 52.1278' W.
- (E) Honey Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.8627' N - 77° 51.0887' W; running easterly to a point on the east shore 34° 22.8609' N - 77° 51.0507' W.
- (F) Harrisons Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 24.1859' N -

- 77° 48.6570' W;  
running  
southwesterly to a  
point on the south  
shore 34° 24.1387'  
N - 77° 48.6982' W.
- (G) Island Creek -  
Inland Waters east  
and Joint Waters  
west of a line  
beginning at a point  
on the south shore  
34° 23.2509' N -  
77° 47.3377' W;  
running  
northeasterly to a  
point on the north  
shore 34° 23.3322'  
N - 77° 49.3208' W.
- (b) Topsail Sound And Tributaries - All  
waters within this these waterbodies  
are designated as Coastal.
- (c) Beasleys (Barlow) Creek - All waters  
within this waterbody are designated  
as Coastal.
- (24) Perquimans County
- (a) Albemarle Sound – All waters within  
this waterbody in Perquimans County  
are designated as Coastal.
- (i) All Manmade Tributaries –  
All waters within this water  
body are designated as Joint.
- (ii) Yeopim River – Inland  
Waters west and Joint  
Waters east of a line  
beginning at a point on the  
north shore 36° 05.1203' N -  
76° 29.5051' W; running  
southerly to a point on the  
south shore at Norcum Point  
36° 05.0571' N - 76°  
29.4657' W. Joint Waters  
west and Coastal Waters east  
of a line beginning at a point  
on the north shore 36°  
04.7426' N - 76° 24.2536'  
W; running southwesterly to  
a point on the south shore  
36° 04.1136' N - 76°  
24.5365' W.
- (A) Yeopim Creek -  
Inland Waters north  
and Joint Waters  
south of a line  
beginning at a point  
on the west shore of  
36° 04.7206' N -  
76° 24.8396' W;  
running easterly to  
a point on the east  
shore 36° 04.7426'  
N - 76° 24.2536' W
- (iii) Perquimans River - Joint  
Waters west and Coastal  
Waters east of a line  
beginning at a point on the  
west shore 36° 05.9669' N -  
76° 18.1791' W; running  
northeasterly to a point on  
the east shore 36° 06.7655'  
N - 76° 16.5953' W. Inland  
Waters southwest and Joint  
Waters northeast of a line  
beginning at a point on the  
west shore 36° 11.6569' N -  
76° 28.0055' W; running  
southeasterly to a point on  
the east shore 36° 11.6123'  
N - 76° 27.9382' W.
- (A) Walter's Creek -  
Inland Waters  
southwest and Joint  
Waters northeast of  
a line beginning at  
a point on the north  
shore 36° 11.1305'  
N - 76° 27.9185'  
W; running  
southeasterly to a  
point on the south  
shore 36° 11.0224'  
N - 76° 27.6626' W.
- (B) Mill Pond Creek -  
Inland Waters north  
and Joint Waters  
south of a line  
beginning at a point  
on the west shore  
36° 11.9766' N -  
76° 27.2511' W;  
running easterly to  
a point on the east  
shore 36° 11.9757'  
N - 76° 27.5752' W.
- (C) Suttons Creek -  
Inland Waters north  
and Joint Waters  
south of a line  
beginning at a point  
on the west shore  
36° 10.0394' N -  
76° 23.7945' W;  
running  
southeasterly to a  
point on the east  
shore 36° 09.9325'  
N - 76° 23.5263' W.
- (D) Jackson (Cove)  
Creek - Inland  
Waters northeast

- and Joint Waters southwest of a line beginning at a point on the north shore 36° 08.4642' N - 76° 20.3324' W; running southeasterly to a point on the east shore 36° 08.4159' N - 76° 20.2890' W.
- (E) Muddy Creek - Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the north shore 36° 07.0381' N - 76° 17.1350' W; running southeasterly to a point on the east shore 36° 07.0218' N - 76° 17.1226' W.
- (iv) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5237' N - 76° 16.9418' W; running southeasterly to a point on the east shore 36° 12.2950' N - 76° 17.1405' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
- (A) Deep Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 11.0945' N - 76° 16.6717' W; running southeasterly to a point on the south shore 36° 10.7510' N - 76° 16.2258' W.
- (B) Davis Creek - Inland Waters west and Joint Waters east of a line beginning at a point
- on the north shore 36° 12.2950' N - 76° 17.1405' W; running southerly to a point on the south shore 36° 12.2222' N - 76° 17.1153' W.
- (25) Tyrrell County
- (a) Albemarle Sound – All waters within this waterbody in Tyrrell County are designated as Coastal.
- (i) All Manmade Tributaries – All manmade tributaries within this waterbody are designated as Joint.
- (ii) Banton (Maybell) Creek – Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.
- (iii) Scuppermong River – Coastal Waters northwest and Joint Waters southeast of a line beginning at a point on the northeast shore 35° 56.7196' N - 76° 18.8964' W; running southwesterly to a point on the southwest shore at 35° 56.3351' N - 76° 19.6609' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0158' N - 76° 15.4605' W; running easterly to a point on the east shore 35° 54.0406' N - 76° 15.3007' W.
- (A) First Creek (Rider's Creek) - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0495' N - 76° 15.2842' W; running northeasterly to a point on the east shore 35° 54.0641' N - 76° 15.2554' W.
- (B) Furlough Creek - Inland Waters west and Joint Waters

- east of a line beginning at a point on the north shore 35° 55.6391' N - 76° 18.9797' W; running southwesterly to a point on the south shore 35° 55.6322' N - 76° 18.9907' W.
- (iv) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W. Coastal Waters north and Joint Waters south of a line running along the north side of the Highway 64 Bridge beginning at a point on the west shore 35° 54.2903' N - 76° 01.6818' W; running easterly to a point on the east shore 35° 53.6835' N - 75° 58.8578' W.
- (A) Little Alligator River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.7640' N - 76° 01.0299' W; running southerly to a point on the south shore 35° 55.9362' N - 76° 01.2492' W.
- (B) Second Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 51.7616' N - 76° 03.5105' W; running southerly to a point on the south shore 35° 51.1317' N - 76° 03.8003' W.
- (C) Goose Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 50.2658' N - 76° 03.9115' W; running southerly to a point on the south shore 35° 50.2123' N - 76° 03.9120' W.
- (D) The Frying Pan - Joint Waters by connection with Alligator River.
- (E) Gum Neck Landing Ditch - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 35° 41.6054' N - 76° 06.8215' W; running southeasterly to a point on the east shore 35° 41.5841' N - 76° 06.7991' W.
- (26) Washington County
- (a) Albemarle Sound - All waters within this waterbody in Washington County are designated as Coastal.
- (i) All Manmade Tributaries - All manmade tributaries of Albemarle Sound within Washington County are designated as Joint.
- (ii) Mackeys (Kendrick) Creek - Inland Waters southeast and Coastal Waters northwest of a line beginning at a point on the north shore 35° 56.3806' N - 76° 36.4356' W; running southwesterly to a point on the south shore 35° 56.3122' N - 76° 36.4613' W.
- (iii) Pleasant Grove Creek (Cherry Swamp) - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.4791' N - 76° 34.1624' W; running easterly to a point on the east shore 35° 56.5042' N - 76° 34.0319' W.
- (iv) Chapel Swamp Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on

- the west shore 35° 56.4150' N - 76° 33.3494' W; running easterly to a point on the east shore 35° 56.4122' N - 76° 33.3091' W.
- (v) Bull Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.9954' N - 76° 23.0291' W; running southerly to a point on the south shore 35° 56.9602' N - 76° 23.0282' W.
- (vi) Deep Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.1291' N - 76° 23.1179' W; running southerly to a point on the south shore 35° 56.0744' N - 76° 23.1230' W.
- (vii) Banton (Maybell) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.
- (b) Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W.
- (i) Conaby Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.3779' N - 76° 42.4401' W; running easterly to a point on the east shore 35° 55.3752' N - 76° 42.3408' W.
- (ii) Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the western shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W.

- (c) Scuppernong River - All waters in this waterbody in Washington County are designated as Inland.

*History Note:* Authority G.S. 113-132; 113-134; 143B-289.52;  
*Eff.* February 1, 1991;  
*Amended Eff.* August 1, 2004; July 1, 1993; September 1, 1991.

**15A NCAC 03R .0101 SEA TURTLE SANCTUARY**

The sea turtle sanctuary referenced in 15A NCAC 03I .0107 is in the Atlantic Ocean adjacent to Onslow County. It is bounded by a line beginning near the easternmost end of Hammocks Beach (Bear Island) at a point 34° 38.3990' N - 77° 07.2962' W; running southeasterly to a point near the Bogue Inlet Bell Buoy 34° 38.3063' N - 77° 07.0738' W; running southwesterly 1,000 feet offshore parallel with the ocean shoreline of Bear Island to a point 34° 37.1000' N - 77° 10.1000' W; running southerly to a point 34° 36.7000' N - 77° 09.8000' W; running southwesterly to a point 34° 35.1000' N - 77° 13.2000' W; running northerly to a point off the mouth of Brown's Inlet 34° 35.6000' N - 77° 13.6000' W; running southwesterly parallel with the ocean shoreline 1,000 feet offshore to a point 34° 34.7000' N - 77° 15.1000' W; running southeasterly to a point 34° 34.3000' N - 77° 14.7000' W; W, running southwesterly to a point near the New River Inlet Bell Buoy 34° 31.0500' N - 77° 19.8333' W; running northwesterly to a point near the southernmost tip of Onslow Beach 34° 31.9226' N - 77° 20.3045' W; then running northeasterly following the shoreline at mean high water across Brown and Bear inlets on the COLREGS demarcation line (as indicated on National Ocean Service navigation charts for the area) to the point of beginning.

*History Note:* Authority G.S. 113-134; 113-182; 143B-289.52;  
*Eff.* January 1, 1991;  
*Amended Eff.* September 1, 1991;  
*Recodified from* 15A NCAC 3R .0001 *Eff.* December 17, 1996;  
*Amended Eff.* August 1, 2004; May 1, 1997.

**15A NCAC 03R .0102 MILITARY DANGER ZONES AND RESTRICTED AREAS**

The designated military danger zones and restricted areas referenced in 15A NCAC 03I .0110(b) are delineated in the following areas:

- (1) Currituck Sound:
- (a) In the vicinity of North Landing River, the waters within a circular area with a radius of 1,000 yards having its center at a point 36° 31.0000' N - 76° 01.6666' W.
- (b) In the vicinity of Northern Currituck Sound, southeasterly of a line beginning at a point 36° 28.0826' N - 75° 58.3818' W; running southerly to a point 36° 26.0657' N - 75° 57.0005' W; running easterly to a point 36° 26.0831' N - 75° 55.4026' W; northerly to a point 36° 28.1984' N -

- 75° 54.7119' W; westerly to the point of beginning 36° 28.0826' N - 75° 58.3818' W.
- (2) Albemarle Sound:
- (a) In the vicinity of Harvey Point, southwest of a line beginning at a point on shore at Harvey Neck 36° 05.3354' N - 76° 20.3059' W; running southeasterly to a point 36° 03.4999' N - 76° 21.7333' W; running southeasterly to a point 36° 02.2999' N - 76° 19.5000' W; running easterly to a point 36° 03.0999' N - 76° 16.7166' W; running northerly to a point 36° 04.8744' N - 76° 17.5538' W; running northerly to a point onshore at Harvey Neck 36° 05.9802' N - 76° 18.1612' W.
- (b) Along south shore of Albemarle Sound, southeast of a line beginning at a point 36° 00.7166' N - 76° 19.3333' W; running southerly to a point 35° 59.5833' N - 76° 19.3333' W; running easterly to a point 36° 00.1999' N - 76° 04.4333' W; running northerly to a point 36° 02.6666' N - 76° 04.4333' W; running westerly to the point of the beginning 36° 00.7166' N - 76° 19.3333' W.
- (i) Southeast of a line beginning at a point 36° 00.7166' N - 76° 19.3333' W; running southerly to a point 35° 59.5833' N - 76° 19.3333' W; running easterly to a point 35° 59.7499' N - 76° 14.5000' W; running northerly to point 36° 01.3333' N - 76° 14.5002' W; running westerly to the point of the beginning 36° 00.7166' N - 76° 19.3333' W.
- (ii) Southeast of a line beginning at a point 36° 01.3333' N - 76° 14.5002' W; running southerly to a point 35° 59.7499' N - 76° 14.5000' W; running easterly to a point 36° 00.0833' N - 76° 07.2499' W; running northerly to a point 36° 02.2999' N - 76° 07.2499' W; running westerly to the point of the beginning 36° 01.3333' N - 76° 14.5002' W.
- (iii) Southeast of a line beginning at a point 36° 02.2999' N - 76° 07.2499' W; running southerly to a point 36° 00.0833' N - 76° 07.2499' W; running easterly to a point 36° 00.1999' N - 76° 04.4333' W; running northerly to a point 36° 02.6666' N - 76° 04.4334' W; running westerly to the point of the beginning 36° 02.2999' N - 76° 07.2499' W.
- (3) Pamlico Sound:
- (a) In the vicinity of Long Shoal, the waters within a circular area with a radius of one and one-half nautical miles having its center at a point 35° 32.3000' N - 75° 40.6500' W;
- (b) In the vicinity of Brant Island, the waters within a circular area with a radius of 3.0 statute miles having its center at a point 35° 12.5000' N - 76° 26.5000' W;
- (c) In the vicinity of Piney Island, the waters within a circular area with a radius of:
- (i) 0.5 statute mile having its center at a point 35° 04.2000' N - 76° 28.4000' W;
- (ii) 1.8 statute mile having its center at a point 35° 02.2000' N - 76° 28.0000' W;
- (iii) 0.5 statute mile having its center at a point 35° 01.7000' N - 76° 25.8000' W;
- (iv) 0.5 statute mile having its center at a point 34° 58.8000' N - 76° 26.2000' W.
- (4) In the Neuse River and its tributaries, within 500 feet from ~~of~~ the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, beginning on the reservation west of Slocum Creek at a point 34° 57.8766' N - 76° 54.8823' W; running southeasterly, east of Hancock Creek to a point 34° 56.1855' N - 76° 50.6363' W; including all waters of Slocum and Hancock creeks and their tributaries within the boundaries of the reservation.
- (5) Atlantic Ocean:
- (a) In the vicinity east of New River Inlet, beginning at a point on the ocean shoreline of the southwest



- portion of Onslow Beach 34° 32.5609' N - 77° 18.5578' W; running southwesterly to a point 34° 23.7279' N - 77° 23.5996' W; east and north of an arc of a circle to a point 34° 35.3465' N - 77° 01.2528' W; northwesterly to a point on the ocean shoreline on the southwest shore of Bear Inlet 34° 37.3793' N - 77° 10.2449' W; running southwesterly following the ocean shoreline to the point of the beginning 34° 32.5609' N - 77° 18.5578' W.
- (b) In the vicinity of Bear Inlet, southwest and southeast of a line beginning at a point 34° 37.5333' N - 77° 12.0500' W; running southwesterly to a point 34° 34.8333' N - 77° 15.1666' W; running southerly to a point 34° 28.9166' N - 77° 15.0833' W; running easterly to a point 34° 32.4500' N - 77° 06.5000' W; running northerly to a point 34° 37.7333' N - 77° 10.5833' W; running southwesterly to a point 34° 36.9666' N - 77° 11.4166' W; running to the northwesterly to the point of the beginning 34° 37.5333' N - 77° 12.0500' W.
- (6) Brown's Inlet between Bear Creek and the Onslow Beach Bridge and the Atlantic Ocean:
- (a) In vicinity of Bear Inlet, southwesterly and southeasterly of line beginning at a point on the north shoreline of the IWW near Bear Creek 34° 38.0450' N - 77° 12.2606' W; running southwesterly parallel to the IWW to a point near the northwest side of the Onslow Beach Bridge 34° 34.5445' N - 77° 16.3578' W; running through the Onslow Beach Bridge to a point on the ocean shoreline 34° 34.1240' N - 77° 16.2896' W running northeasterly following the ocean shoreline across Brown's Inlet to a point 34° 37.0903' N - 77° 10.7206' W; running around the shoreline of Bear Inlet to a point 34° 37.2494' N - 77° 10.7206' W; running along the northeast shoreline of Bear Creek to the south shoreline of the IWW to a point 34° 37.9597' N - 77° 12.2038' W; running across the IWW to include all inlets, streams, bays and water therein to the point of the beginning 34° 38.0450' N - 77° 12.2606' W.
- (7) New River within eight sections:
- (a) Trap Bay Sector, in New River, north of a line beginning on the west shore 34° 33.1209' N - 77° 21.7232' W; running easterly to a point 34° 33.2885' N - 77° 21.0809' W; running easterly to a point on the east shore 34° 33.2054' N - 77° 20.4736' W; following the northeast shoreline to include all streams, bays and waters therein to a point 34° 34.1996' N - 77° 21.6639' W; running southwest to a point 34° 33.6955' N - 77° 22.3780' W; following the southwest shoreline to include all streams, bays and water therein to a point of the beginning 34° 33.1209' N - 77° 21.7232' W.
- (b) Courthouse Bay Sector, in New River, north of a line beginning on the southwest shore to a point 34° 33.6955' N - 77° 22.3780' W; running to a point on the northeast shore 34° 34.1996' N - 77° 21.6639' W; following the northeast shoreline to include all streams, bays and water therein to a point on the northshore near Hwy. 172 Bridge 34° 34.7737' N - 77° 23.9604' W; running to a point on the southshore near Hwy. 172 Bridge 34° 34.5917' N - 77° 23.9464' W; following the southeast shoreline to include all streams, bays and waters therein to the point of the beginning 34° 33.6955' N - 77° 22.3780' W.
- (c) Stone Bay Sector, in New River, north of a line beginning on the southwest shore near Hwy. 172 Bridge 34° 34.5917' N - 77° 23.9464' W; running to a point on the north shore near Hwy. 172 Bridge 34° 34.7737' N - 77° 23.9604' W; following the north shoreline to a point 34° 35.7399' N - 77° 24.0444' W; running to a point on the Grey Point Sector Line 34° 36.3841' N - 77° 25.9488' W; running westerly to a point on the west shore 34° 36.5801' N - 77° 26.6910' W; following the west shore to the point of the beginning near Hwy. 172 Bridge 34° 34.5917' N - 77° 23.9464' W.
- (d) Stone Creek Sector, in New River, southwest of a line beginning on the north shore 34° 37.1122' N - 77° 25.9628' W; running southerly to a point on the Grey Point Sector line 34° 36.3841' N - 77° 25.9488' W; running westerly to a point on the

- west shore 34° 36.5801' N - 77° 26.6910' W; following the shoreline to include all streams, bays and water therein to the point of beginning 34° 37.1122' N - 77° 25.9628' W.
- (e) Grey Point Sector, in New River, northeast of a line beginning on the west shore 34° 36.5801' N - 77° 26.6910' W; running easterly to a point on the east shore 34° 35.7399' N - 77° 24.0444' W; following the easterly shoreline including all streams, bays and water therein to a point 34° 38.2465' N - 77° 20.3336' W; running northwest to a point on the west shore 34° 39.1847' N - 77° 22.8821' W; following the west shoreline to include all streams, bays and waters therein to a point 34° 37.1122' N - 77° 25.9628' W; running southerly to a point on the Grey Point Sector line 34° 36.3841' N - 77° 25.9488' W.
- (f) Farnell Bay Sector, in New River, north of a line on the west shore 34° 39.1847' N - 77° 22.8821' W; running to a point on the east shore 34° 38.2465' N - 77° 20.3336' W; in Frenchs Creek, west of a line on the north shore 34° 38.3585' N - 77° 19.9695' W; running to a point on the south shore 34° 38.1064' N - 77° 19.9415' W; following the east shoreline to a point 34° 40.4730' N - 77° 22.7141' W; running northwest to a point on the west shore 34° 40.7530' N - 77° 23.9744' W; following the west shoreline to include all streams, bays and waters therein to a point 34° 39.1847' N - 77° 22.8821' W.
- (g) Morgan Bay Sector, in New River, north of a line on the west shore 34° 40.7530' N - 77° 23.9744' W; running to a point on the east shore 34° 40.4730' N - 77° 22.7141' W; in Wallace Creek, west of a line 34° 40.9070' N - 77° 21.9719' W; running south to a point on the south shore 34° 40.6970' N - 77° 21.9579' W; following the east shoreline to a point 34° 42.5526' N - 77° 23.6712' W; running south to a point on the west shore 34° 42.0211' N - 77° 24.9325' W; following the west shoreline to include all streams, bays and waters therein to a point 34° 40.7530' N - 77° 23.9744' W.
- (h) Jacksonville Sector in New River, Southwest Creek; northwest of a line beginning at a point 34° 41.0751' N - 77° 25.6267' W; to a point on the south shore 34° 40.9581' N - 77° 25.6624' W; north of a line beginning at a point on the northeast shoreline of Southwest Creek 34° 42.0211' N - 77° 24.9325' W; running northwest to a point on the east shoreline of New River 34° 42.5526' N - 77° 23.6712' W; southeast of a line beginning at a point on the west shore of New River 34° 43.7028' N - 77° 25.8448' W; running east to a point on the east shore of New River 34° 43.7108' N - 77° 25.5275' W; southwest of a line beginning at a point on the north shore of Northeast Creek 34° 43.7108' N - 77° 23.4412' W; running southerly to a point on the south shore of Northeast Creek 34° 43.3696' N - 77° 23.4333' W;
- (8) Cape Fear River:
- (a) In the vicinity of Sunny Point Army Terminal, beginning at a point onshore west of the main ship channel 33° 58.2950' N - 77° 58.1533' W; running easterly to a point near marker #23, 33° 58.2950' N - 77° 56.9517' W; running northerly parallel with the shoreline to a point 33° 59.1838' N - 77° 56.8694' W; running northerly parallel to the shoreline to a point 34° 00.6158' N - 77° 56.4250' W; running northerly parallel to the shoreline to a point 34° 02.0478' N - 77° 56.4250' W; running westerly back to a point onshore 34° 02.0642' N - 77° 56.6061' W.

*History Note:* Authority G.S. 113-134; 113-181; 113-182; 143B-289.52;  
*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1994; July 1, 1993; September 1, 1991;*  
*Recodified from 15A NCAC 3R .0002 Eff. December 17, 1996;*  
*Amended Eff. August 1, 2004; May 1, 1997.*

#### 15A NCAC 03R .0103 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

- (1) In the Roanoke Sound Area:
- (a) Shallowbag Bay:
- (i) Dough Creek - northeast of a line beginning on the west shore at a point 35° 54.5396' N - 75° 39.9681' W;

1173

- at a point 35° 24.3606' N - 76° 04.4557' W; running southerly to the north shore of Brown Island to a point 35° 24.2081' N - 76° 04.4622' W; and northwest of a line beginning on the south shore of Brown Island at a point 35° 23.8255' N - 76° 04.4761' W; running southwesterly to a point 35° 23.6543' N - 76° 04.8630' W;
- (e) East Bluff Bay - Harbor Creek east of a line beginning on the north shore at a point 35° 21.5762' N - 76° 07.8755' W; running southerly to a point 35° 21.4640' N - 76° 07.8750' W; running easterly to the south shore to a point 35° 21.4332' N - 76° 07.7211' W;
- (f) Cunning Harbor tributaries - north of a line beginning on the west shore at a point 35° 20.7567' N - 76° 12.6379' W; running easterly to the east shore to a point 35° 20.7281' N - 76° 12.2292' W;
- (g) Juniper Bay:
- (i) Upper Juniper Bay - north of a line beginning on the west shore at a point 35° 23.1687' N - 76° 15.1921' W; running easterly to the east shore to a point 35° 23.1640' N - 76° 14.9892' W;
- (ii) Rattlesnake Creek - west of a line beginning on the north shore at a point 35° 22.9453' N - 76° 15.2748' W; running southerly to the south shore to a point 35° 22.8638' N - 76° 15.3461' W;
- (iii) Buck Creek - north of a line beginning on the west shore at a point 35° 21.5220' N - 76° 13.8865' W; running southeasterly to the east shore to a point 35° 21.3593' N - 76° 13.7039' W;
- (iv) Laurel Creek - east of a line beginning on the north shore at a point 35° 20.6693' N - 76° 13.3177' W; running southerly to the south shore to a point 35° 20.6082' N - 76° 13.3305' W;
- (v) Old Haulover - west of a line beginning on the north shore at a point 35° 22.0186' N - 76° 15.6736' W; running southerly to the south shore to a point 35° 21.9708' N - 76° 15.6825' W;
- (h) Swanquarter Bay:
- (i) Upper Swanquarter Bay - north of a line beginning on the west shore at a point 35° 23.5651' N - 76° 20.6715' W; running easterly to the east shore to a point 35° 23.6988' N - 76° 20.0025' W;
- (ii) Oyster Creek - east of a line beginning on the north shore at a point 35° 23.1214' N - 76° 19.0026' W; running southeasterly to the south shore to a point 35° 23.0117' N - 76° 18.9591' W;
- (iii) Caffee Bay:
- (A) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1604' N - 76° 18.9140' W; running easterly to the east shore to a point 35° 22.1063' N - 76° 18.7500' W;
- (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1573' N - 76° 18.5101' W; running easterly to the east shore to a point 35° 22.1079' N - 76° 18.1562' W;
- (C) Upper Caffee Bay (Haulover) - east of a line beginning on the north shore at a point 35° 21.8499' N - 76° 17.5199' W; running southerly to the south shore to a point 35° 21.5451' N - 76° 17.4966' W.
- (i) Rose Bay:
- (i) Rose Bay - north of a line beginning on the west shore at a point 35° 26.6543' N - 76° 25.3992' W; running easterly to Channel Marker "6"; running northeasterly to

- |       |  |       |   |
|-------|--|-------|---|
|       | Watch Point to a point 35° 26.8515' N - 76° 25.0055' W;  | (vii) | Eastern tributaries (Cedar Hammock and Long Creek) - east of a line beginning on the north shore at a point 35° 24.9119' N - 76° 23.1587' W; running southerly to the south shore to a point 35° 24.6700' N - 76° 23.2171' W; |
| (ii)  | Island Point Creek - west of a line beginning on the north shore at a point 35° 26.0413' N - 76° 25.0452' W; running southeasterly to the south shore to a point 35° 25.9295' N - 76° 24.9882' W;  | (j)   | Spencer Bay:  |
| (iii) | Tooley Creek - west of a line beginning on the north shore at a point 35° 25.4937' N - 76° 25.5324' W; running southerly to the south shore to a point 35° 25.1819' N - 76° 25.5776' W;  | (i)   | Germantown Bay:   |
| (iv)  | Broad Creek - east of a line beginning on the north shore at a point 35° 24.4620' N - 76° 23.3398' W; running southwesterly to the south shore to a point 35° 24.2352' N - 76° 23.5158' W;   | (A)   | Ditch Creek - northwest of a line beginning on the north shore at a point 35° 24.1874' N - 76° 27.8527' W; running southwesterly to the south shore to a point 35° 24.0937' N - 76° 27.9348' W;                               |
| (v)   | Lightwood Snag Bay - northwest of a line beginning on the north shore at a point 35° 24.3340' N - 76° 25.9680' W; running southwesterly to a point 35° 24.2610' N - 76° 26.1800' W; running southwesterly to a point on the shore 35° 23.9270' N - 76° 26.3300' W; | (B)   | Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W;                             |
| (vi)  | Deep Bay:  | (C)   | Headwaters of Germantown Bay - north of a line beginning on the west shore at a point 35° 24.8345' N - 76° 27.2605' W; running southeasterly to the east shore to a point 35° 24.6210' N - 76° 26.9221' W;                    |
|       | (A) Old Haulover - north of a line beginning on the west shore at a point 35° 23.2140' N - 76° 22.8560' W; running easterly to the east shore to a point 35° 23.2124' N - 76° 22.7340' W;  | (D)   | Swan Creek - southeast of a line beginning on the north shore at a point 35° 24.4783' N - 76° 27.1513' W; running southwesterly to the south shore to a point 35° 24.3899' N - 76° 27.2809' W;                                |
|       | (B) Drum Cove (Stinking Creek) - south of a line beginning on the west shore at a point 35° 22.5212' N - 76° 24.7321' W; running southeasterly to the east shore to a point 35° 22.4282' N - 76° 24.5147' W;   |       |   |

- (ii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 22.9741' N - 76° 28.3469' W; running southerly to the south shore to a point 35° 22.8158' N - 76° 28.3280' W;
  - (iii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 23.1375' N - 76° 28.5681' W; running southerly to the south shore to a point 35° 23.0209' N - 76° 28.5060' W;
  - (iv) Unnamed tributary - southwest of a line beginning on the north shore at a point 35° 23.3775' N - 76° 28.7332' W; running southeasterly to the south shore to a point 35° 23.3297' N - 76° 28.5608' W;
  - (v) Unnamed tributaries - northwest of a line beginning on the north shore at a point 35° 23.7207' N - 76° 28.6590' W; running southwesterly to the south shore to a point 35° 23.4738' N - 76° 28.7763' W;
  - (vi) Upper Spencer Bay - northwest of a line beginning on the north shore at a point 35° 24.3129' N - 76° 28.5300' W; running southwesterly to the south shore to a point 35° 23.9681' N - 76° 28.7671' W;
  - (vii) Spencer Creek - east of a line beginning on the north shore at a point 35° 23.9990' N - 76° 27.3702' W; running southerly to the south shore to a point 35° 23.8598' N - 76° 27.4037' W;
  - (k) Long Creek - north of a line beginning on the west shore at a point 35° 22.4678' N - 76° 28.7868' W; running southeasterly to the east shore to a point 35° 22.3810' N - 76° 28.7064' W;
  - (l) Willow Creek - east of a line beginning on the north shore at a point 35° 23.1370' N - 76° 29.8829' W; running southeasterly to the south shore to a point 35° 22.9353' N - 76° 29.7215' W;
  - (m) Abels Bay - north and east of a line beginning on the west shore at a point 35° 24.1072' N - 76° 30.3848' W;
- running southeasterly to the east shore to a point 35° 23.9898' N - 76° 30.1178' W; thence running southerly to the south shore to a point 35° 23.6947' N - 76° 30.1900' W;
- (n) Crooked Creek - north of a line beginning on the west shore at a point 35° 24.4138' N - 76° 32.2124' W; running easterly to the east shore to a point 35° 24.3842' N - 76° 32.0419' W.
- (3) In the Pungo River Area:
- (a) Fortescue Creek:
    - (i) Headwaters of Fortescue Creek - southeast of a line beginning on the south shore at a point 35° 25.5379' N - 76° 30.6923' W; running easterly to the north shore to a point 35° 25.5008' N - 76° 30.5537' W;
    - (ii) Warner Creek - north of a line beginning on the west shore at a point 35° 26.2778' N - 76° 31.5463' W; running easterly to the east shore to a point 35° 26.3215' N - 76° 31.4522' W;
    - (iii) Island Creek - north of a line beginning on the west shore at a point 35° 26.1342' N - 76° 32.3883' W; running easterly to the east shore to a point 35° 26.1203' N - 76° 32.2603' W;
    - (iv) Dixon Creek - south of a line beginning on the west shore at a point 35° 25.5766' N - 76° 31.8489' W; running easterly to the east shore to a point 35° 25.5865' N - 76° 31.6960' W;
    - (v) Pasture Creek - north of a line beginning on the west shore at a point 35° 25.9437' N - 76° 31.8468' W; running southwesterly to the east shore to a point 35° 25.9918' N - 76° 31.7224' W;
    - (vi) Cox, Snell, and Seer Creeks - northeast of a line beginning on the west shore at a point 35° 26.0496' N - 76° 31.2087' W; running southeasterly to the east shore to a point 35° 25.8497' N - 76° 30.8828' W;
    - (vii) Unnamed tributary on the north side of Fortescue Creek - northeast of a line

- beginning on the west shore at a point 35° 25.7722' N - 76° 30.7825' W; running southeasterly to the east shore to a point 35° 25.7374' N -- 76° 30.7102' W;
- (viii) Runway Creek - northeast of a line beginning on the west shore at a point 35° 25.6547' N - 76° 30.6637' W; running easterly to the east shore to a point 35° 25.6113' N - 76° 30.5714' W;
- (b) Slade Creek:
- (i) Upper Slade Creek - south of a line beginning on the north shore at a point 35° 27.9168' N - 76° 30.5189' W; running westerly to the south shore to a point 35° 27.9532' N - 76° 30.7140' W;
- (ii) Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' W;
- (iii) Jones Creek - south of a line beginning on the west shore at a point 35° 28.0077' N - 76° 30.9337' W; running southeasterly to the east shore to a point 35° 27.9430' N - 76° 30.8938' W;
- (iv) Becky Creek - north of a line beginning on the west shore at a point 35° 28.6081' N - 76° 31.6886' W; running northeasterly to the east shore to a point 35° 28.6297' N - 76° 31.6073' W;
- (v) Neal Creek - north of a line beginning on the west shore at a point 35° 28.7797' N - 76° 31.8657' W; running northeasterly to the east shore to a point 35° 28.8084' N - 76° 31.7727' W;
- (vi) Wood Creek - north of a line beginning on the west shore at a point 35° 28.5788' N - 76° 32.4163' W; running northeasterly to the east shore to a point 35° 28.6464' N - 76° 32.3339' W;
- (vii) Spellman Creek - north of a line beginning on the east shore at a point 35° 28.2233' N - 76° 32.6827' W; running southwesterly to the west shore to a point 35° 28.2567' N - 76° 32.6533' W;
- (viii) Speer Creek - east of a line beginning on the north shore at a point 35° 27.9680' N - 76° 32.3593' W; running southerly to the south shore to a point 35° 27.9216' N - 76° 32.3862' W;
- (ix) Church Creek and Speer Gut - east of a line beginning on the north shore at a point 35° 27.5910' N - 76° 32.7412' W; running southwesterly to the south shore to a point 35° 27.5282' N - 76° 32.8227' W;
- (x) Allison and Foreman Creek - south of a line beginning on Parmalee Point at a point 35° 27.2812' N - 76° 33.0634' W; running southwesterly to the west shore to a point 35° 27.2418' N - 76° 33.1451' W;
- (c) Flax Pond - west of a line beginning the north shore at a point 35° 32.0297' N - 76° 33.0389' W; running southwesterly to the south shore to a point 35° 31.9212' N - 76° 33.2061' W;
- (d) Battalina and Tooleys creeks - northwest of a line beginning on the north shore at a point 35° 32.3914' N - 76° 36.1548' W; running southwesterly to the south shore to a point 35° 32.0627' N - 76° 36.3769' W;
- (4) In the Pamlico River Area:
- (a) North Creek:
- (i) North Creek - north of a line beginning on the west shore at a point 35° 25.6764' N - 76° 39.9970' W; running northeasterly to the east shore to a point 35° 25.5870' N - 76° 40.0806' W;
- (ii) East Fork:
- (A) Northeast of a line beginning on the west shore at a point 35° 25.8000' N - 76° 39.2679' W; running southeasterly to the east shore to a point 35° 25.6914' N - 76° 39.1374' W;

- (B) Unnamed tributary of East Fork - northwest of a line beginning on the north shore at a point 35° 25.6950' N - 76° 39.4337' W; running southwesterly to the south shore to a point 35° 25.6445' N - 76° 39.4698' W;
- (iii) Frying Pan Creek - east of a line beginning on the north shore at a point 35° 24.9881' N - 76° 39.5948' W; running southwesterly to Chambers Point to a point 35° 24.8508' N -- 76° 39.6811' W;
- (iv) Little East Creek - west of a line beginning on the north shore at a point 35° 25.1463' N - 76° 40.3490' W; running southwesterly to Cousin Point to a point 35° 25.0075' N - 76° 40.4159' W;
- (b) Goose Creek:
  - (i) Hatter Creek - west of a line beginning on the north shore at a point 35° 19.9593' N - 76° 37.5992' W; running southerly to the south shore to a point 35° 19.9000' N - 76° 37.5904' W;
  - (ii) Upper Spring Creek:
    - (A) Headwaters of Upper Spring Creek - east of a line beginning on the north shore at a point 35° 16.3636' N - 76° 36.0568' W; running southeasterly to the south shore to a point 35° 16.1857' N - 76° 36.0111' W;
    - (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 16.8386' N - 76° 36.4447' W; running easterly to the east shore to a point 35° 16.8222' N - 76° 36.3811' W;
- (iii) Eastham Creek:
  - (A) Slade Landing Creek - south of a line beginning on the west shore at a point 35° 17.5450' N - 76° 35.9677' W; running southeasterly to the east shore to a point 35° 17.4845' N - 76° 35.8946' W;
  - (B) Mallard Creek - north of a line beginning on the west shore at a point 35° 17.8230' N - 76° 36.1314' W; running southeasterly to the east shore to a point 35° 17.7927' N - 76° 36.0330' W;
  - (iv) Mud Gut - northeast of a line beginning on the north shore at a point 35° 17.8754' N - 76° 36.7704' W; running southeasterly to the south shore to a point 35° 17.8166' N - 76° 36.7468' W;
  - (v) Wilkerson Creek - east of a line beginning on the north shore at a point 35° 18.4096' N - 76° 36.7479' W; running southwesterly to the south shore to a point 35° 18.3542' N - 76° 36.7741' W;
  - (vi) Dixon Creek - east of a line beginning on the north shore at a point 35° 18.8893' N - 76° 36.5973' W; running southerly to the south shore to a point 35° 18.5887' N - 76° 36.7142' W;
- (c) Oyster Creek; Middle Prong:
  - (i) Oyster Creek:
    - (A) West of a line, beginning on the north shore at a point 35° 19.4780' N - 76° 34.0131' W; running southerly to the south shore to a point 35° 19.3796' N - 76° 34.0021' W;
    - (B) Duck Creek - south of a line beginning on the west shore at



- a point 35° 19.0959' N - 76° 33.2998' W; running northeasterly to the east shore to a point 35° 19.1553' N - 76° 33.2027' W;
- (ii) James Creek - southwest of a line beginning on the north shore at a point 35° 18.6045' N - 76° 32.3233' W; running southeasterly to James Creek Point at a point 35° 18.4805' N - 76° 32.0240' W;
- (iii) Middle Prong - south of a line beginning on the west shore at a point 35° 17.8888' N - 76° 31.9379' W; running southerly to the east shore to a point 35° 17.7323' N - 76° 31.9052' W;
- (iv) Clark Creek:
- (A) Headwaters of Clark Creek (including Mouse Harbor Ditch) - southeast of a line beginning on the west shore at a point 35° 18.1028' N - 76° 31.1661' W; running northeasterly to the east shore to a point 35° 18.1907' N - 76° 31.0610' W;
- (B) Boat Creek - east of a line beginning on the north shore at a point 35° 18.5520' N - 76° 31.2927' W; running southerly to the south shore to a point 35° 18.4189' N - 76° 31.2660' W;
- (5) In the Western Pamlico Sound Area:
- (a) Mouse Harbor:
- (i) Long Creek - north of a line beginning on the west shore at a point 35° 18.4025' N - 76° 29.8139' W; running northeasterly to the east shore to a point 35° 18.4907' N - 76° 29.5652' W;
- (ii) Lighthouse Creek - north of a line beginning on the west shore at a point 35° 18.5166' N - 76° 29.2166' W; running southeasterly to the east shore to a point 35° 18.4666' N - 76° 29.1666' W;
- (iii) Cedar Creek and Island creeks - south of a line beginning on the west shore at a point 35° 16.9073' N - 76° 29.8667' W; running southeasterly to the east shore to a point 35° 16.6800' N - 76° 29.4500' W;
- (b) Porpoise Creek - west of a line beginning on the north shore at a point 35° 15.7263' N - 76° 29.4897' W; running southeasterly to the south shore to a point 35° 15.6335' N - 76° 29.3346' W;
- (c) Middle Bay:
- (i) Middle Bay - west of a line beginning on the north shore at a point 35° 14.6137' N - 76° 30.8086' W; running southeasterly to the south shore to a point 35° 14.0631' N - 76° 30.5176' W;
- (ii) Little Oyster Creek - north of a line beginning on the west shore at a point 35° 14.4745' N - 76° 30.2111' W; running northeasterly to the east shore to a point 35° 14.5825' N - 76° 29.9144' W;
- (d) Jones Bay, west of the IWW:
- (i) Little Drum Creek and Little Eve Creek - south of a line beginning on the west shore at a point 35° 12.4380' N - 76° 31.7428' W; running southeasterly to the east shore to a point 35° 12.3499' N - 76° 31.2554' W;
- (ii) Ditch Creek - south of a line beginning on the west shore at a point 35° 13.3609' N - 76° 33.6539' W; running southeasterly to the east shore to a point 35° 13.2646' N - 76° 33.1996' W;
- (iii) Lambert Creek - west of a line beginning on the north shore at a point 35° 13.8980' N - 76° 34.3078' W; running southeasterly to the south shore to a point 35° 13.8354' N - 76° 34.2665' W;
- (iv) Headwaters of Jones Bay, (west of the IWW) - west of a line beginning on the north shore at a point 35° 14.4684'

- N - 76° 35.4307' W; running southerly to the south shore to a point 35° 14.3947' N - 76° 35.4205' W;
  - (v) Bills Creek - north of a line beginning on the west shore at a point 35° 14.4162' N - 76° 34.8566' W; running northerly to the east shore to a point 35° 14.4391' N - 76° 34.7248' W;
  - (vi) Doll Creek - north of a line beginning on the west shore at a point 35° 14.3320' N - 76° 34.2935' W; running southeasterly to the east shore to a point 35° 14.2710' N - 76° 34.0406' W;
  - (vii) Drum Creek - north of a line beginning on the west shore at a point 35° 14.1764' N - 76° 33.2632' W; running easterly to the east shore to a point 35° 14.1620' N - 76° 33.0614' W.
- (6) In the Bay River Area:
  - (a) Mason Creek - southeast of a line beginning on the north shore at a point 35° 08.2531' N - 76° 41.4897' W; running southwesterly to the west shore to a point 35° 08.1720' N - 76° 41.6340' W;
  - (b) Moore Creek - southeast of a line beginning on the north shore at a point 35° 08.9671' N - 76° 40.2017' W; running southeasterly to the south shore to a point 35° 08.8629' N - 76° 40.1598' W;
  - (c) Small tributaries from Bell Point to Ball Creek:
    - (i) Tributary west of Bell Point - south of a line beginning on the west shore at a point 35° 09.9536' N - 76° 39.3977' W; running northeasterly to the east shore to a point 35° 09.9970' N - 76° 39.3420' W;
    - (ii) Little Pasture Creek - south of a line beginning on the west shore at a point 35° 09.8944' N - 76° 39.1483'; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W;
    - (iii) Rice Creek - south of a line beginning on the west shore at a point 35° 09.7616' N - 76° 38.9686' W; running southeasterly to the east shore to a point 35° 09.7378' N - 76° 38.8833' W;
  - (d) Ball and Cabin creeks - south of a line beginning on the west shore at a point 35° 09.6479' N - 76° 37.9973' W; running southeasterly to the east shore to a point 35° 09.5589' N - 76° 37.5879' W;
  - (e) Bonner Bay:
    - (i) Riggs Creek - west of a line beginning on the north shore at a point 35° 09.4050' N - 76° 36.2205' W; running southeasterly to the south shore to a point 35° 09.2298' N - 76° 36.0949' W;
    - (ii) Spring Creek - west of a line beginning on the north shore at a point 35° 08.5149' N - 76° 36.0799' W; running southerly to the south shore to a point 35° 08.3575' N - 76° 36.0713' W;
    - (iii) Bryan and Ives creeks - south of a line beginning on the west shore at a point 35° 08.3632' N - 76° 35.8653' W; running northeasterly to the east shore to a point 35° 08.4109' N - 76° 35.7075' W;
    - (iv) Dipping Vat Creek - east of a line beginning on the north shore at a point 35° 09.2734' N - 76° 34.3363' W; running southerly to the south shore to a point 35° 09.1212' N - 76° 34.3667' W;
    - (v) Long Creek - east of a line beginning on the west shore at a point 35° 08.1404' N - 76° 34.5741' W; running northeasterly to the east shore to a point 35° 08.2078' N - 76° 34.4819' W;
    - (vi) Cow Gallus Creek - west of a line beginning on the north shore at a point 35° 08.5125' N - 76° 34.6417' W; running southerly to the south shore to a point 35° 08.4083' N - 76° 34.6131' W;
  - (f) Rock Hole Bay - northeast of a line beginning on the west shore at a point 35° 11.6478' N - 76° 32.5840' W; running southeasterly to the east shore to a point 35° 11.2664' N - 76° 32.2160' W;

- (g) Dump Creek - north of a line beginning on the west shore at a point 35° 11.7105' N - 76° 33.4228' W; running easterly to the east shore to a point 35° 11.7174' N - 76° 33.1807' W;
- (h) Tributaries east of IWW at Gales Creek:
  - (i) Raccoon Creek - east of a line beginning on the north shore at a point 35° 12.9169' N - 76° 35.4930' W; running southeasterly to the south shore to a point 35° 12.6515' N - 76° 35.3368' W;
  - (ii) Ditch Creek - east of a line beginning on the north shore at a point 35° 12.4460' N - 76° 35.0707' W; running southeasterly to the south shore to a point 35° 12.3495' N - 76° 34.9917' W;
- (i) Tributaries west of IWW at Gales Creek:
  - (i) Jumpover Creek - west of a line beginning on the north shore at a point 35° 13.2830' N - 76° 35.5843' W; running southerly to the south shore to a point 35° 13.2035' N - 76° 35.5844' W;
  - (ii) Gales Creek - west of a line beginning on the north shore at a point 35° 12.9653' N - 76° 35.6600' W; running southerly to the south shore to a point 35° 12.8032' N - 76° 35.6366' W;
  - (iii) Whealton and Tar creeks - west of a line beginning on the north shore at a point 35° 12.7334' N - 76° 35.5430' W; running southeasterly to the south shore to a point 35° 12.4413' N - 76° 35.3594' W;
- (j) Chadwick and No Jacket creeks - north of a line beginning on the west shore at a point 35° 11.9511' N - 76° 35.8899' W; running northeasterly to the east shore to a point 35° 12.0599' N - 76° 35.3973' W;
- (k) Bear Creek - west of a line beginning on the north shore at a point 35° 11.7526' N - 76° 36.2721' W; running southwesterly to the south shore to a point 35° 11.5781' N - 76° 36.3366' W;
- (l) Little Bear Creek - north of a line beginning on the west shore at a point 35° 11.1000' N - 76° 36.3060' W; running northeasterly to the east shore to a point 35° 11.2742' N - 76° 35.9822' W;
- (m) Tributaries to Bay River from Petty Point to Sanders Point:
  - (i) Oyster Creek - north of a line beginning on the west shore at a point 35° 10.7971' N - 76° 36.7399' W; running northeasterly to the east shore to a point 35° 10.9493' N - 76° 36.4878' W;
  - (ii) Potter Creek - north of a line beginning on the west shore at a point 35° 10.7259' N - 76° 37.0764' W; running northeasterly to the east shore to a point 35° 10.7778' N - 76° 36.7933' W;
  - (iii) Barnes and Gascon creeks - north of a line beginning on the west shore at a point 35° 10.6396' N - 76° 37.3137' W; running northeasterly to the east shore to a point 35° 10.6929' N - 76° 37.2087' W;
  - (iv) Harris Creek - north of a line beginning on the west shore at a point 35° 10.5922' N - 76° 37.5333' W; running northeasterly to the east shore to a point 35° 10.6007' N - 76° 37.5103' W;
  - (v) Mesic Creek - north of a line beginning on the west shore at a point 35° 10.5087' N - 76° 37.9520' W; running easterly to the east shore to a point 35° 10.4830' N - 76° 37.8477' W;
- (n) In Vandemere Creek:
  - (i) Cedar Creek - north of a line beginning on the west shore at a point 35° 11.2495' N - 76° 39.5727' W; running northeasterly to the east shore to a point 35° 11.2657' N - 76° 39.5238' W;
  - (ii) Long Creek - east of a line beginning on the north shore at a point 35° 11.4779' N - 76° 38.7790' W; running southerly to the south shore to a point 35° 11.4220' N - 76° 38.7521' W;
  - (iii) Little Vandemere Creek - north of a line beginning on the west shore at a point 35°

- 12.1449' N - 76° 39.2620' W; running southeasterly to the east shore to a point 35° 12.1182' W 76° 39.1993' W;
- (o) Smith Creek - north of a line beginning on the west shore to a point 35° 10.4058' N - 76° 40.2565' W; running northeasterly to the east shore to a point 35° 10.4703' N - 76° 40.1593' W;
- (p) Harper Creek - west of a line beginning on the north shore at a point 35° 09.2767' N - 76° 41.8489' W; running southwesterly to the south shore to a point 35° 09.1449' N - 76° 41.9137' W;
- (q) Chapel Creek - north of a line beginning on the west shore at a point 35° 08.9333' N - 76° 42.8382' W; running northeasterly to the east shore to a point 35° 08.9934' N - 76° 42.7694' W;
- (r) Swindell Bay - south of a line beginning on the west shore at a point 35° 08.2580' N - 76° 42.9380' W; running southeasterly to the east shore to a point 35° 08.2083' N - 76° 42.8031' W.
- (7) In the Neuse River Area North Shore:
- (a) Swan Creek - west of a line beginning on the south shore at a point 35° 06.5470' N - 76° 33.8203' W; running northeasterly to a point 35° 06.4155' N - 76° 33.9479'; running to the south shore of Swan Island to a point 35° 06.3168' N - 76° 34.0263' W; running northeasterly to a point 35° 06.6705' N - 76° 33.7307' W, running northeasterly to the north shore to a point 35° 06.8183' N - 76° 33.5971' W;
- (b) Broad Creek:
- (i) Greens Creek - north of a line beginning on the west shore at a point 35° 06.0730' N - 76° 35.5110' W; running southeasterly to the east shore to a point 35° 05.9774' N - 76° 35.3704' W;
- (ii) Pittman Creek - north of a line beginning on the west shore at a point 35° 05.8143' N - 76° 36.1475' W; running northeasterly to the east shore to a point 35° 05.8840' N - 76° 36.0144' W;
- (iii) Burton Creek - west of a line beginning on the north shore at a point 35° 05.7174' N - 76° 36.4797' W; running southwesterly to the south shore to a point 35° 05.6278' N - 76° 36.5067' W;
- (iv) All tributaries on the north shore of Broad Creek - north of a line beginning on the west shore of the western most tributary at a point 35° 05.5350' N - 76° 37.4058' W; running easterly to a point 35° 05.4752' N - 76° 36.9672' W; running to a point 35° 05.4868' N - 76° 36.9163' W; north of a line beginning on the west shore of the eastern most tributary at 35° 05.4415' N - 76° 36.7869' W, running northeasterly to a point 35° 05.4664' N - 76° 36.7540' W
- (v) Brown Creek - northwest of a line beginning on the west shore at a point 35° 05.5310' N - 76° 37.8132' W; running northeasterly to the east shore to a point 35° 05.5737' N - 76° 37.6908' W;
- (vi) Broad Creek including Gideon Creek - west of a line beginning on the north shore at a point 35° 05.5310' N - 76° 37.8132' W; running southerly to the south shore to a point 35° 05.3212' N - 76° 37.8398' W;
- (vii) Tar Creek - south of a line beginning on the west shore at a point 35° 05.2604' N - 76° 37.5093' W; running easterly to the east shore to a point 35° 05.2728' N - 76° 37.6251' W;
- (viii) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.3047' N - 76° 37.0316' W; running easterly to the east shore to a point 35° 05.2674' N - 76° 36.8086' W;
- (ix) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.2674' N - 76° 36.8086' W; running easterly to the east shore to a point 35° 05.2445' N - 76° 36.5416' W;
- (x) Parris Creek - south of a line beginning on the west shore

- |       |  |       |  |
|-------|--|-------|--|
|       | at a point 35° 05.2445' N – 76° 36.5416' W; running southeasterly to the east shore to a point 35° 05.2031' N - 76° 36.4573' W;  |       | southeasterly to the east shore to a point 35° 01.4040' N - 76° 42.7320' W;  |
| (xi)  | Mill Creek - south of a line beginning on the west shore at a point 35° 05.4439' N - 76° 36.0260' W; running northeasterly to the east shore to a point 35° 05.4721' N - 76° 35.8835' W;                             | (iv)  | Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.3680' N - 76° 42.4920' W; running southeasterly to the east shore to a point 35° 01.3560' N - 76° 42.4320' W; |
| (xii) | Cedar Creek - south of a line beginning on the west shore at a point 35° 05.3711' N – 76° 35.6556' W; running southeasterly to the east shore to a point 35° 05.2867' N – 76° 35.5348' W.                            | (v)   | Greens Creek - west of a line beginning on the north shore at a point 35° 01.5985' N - 76° 42.9959' W; running southeasterly to the south shore to a point 35° 01.4759' N - 76° 42.9570 W;   |
| (c)   | Orchard and Old House creeks - north of a line beginning on the west shore at a point 35° 03.3302' N - 76° 38.4478' W; running northeasterly to the east shore to a point 35° 03.6712' N - 76° 37.9040' W;           | (vi)  | Kershaw Creek - north of a line beginning on the west shore at a point 35° 01.5985' N - 76° 42.9959' W; running easterly to the east shore to a point 35° 01.6077' N - 76° 42.8459' W;   |
| (d)   | Pierce Creek - north of a line beginning on the west shore at a point 35° 02.5030' N - 76° 40.0536' W; running northeasterly to the east shore to a point 35° 02.5264' – 76° 39.9901 W;                              | (vii) | Shop Gut Creek - west of a line beginning on the north shore at a point 35° 01.2720' N – 76° 42.1500' W; running southerly to the south shore to a point 35° 01.1700' N – 76° 42.1380' W.  |
| (e)   | Whittaker Creek - north of a line beginning on the west shore at a point 35° 01.7186' N - 76° 41.1309' W; running easterly to the east shore to a point 35° 01.6702' N - 76° 40.9036' W;                             | (g)   | Dawson Creek:  |
| (f)   | Oriental:  | (i)   | Unnamed eastern tributary of Dawson Creek - east of a line beginning on the north shore at a point 35° 00.2064' N – 76° 45.2652' W; running southeasterly to the south shore to a point 35° 00.1790' N - 76° 45.2289' W;           |
| (i)   | Smith and Morris creeks - north of a line beginning on the west shore at a point 35° 02.1553' N - 76° 42.2931' W; running southeasterly to the east shore to a point 35° 02.1097' N - 76° 42.1806' W;                | (ii)  | Unnamed tributary of Dawson Creek (at mouth) - east of a line beginning on the north shore at a point 34° 59.6620' N – 76° 45.1156' W; running southerly to the south shore to a point 34° 59.6326' N – 76° 45.1177' W;            |
| (ii)  | Unnamed tributary west of Dewey Point - north of a line beginning on the west shore at a point 35° 01.3704' N - 76° 42.4906' W; running northeasterly to—the east shore to a point 35° 01.3530' N -- 76° 42.4323' W; | (h)   | Beard Creek tributary - southeast of a line beginning on the north shore at a point 35° 00.3176' N - 76° 51.9098' W; running southwesterly to the southwest shore to a point 35° 00.1884' N - 76° 51.9850' W.                      |
| (iii) | Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.4340' N - 76° 42.7920' W; running   | (8)   | In the Neuse River Area South Shore:   |
|       |  | (a)   | Clubfoot Creek - south of a line beginning on the west shore at a point  |

- 34° 52.4621' N - 76° 45.9256' W;  
running easterly to the east shore to a  
point 34° 52.4661' N - 76° 45.7567'  
W;
- (i) Mitchell Creek - west of a  
line beginning on the north  
shore at a point 34° 54.4176'  
N - 76° 45.7680' W; running  
southerly to the south shore  
to a point 34° 54.2610' N -  
76° 45.8277' W;
  - (ii) Gulden Creek - east of a line  
beginning on the north shore  
at a point 34° 54.1760' N -  
76° 45.4438' W; running  
southerly to the south shore  
to a point 34° 54.0719' N -  
76° 45.4888' W;
- (b) Adams Creek:
- (i) Godfrey Creek - south of a  
line beginning on the west  
shore at a point 34° 57.3104'  
N - 76° 41.1292' W; running  
easterly to the east shore to a  
point 34° 57.2655' N - 76°  
41.1187' W;
  - (ii) Delamar Creek - south of a  
line beginning on the west  
shore at a point 34° 57.0475'  
N - 76° 40.7230' W; running  
southeasterly to the east  
shore to a point 34° 57.0313'  
N - 76° 40.7015' W;
  - (iii) Kellum Creek - west of a  
line beginning on the north  
shore at a point 34° 55.5240'  
N - 76° 39.8072' W; running  
southeasterly to the south  
shore to a point 34° 55.4356'  
N - 76° 39.8201' W;
  - (iv) Kearney Creek and unnamed  
tributary - west of a line  
beginning on the north shore  
of the north creek at a point  
34° 55.1847' N - 76°  
39.9686' W; running  
southerly to the south shore  
to a point 34° 54.9661' N -  
76° 40.0091' W;
  - (v) Isaac Creek - south of a line  
beginning on the west shore  
at a point 34° 54.2457' N -  
76° 40.1010' W; running  
easterly to the east shore to a  
point 34° 54.2630' N - 76°  
40.0088' W;
  - (vi) Back Creek - southeast of a  
line beginning on the  
northeast shore at a point  
34° 54.6598' N - 76°  
39.5257' W; running  
southwesterly to the  
southwest shore to a point  
34° 54.5366' N - 76°  
39.7075' W;
- (vii) Cedar Creek - southeast of a  
line beginning on the west  
shore at a point 34° 55.7759'  
N - 76° 38.6070' W; running  
easterly to the east shore to a  
point 34° 55.7751' N - 76°  
38.4965' W;
  - (viii) Jonaquin Creek - northeast  
of a line beginning on the  
west shore at a point 34°  
56.1192' N - 76° 38.4997'  
W; running easterly to the  
east shore to a point 34°  
56.1172' N - 76° 38.4584'  
W;
  - (ix) Dumpling Creek - east of a  
line beginning on the  
northwest shore at a point  
34° 56.9187' N - 76°  
39.5559' W; running  
southeasterly to the  
southeast shore to a point  
34° 56.8421' N - 76°  
39.5155' W;
  - (x) Sandy Huss Creek -  
northeast of a line beginning  
on the west shore at a point  
34° 57.2348' N - 76°  
39.8457' W; running  
southeasterly to the east  
shore to a point 34° 57.1638'  
N - 76° 39.7169' W;
- (c) Garbacon Creek - south of a line  
beginning on the west shore at a point  
34° 59.0044' N - 76° 38.5758' W;  
running easterly to the east shore to a  
point 34° 59.0006' N - 76° 38.4845'  
W;
- (d) South River:
- (i) Big Creek - southwest of a  
line beginning on the  
northwest shore at a point  
34° 56.9502' N - 76°  
35.3498' W; running  
southeasterly to the  
southeast shore to a point  
34° 56.8346' N - 76°  
35.2091' W;
  - (ii) Horton Bay - north of a line  
beginning on the west shore  
at a point 34° 59.1936'—N -  
76° 34.7657' W; running  
easterly to the east shore to a  
point 34° 59.2023' N - 76°  
34.4586' -W;

- (e) Brown Creek - south of a line beginning on the west shore at a point 34° 59.8887' N - 76° 33.5707' W; running easterly to the east shore to a point 34° 59.9440' N - 76° 33.4180' W;
- (f) Turnagain Bay:
  - (i) Abraham Bay - west of a line beginning on the north shore at a point 35° 00.1780' N - 76° 30.7564' W; running southerly to the south shore to a point 34° 59.8338' N - 76° 30.7128' W;
  - (ii) Broad Creek and Persons Creek - southwest of a line beginning at a point on the north shore 34° 59.1974' N - 76° 30.4118' W; running southeasterly to the south shore to a point 34° 58.9738' N - 76° 30.1168' W;
  - (iii) Mulberry Point Creek - east of a line beginning on the north shore at a point 35° 00.4736' N - 76° 29.7538' W; running southerly to the south shore to a point 35° 00.3942' N - 76° 29.7082' W;
  - (iv) Tump Creek - east of a line beginning on the north shore at a point 35° 00.2035' N - 76° 29.5947' W; running southerly to the south shore to a point 35° 00.0500' N - 76° 29.4897' W;
  - (v) Tributary south of Tump Creek - east of a line beginning on the north shore at a point 34° 59.7784' N - 76° 29.3548' W; running southerly to the south shore to a point 34° 59.6830' N - 76° 29.3303' W;
  - (vi) Deep Gut - northeast of a line beginning on the north shore at a point 34° 59.6134' N - 76° 29.0376' W; running southeasterly to the south shore to a point 34° 59.4799' N - 76° 28.9362' W;
  - (vii) Big Gut - east of a line beginning on the north shore at a point 34° 59.0816' N - 76° 28.7076' W; running southerly to the south shore to a point 34° 58.9300' N - 76° 28.7383' W.
- (9) West Bay; Long Bay Area:
  - (a) Fur Creek and Henrys Creek - southwest of a line beginning on the northwest shore at a point 34° 56.5580' N - 76° 27.7065' W; running southeasterly to the southeast shore to a point 34° 56.3830' N - 76° 27.4563' W;
  - (b) Cadduggen Creek - south of a line beginning on the west shore at a point 34° 56.5767' N - 76° 23.8711' W; running easterly to the east shore to a point 34° 56.2890' N - 76° 23.6626' W.
- (10) Core Sound Area:
  - (a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;
  - (b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;
  - (c) Thorofare Bay:
    - (i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W;
    - (ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;
  - (d) Nelson Bay:
    - (i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a point 34° 50.2861' N - 76° 24.8708' W;
    - (ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore

- to a point 34° 51.7323' N - 76° 24.6487' W;
- (e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;
  - (f) Oyster Creek, northwest of the Highway 70 bridge;
  - (g) Jarretts Bay Area:
    - (i) Smyrna Creek - northwest of the Highway 70 bridge;
    - (ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore to a point 34° 47.6143' N - 76° 28.6473' W;
    - (iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point 34° 47.9766' N - 76° 28.9729' W;
    - (iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;
    - (v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;
    - (vi) Williston Creek - northwest of the Highway 70 bridge;
    - (vii) Wade Creek - west of a line beginning on the north shore at a point 34° 46.3022' N - 76° 30.5443' W; running southerly to the south shore to a point 34° 46.2250' N - 76° 30.3864' W;
    - (viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;
  - (ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;
  - (x) Tusk Creek - northwest of a line beginning on the northwest shore at a point 34° 44.8049' N - 76° 30.6248' W; running southerly to the south shore to a point 34° 44.6074' N - 76° 30.7553' W;
  - (xi) Creek west of Bells Island - west of a line beginning on the north shore at a point 34° 43.9531' N - 76° 30.4144' W; running southerly to the south shore to a point 34° 43.7825' N - 76° 30.3543' W.
- (11) Straits, North River, Newport River Area:
- (a) Straits:
    - (i) Sleepy Creek - north of a line beginning on the west shore at a point 34° 43.3925' N - 76° 31.4912' W; running easterly to the east shore to a point 34° 43.3651' N - 76° 31.3250' W;
    - (ii) Whitehurst Creek - north of a line beginning on the west shore at a point 34° 43.5118' N - 76° 33.3392' W; running northeasterly to the east shore to a point 34° 43.5561' N - 76° 33.1869' W;
  - (b) North River, north of Highway 70 bridge:
    - (i) Ward Creek - north of Highway 70 bridge:
      - (A) North Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.9573' N - 76° 34.4208' W; running northeasterly to the northeast shore to a point 34° 46.0511' N - 76° 34.3170' W;



- (B) South Leopard Creek - southeast of a line beginning on the southwest shore at a point 34° 45.4930' N - 76° 34.7622' W; running northeasterly to the northeast shore to a point 34° 45.5720' N - 76° 34.6236' W;
- (ii) Turner Creek (Gibbs Creek) - west of a line beginning on the north shore at a point 34° 43.4693' N - 76° 37.6372' W; running southerly to the south shore to a point 34° 43.4054' N - 76° 37.6585' W;
- (c) Newport River - west of a line beginning on the north shore at a point 34° 46.5635' N - 76° 44.3998' W; running southerly to Lawton Point to a point 34° 45.6840' N - 76° 44.0895' W;
- (i) Russel Creek - northeast of a line beginning on the north shore at a point 34° 45.5840' N - 76° 39.8020' W; running southeasterly to the south shore to a point 34° 45.5819' N - 76° 39.7895' W;
- (ii) Ware Creek - northeast of a line beginning on the north shore at a point 34° 46.4576' N - 76° 40.5020' W; running southeasterly to the south shore to a point 34° 46.4125' N - 76° 40.4460' W;
- (iii) Bell Creek - east of a line beginning on the north shore at a point 34° 47.2805' N - 76° 40.9082' W; running southerly to the south shore to a point 34° 47.0581' N - 76° 40.8854' W;
- (iv) Eastman Creek - east of a line beginning on the north shore at a point 34° 47.8640' N - 76° 41.0671' W; running southerly to the south shore to a point 34° 47.8027' N - 76° 41.0605' W;
- (v) Oyster Creek - north of a line beginning on the west shore at a point 34° 46.6610' N - 76° 42.5011' W; running easterly to the east shore to a point 34° 46.7161' N - 76° 42.3481' W;
- (vi) Harlow Creek - north of a line beginning on the west shore at a point 34° 46.7138' N - 76° 43.4838' W; running northeasterly to the east shore to a point 34° 46.8490' N - 76° 43.3296' W;
- (vii) Calico Creek - west of a line beginning on the north shore at a point 34° 43.7318' N - 76° 43.1268' W; running southerly to the south shore to a point 34° 43.6066' N - 76° 43.2040' W;
- (viii) Crab Point Bay - northwest of a line beginning on the northeast shore at a point 34° 44.0615' N - 76° 42.9393' W; running southwesterly to the southwest shore to a point 34° 43.9328' N - 76° 43.0721' W.
- (12) Bogue Sound; Bogue Inlet Area:
  - (a) Gales Creek - north of the Highway 24 bridge;
  - (b) Broad Creek - north of the Highway 24 bridge;
  - (c) Sanders Creek - north of a line beginning at a point 34° 42.4694' N - 76° 58.3754' W on the west shore; running easterly to a point 34° 42.4903' N - 76° 58.143' W on the east shore;
  - (d) Goose Creek - north of a line beginning on the west shore at a point 34° 41.8183' N - 77° 00.7208' W; running easterly to the east shore to a point 34° 41.8600' N - 77° 00.5108' W;
  - (e) Archer Creek - west of a line beginning on the north shore at a point 34° 40.4721' N - 77° 00.7577' W; running southerly to the south shore to a point 34° 40.3521' N - 77° 00.8008' W;
  - (f) White Oak River - northwest of a line beginning on the northeast shore at a point 34° 45.6730' N - 77° 07.5960' W; running southwesterly to the southwest shore to a point 34° 45.2890' N - 77° 07.7500' W;
  - (i) Pettiford Creek - east of a line beginning on the north shore at a point 34° 42.8670' N - 77° 05.3990' W; running southerly to the south shore

- to a point 34° 42.6310' N - 77° 05.3180' W.
    - (ii) Holland Mill Creek - west of a line beginning on the north shore at a point 34° 43.8390' N - 77° 08.0090' W; running southeasterly to the south shore to a point 34° 43.4800' N - 77° 07.7650' W.
  - (g) Hawkins Creek - west of a line beginning on the north shore at a point 34° 41.1210' N - 77° 07.5720' W; running southerly to the south shore to a point 34° 41.0460' N - 77° 07.5930' W;
  - (h) Queen's Creek - north of state road number 1509 bridge:
    - (i) Dick's Creek - west of a line beginning on the north shore at a point 34° 39.9790' N - 77° 09.3470' W; running southeasterly to the south shore to a point 34° 39.9350' N - 77° 09.3280' W;
    - (ii) Parrot Swamp - west of a line beginning on the north shore at a point 34° 40.6170' N - 77° 09.7820' W; running southeasterly to the south shore to a point 34° 40.3660' N - 77° 09.5980' W;
    - (iii) Hall's Creek - east of a line beginning on the north shore at a point 34° 41.0740' N - 77° 09.8640' W; running easterly to the south shore to a point 34° 41.0300' N - 77° 09.6740' W;
  - (i) Bear Creek - west of a line beginning at Willis Landing at a point 34° 38.7090' N - 77° 12.6860' W; running southeasterly to the south shore to a point 34° 38.4740' N - 77° 12.3810' W.
- (13) New River Area:
  - (a) Salliers Bay area - all waters north and northwest of the IWW beginning at a point on the shoreline 34° 37.0788' N - 77° 12.5350' W; running easterly to a point near Beacon "58" at a point 34° 37.9670' N - 77° 12.3060' W; running along the IWW near Cedar Point to a point 34° 33.1860' N - 77° 20.4370' W; running northerly to a point on the shoreline 34° 33.1063' N - 77° 20.4679' W; following the shoreline to the point of origin; including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;
- (b) New River Inlet area (including Hellgate Creek and Ward's Channel) - all waters south of the IWW from a point on the shoreline 34° 33.0486' N - 77° 18.6295' W running northwesterly to a point near Beacon "65" 34° 33.0550' N - 77° 18.6380' W; running along the IWW to a point near Beacon "15" 34° 31.0630' N - 77° 22.2630' W; running southerly to a point on the shoreline 34° 30.9212' N - 77° 22.2257' W; following the shoreline across New River Inlet at the COLREGS demarcation line back to the point of origin excluding the marked New River Inlet Channel; New River:
  - (i) Trap's Bay - northeast of a line beginning on the west shore at a point 34° 34.0910' N - 77° 21.0010' W; running southeasterly to the east shore to a point 34° 33.8260' N - 77° 20.4060' W;
  - (ii) Courthouse Bay:
    - (A) Tributary of Courthouse Bay - southeast of a line beginning on Harvey's Point at a point 34° 35.0050' N - 77° 22.3910' W; running northeasterly to the east shore to a point 34° 35.0830' N - 77° 22.1890' W;
    - (B) Tributary of Courthouse Bay - northwest of a line beginning on the west shore at a point 34° 35.0970' N - 77° 22.6010' W; running northeasterly to the east shore to a point 34° 35.1630' N - 77° 22.5030' W;
    - (C) Rufus Creek - east of a line beginning at a point on the north shore 34° 34.4630' N - 77° 21.6410' W; running southerly to a point near Wilken's Bluff 34°

- 34.3140' N - 77°  
21.6620' W;
- (iii) Wheeler Creek - south of a line beginning on the west shore at a point 34° 34.0570' N - 77° 23.3640' W; running easterly to a point near Poverty Point 34° 34.1060' N - 77° 23.2440' W;
  - (iv) Fannie Creek - south of a line beginning on the west shore at a point 34° 34.1470' N - 77° 23.6390' W; running easterly to the east shore to a point 34° 34.1300' N - 77° 23.5600' W;
  - (v) Snead's Creek - northwest of a line beginning on the west shore at a point 34° 35.2850' N - 77° 23.5500' W; running northerly to the east shore to a point 34° 35.3440' N - 77° 23.4860' W;
  - (vi) Everette Creek - south of a line beginning on the west shore at a point 34° 34.2570' N - 77° 24.8480' W; running easterly to the east shore to a point 34° 34.2380' N - 77° 24.6970' W;
  - (vii) Stone's Creek - southwest of a line beginning on the northwest shore at a point 34° 36.6170' N - 77° 26.8670' W; running southeasterly to the southeast shore to a point 34° 36.5670' N - 77° 26.8500' W;
  - (viii) Muddy Creek - north of a line beginning on the west shore 34° 36.8670' N - 77° 26.6340' W; running easterly to the east shore to a point 34° 36.8670' N - 77° 26.6170' W;
  - (ix) Mill Creek - north of a line beginning on the west shore at a point 34° 37.2350' N - 77° 25.7000' W; running easterly to the east shore to a point 34° 37.2360' N - 77° 25.6890' W;
  - (x) Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to a point 34° 38.0720' N - 77° 22.6000' W;
  - (xi) Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;
  - (xii) Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W; running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W;
  - (xiii) Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77° 24.1190' W; running southeasterly to the south shore to a point 34° 43.3950' N - 77° 23.5450' W;
  - (xiv) Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W;
  - (xv) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W;
  - (d) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of origin:
    - (i) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to

- the south shore to a point  
34° 32.0340' N - 77°  
22.7160' W;
- (ii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W.
- (14) Stump Sound Area: Stump Sound - all waters north of the IWW from a point on the shoreline 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon "15" 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline 34° 31.0550' N - 77° 22. 2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" 34° 28.082' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals.
- (15) Topsail Sound Area:
- (a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;
- (b) Old Topsail Creek - all waters northwest of a line beginning on the northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point 34° 21.4930' N - 77° 40.6900' W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;
- (c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin;
- (d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline 34° 24.0278' N - 77° 36.8498' W; running southerly to a point near Beacon "93" 34° 23.9090' N - 77° 36.7420' W; running along the IWW to a point near Beacon "96" 34° 22.5480' N - 77° 38.7890' W; running northerly to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W; running along the shoreline to the point of origin.
- (16) Middle Sound Area:
- (a) Howard Channel and Long Point Channel area - all waters southeast of the IWW beginning at a point on the shoreline 34° 20.4514' N - 77° 40.0183' W; running along the shorelines of Topsail Inlet Channel and Marker # 98 Channel to a point near Beacon "98" 34° 21.5670' N - 77° 40.4580' W; to running along the IWW to a point on the north side of the Figure 8 Island Marina Channel to a point 34° 16.5120' N - 77° 45.4870' W; following the shoreline of Figure 8 Island Marina Channel to a point 34° 16.2628' N - 77° 44.7855' W; following the shoreline across Rich Inlet at the COLREGS demarkation line to the point of origin. [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker "105" to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet;]
- (b) Futch Creek - northwest of a line beginning on the north shore at Baldeagle Point at a point 34° 17.9900' N - 77° 44.4930' W; running southerly to Porter's Neck to a point 34° 18.1170' N - 77° 44.3760' W;
- (c) Page's Creek - northwest of a line beginning on the north shore at a point 34° 16.7420' N - 77° 46.6940' W;

- W; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W;
- (d) All waters bounded on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel.
- (17) Greenville Sound Area:
- (a) Shell Island area - all waters bounded on the north by Mason's Inlet Channel, on the west by the IWW, on the south by Old Moores Inlet Channel and on the east by Wrightsville Beach.
- (b) Howe Creek (Moore's Creek) - northwest of a line beginning on the north shore at a point 34° 14.9060' N - 77° 47.2180' W; running southwesterly to the south shore to a point 34° 14.8470' N - 77° 47.3810' W;
- (c) Bradley Creek - all waters west of a line beginning on the north side of the Highway 17, 74 and 76 bridge at a point 34° 12.9700' N - 77° 50.0260' W running southerly to the south side of the Bridge at a point 34° 12.8620' N - 77° 50.0550' W;
- (d) Wrightsville Beach area - all waters in an area enclosed by a line beginning across the IWW from the mouth of Bradley Creek at a point 34° 12.3530' N - 77° 49.1250' W; running easterly to a point (near the Borrow Pit) 34° 12.3820' N - 77° 48.6610' W; then bounded by Bank's Channel on the east, Shinn Creek on the south and the IWW on the west, back to point of origin.
- (18) Masonboro Sound Area:
- (a) Masonboro-Myrtle Grove Sound area (west side) -all waters west and northwest of the IWW beginning at a point on the shoreline 34° 12.7423' N - 77° 49.8391' W; running southeasterly to a point at the mouth of Bradley Creek at a point 34° 12.4130' N - 77° 49.2110' W; running along the west side of the IWW to a point opposite Beacon "161" at 34° 03.5590' N - 77° 53.4550' W; running westerly to a point on the shoreline 34° 03.5715' N - 77° 53.4979' W; running along the shoreline back to the point of origin.
- (b) Masonboro-Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning on the north end of Masonboro Island at a point 34° 10.9130' N - 77° 48.9550' W; running northwesterly to a point near the intersection of Shinn Creek and the IWW 34° 11.3840' N - 77° 49.5240' W; running along the east side of the IWW to a point near Marker "161" 34° 03.5270' N - 77° 53.3550' W; running southerly to a point on the shoreline 34° 03.3917' N - 77° 53.0423' W; running along the shoreline across Carolina Beach Inlet at the COLREGS demarcation line back to the point of origin (with the exception of Old Masonboro Channel and Carolina Beach Inlet Channel).
- (19) Cape Fear River Area:
- (a) Cape Fear River - all waters north of a line beginning on the west shore at a point 34° 10.4410' N - 77° 57.7400' W; running easterly through Beacon "59" to the east shore to a point 34° 10.4050' N - 77° 57.1310' W; with the exception of the maintained channel, and all waters north of a line beginning on the west shore at a point 34° 04.6040' N - 77° 56.4780' W; running easterly through Beacon "41" to the east shore to a point 34° 04.7920' N - 77° 55.4740' W; with the exception of 300 yards east and west of the main shipping channel up to Beacon "59" (mouth of Brunswick River);
- (b) The Basin (Ft. Fisher area) - east of a line beginning on the north shore at a point 33° 57.2950' N - 77° 56.1450' W; running southeasterly to the south shore to a point 33° 57.1120' N - 77° 56.2060' W;
- (c) Walden Creek - all waters northwest of a line beginning on the north side of county road No. 1528 bridge at a point 33° 58.2950' N - 77° 59.0280' W running southerly to the south side of the bridge at a point 33° 58.2250' N - 77° 59.0440' W ;
- (d) Baldhead Island Creeks:
- (i) Baldhead Creek - southeast of a line beginning on the north shore at a point 33° 51.7680' N - 77° 59.1700' W; running westerly to the south shore to a point 33° 51.7590' N - 77° 59.1850' W;
- (ii) Cape Creek - southeast of a line beginning on the north shore at a point 33° 51.9740'

- N - 77° 58.3090' W; running southwesterly to the south shore to a point 33° 51.9480' -N - 77° 58.3480' W;
  - (iii) Bluff Island Creek (East Beach Creek) - south of a line beginning on the west shore at a point 33° 52.6740' N - 77° 58.1530' W; running easterly to the east shore to a point 33° 52.6850' N - 77° 58.0780' W;
  - (iv) Deep Creek - south of a line on the west shore at a point 33° 52.6850' N - 77° 58.0780' W; running northeasterly to the east shore to a point 33° 52.7690' N - 77° 58.0110' W;
  - (e) Dutchman Creek - north of a line beginning on the west shore at a point 33° 55.1560' N - 78° 02.7260' W; running southeasterly to the east shore to a point 33° 55.1130' N - 78° 02.5990' W;
  - (f) Denis Creek - west of a line beginning on the north shore at a point 33° 55.0410' N - 78° 03.5180' W; running southerly to the south shore to a point 33° 55.0120' N - 78° 03.5110' W;
  - (g) Piney Point Creek - west of a line beginning on the north shore at a point 33° 54.6310' N - 78° 03.5020' W; running southerly to the south shore to a point 33° 54.6040' N - 78° 03.5010' W;
  - (h) Molasses, Coward and Smokehouse creeks - all waters bounded by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island on the south and the CP and L Discharge canal on the west;
  - (i) Oak Island area - all waters north of the IWW from a point on the shoreline 33° 55.2827' N - 78° 03.7681' W; running southerly to a point across the IWW from Marker # 9 33° 55.2610' N - 78° 03.7630' W; running along the IWW to a point near Beacon "18" 33° 55.7410' N - 78° 10.2760' W; running northerly to a point on the shoreline 33° 55.7718' N - 78° 10.2744' W; running along the shoreline back to the point of origin; all waters south of the IWW from a point near Marker "9" 33° 55.2060' N - 78° 03.7580' W; running along the IWW to a point across the IWW from Beacon "18" 33° 55.7199' N - 78° 10.2764' W; running southerly to a point on the shoreline 33° 55.6898' N - 78° 10.2775' W; running along the shoreline back to the point of origin.
- (20) Lockwoods Folly Inlet Area:
  - (a) Davis Creek and Davis Canal - east of a line beginning on the north shore at a point 33° 55.2280' N - 78° 10.8610' W; running southerly to the south shore to a point 33° 55.1970' N - 78° 10.8390' W;
  - (b) Lockwoods Folly River - north of a line beginning on the west shore at a point 33° 56.3880' N - 78° 13.2360' W; running easterly to the east shore to a point 33° 56.6560' N - 78° 12.8350' W;
  - (c) Spring Creek (Galloway Flats area) - all waters northwest of a line beginning on the north shore at a point 33° 55.7350' N - 78° 13.7090' W; running southwesterly to the south shore to a point 33° 55.5590' N - 78° 13.7960' W.
- (21) Shallotte Inlet Area:
  - (a) Shallotte River - north of a line beginning on Bill Holden's Landing at a point 33° 55.8840' N - 78° 22.0710' W; running northeasterly to Gibbins Point to a point 33° 56.3190' N - 78° 21.8740' W;
  - (b) Shallotte River (Ocean Flats)-excluding Gibbs Creek, the area enclosed by a line beginning at Long Point 33° 54.6210' N - 78° 21.7960' W; then bounded on the south by the IWW, the west by Shallotte River, the north by Gibb's Creek and the east by the shoreline of the Shallotte River back to the point of origin;
  - (c) Shallotte Creek (Little Shallotte River) - east of a line beginning on Shell Landing at a point 33° 55.7390' N - 78° 21.6410' W; running southerly to Boone's Neck Point to a point 33° 55.5990' N - 78° 21.5480' W;
  - (d) Saucepan Creek - -northwest of a line beginning on the west shore at a point 33° 54.7007' N - 78° 23.4183' W; running northerly to the east shore (mouth of Old Mill Creek) to a point 33° 54.9140' N - 78° 23.4370' W;
  - (e) Old Channel area - all waters south of the IWW from a point near Beacon "83" 33° 54.2890' N - 78° 23.1930' W; running along the IWW to a point near Ocean Isle Beach bridge 33°

53.7270'—N - 78° 26.3760' W; running southerly to a point on the shoreline 33° 53.7082' N - 78° 26.3732' W; running southerly along the shoreline to a point on the shoreline 33° 53.3827' N - 78° 26.2118' W; running along the shoreline to the point of origin; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker "89".

(22) Little River Inlet Area:

- (a) Gause Landing area - all waters north of the IWW from a point on the shoreline 33° 53.9053' N - 78° 25.6064' W; running southerly to a point near Beacon "90" 33° 53.8790' N - 78° 25.5950' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line; 33° 52.0003' N - 78° 33.5633' W; running northerly along the South Carolina line to a point on the shoreline 33° 52.0290' N - 78° 33.5893' W; running along the shoreline to the point of origin.
- (b) Eastern Channel Area - all waters bounded on the east and south by Eastern Channel, on the west by Jink's Creek and on the north by the IWW;
- (c) The Big Narrows Area:
  - (i) Big Teague Creek - west of a line beginning on the north shore at a point 33° 52.8260' N - 78° 30.0110' W; running southerly to the south shore to a point 33° 52.8040' N - 78° 29.9940' W;
  - (ii) Little Teague Creek - west of a line beginning on the north shore at a point 33° 52.9280' N - 78° 30.1500' W; running southeasterly to the south shore to a point 33° 52.9130' N - 78° 30.1220' W;
  - (iii) Big Norge Creek - south of a line beginning on the west shore at a point 33° 52.8550' N - 78° 30.6190' W; running easterly to the east shore to a point 33° 52.8620' N - 78° 30.5900' W;
- (d) Mad Inlet area - all waters south of the IWW from a point on the shoreline 33° 52.3121' N - 78° 30.4990' W; running northerly to a

point near the Sunset Beach bridge 33° 52.8450' N - 78° 30.6510' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line 33° 51.9888' N - 78° 33.5458' W; running southeasterly along the South Carolina line to a point on the shoreline; running along the shoreline across Mad Inlet at the COLREGS demarcation line to the point of origin; with the exception of Bonaparte Creek;

- (e) Calabash River - all waters east of a line beginning at a point on the north side of state road No. 1164 bridge at a point 33° 53.3850' N - 78° 32.9710' W running southerly to the south side of the bridge at a point 33° 53.3580' N - 78° 32.9750' W.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*

*Eff. January 1, 1991;*

*Amended Eff. March 1, 1996; September 1, 1991;*

*Recodified from 15A NCAC 03R .0003 Eff. December 17, 1996;*

*Amended Eff. August 1, 2004; May 1, 1997.*

**15A NCAC 03R .0105 SPECIAL SECONDARY NURSERY AREAS**

The special secondary nursery areas referenced in 15A NCAC 03N .0105(b) are designated in the following coastal water areas:

(1) Roanoke Sound:

- (a) Outer Shallowbag Bay - west of a line beginning on Baum Point at a point 35° 55.1461' N - 75° 39.5618' W; running southeasterly to Ballast Point to a point 35° 54.6250' N - 75° 38.8656' W; including the canal on the southeast shore of Shallowbag Bay.
- (b) Kitty Hawk Bay/Buzzard Bay - within the area designated by a line beginning at a point on the east shore of Collington Creek at a point 36° 02.4360' N - 75° 42.3189' W; running westerly to a point 36° 02.6630' N - 75° 41.4102' W; running along the shoreline to a point 36° 02.3264' N - 75° 42.3889' W; running southwesterly to a point 36° 02.1483' N - 75° 42.4329' W; running along the shoreline to a point 36° 01.6736' N - 75° 42.5313' W; running southwesterly to a point 36° 01.5704' N - 75° 42.5899' W; running along the shoreline to a point 36° 00.9162' N - 75° 42.2035' W; running

- southeasterly to a point 36° 00.8253' N - 75° 42.0886' W; running along the shoreline to a point 35° 59.9886' N - 75° 41.7284' W; running southwesterly to a point 35° 59.9597' N - 75° 41.7682' W; running along the shoreline to the mouth of Buzzard Bay to a point 35° 59.6480' N - 75° 32.9906' W; running easterly to Mann Point to a point 35° 59.4171' N - 75° 32.7361' W; running northerly along the shoreline to the point of beginning.
- (2) In the Pamlico and Pungo rivers Area:
- (a) Pungo Creek - west of a line beginning on Persimmon Tree Point at a point 35° 30.7633' N - 76° 38.2831' W; running southwesterly to Windmill Point to a point 35° 31.1546' N - 76° 37.7590' W;
- (b) Scranton Creek - south and east of a line beginning on the west shore at a point 35° 30.6810' N - 76° 28.3435' W; running easterly to the east shore to a point 35° 30.7075' N - 76° 28.6766' W;
- (c) Slade Creek - east of a line beginning on the west shore at a point 35° 27.8879' N - 76° 32.9906' W; running southeasterly to the east shore to a point 35° 27.6510' N - 76° 32.7361' W;
- (d) South Creek - west of a line beginning on Hickory Point at a point 35° 21.7385' N - 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N - 76° 41.7870' W;
- (e) Bond Creek/Muddy Creek - south of a line beginning on Fork Point 35° 20.7534' N - 76° 41.7870' W; running southeasterly to Gum Point to a point 35° 20.5632' N - 76° 41.4645' W;
- (3) In the West Bay Area:
- (a) West Thorofare Bay - south of a line beginning on the west shore at a point 34° 57.2199' N - 76° 24.0947' W; running easterly to the east shore to a point 34° 57.4871' N - 76° 23.0737' W;
- (b) Long Bay-Ditch Bay - west of a line beginning on the north shore of Ditch Bay at a point 34° 57.9388' N - 76° 27.0781' W; running southwesterly to the south shore of Ditch Bay to a point 34° 57.2120' N - 76° 27.2185' W; then south of a line running southeasterly to the east shore of Long Bay to a point 34° 56.7633' N - 76° 26.3927' W;
- (c) Turnagain Bay - south of a line beginning on the west shore at a point 34° 59.4065' N - 76° 30.1906' W; running easterly to the east shore to a point 34° 59.5668' N - 76° 29.3557' W;
- (4) In the Core Sound Area:
- (a) Cedar Island Bay - northwest of a line beginning near the gun club dock at a point 34° 58.7203' N - 76° 15.9645' W; running northeasterly to the south shore to a point 34° 57.7690' N - 76° 16.8781' W;
- (b) Thorofare Bay-Barry Bay - northwest of a line beginning on Rumley Hammock at a point 34° 55.4853' N - 76° 18.2487' W; running northeasterly to Hall Point to a point 34° 54.4227' N - 76° 19.1908' W;
- (c) Nelson Bay - northwest of a line beginning on the west shore of Nelson Bay at a point 34° 51.1353' N - 76° 24.5866' W; running northeasterly to Drum Point to a point 34° 51.6417' N - 76° 23.7620' W;
- (d) Brett Bay - north of a line beginning on the west shore at a point 34° 49.4019' N - 76° 26.0227' W; running easterly to Piney Point to a point 34° 49.5799' N - 76° 25.0534' W;
- (e) Jarrett Bay - north of a line beginning on the west shore near Old Chimney at a point 34° 45.5743' N - 76° 30.0076' W; running easterly to a point east of Davis Island 34° 45.8325' N - 76° 28.7955' W;
- (5) In the North River Area:
- (a) North River - north of a line beginning on the west shore at a point 34° 46.0383' N - 76° 37.0633' W; running easterly to a point on the east shore 34° 46.2667' N - 76° 35.4933' W;
- (a) Ward Creek - east of a line beginning on the north shore at a point 34° 46.2667' N - 76° 35.4933' W; running southerly to the south shore to a point 34° 45.4517' N - 76° 35.1767' W;
- (6) Newport River - west of a line beginning near Penn Point on the south shore at a point 34° 45.6960' N - 76° 43.5180' W; running northeasterly to the north shore to a point 34° 46.8490' N - 76° 43.3296' W;
- (7) New River - all waters upstream of a line beginning on the north side of the N.C. Highway 172 Bridge at a point 34° 34.7680' N - 77° 23.9940' W; running southerly to the



- south side of the bridge at a point 34° 34.6000' N – 77° 23.9710' W;
- (8) Intracoastal Waterway – all waters in the IWW maintained channel from a point near Marker "17" north of Alligator Bay 34° 30.7930' N – 77° 23.1290' W; to a point near Marker "49" at Morris Landing at a point 34° 28.0820' N – 77° 30.4710' W; and all waters in the IWW maintained channel and 100 feet on either side from Marker "49" to the N.C. Highway 50-210 Bridge at Surf City;
  - (9) Cape Fear River – all waters bounded by a line beginning on the south side of the Spoil Island at the intersection of the IWW and the Cape Fear River ship channel at a point 34° 01.5780' N - 77° 56.0010' W; running easterly to the east shore of the Cape Fear River to a point 34° 01.7230' N - 77° 55.1010' W; running southerly and bounded by the shoreline to the Ferry Slip at Federal Point at a point 33° 57.8080' N - 77° 56.4120' W; running northerly to Bird Island to a point 33° 58.3870' N - 77° 56.5780' W; running northerly along the west shoreline of Bird Island and the Cape Fear River spoil islands back to point of origin;
  - (10) Lockwood Folly River – all waters north of a line beginning on Howells Point at a point 33° 55.3680' N - 78° 12.7930' W and running in a westerly direction along the IWW near IWW Marker "46" to a point 33° 55.3650' N - 78° 13.8500' W;
  - (11) Saucepan Creek - all waters north of a line beginning on the west shore at a point 33° 54.6290' N - 78° 22.9170' W; running northeasterly to the east shore to a point 33° 54.6550' N - 78° 22.8670' W.

*History Note: Authority G.S. 113-134; 113-182; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1996; March 1, 1994;*  
*Recodified from 15A NCAC 3R .0005 Eff. December 17, 1996;*  
*Amended Eff. August 1, 2004; May 1, 1997.*

## **TITLE 17 - DEPARTMENT OF REVENUE**

### **17 NCAC 04E .0301 SPOILAGE OR DESTRUCTION OF NONTAXPAID BEER OR WINE**

Where the spoilage, breakage or destruction of nontaxpaid beer or wine in the inventory of the resident wholesaler or importer is a lesser amount than that defined as a "major disaster" in G.S. 105-113.81(a), there shall be no deduction from the excise tax as compensation for such loss.

*History Note: Authority G.S. 105-113.85; 105-262;*  
*Eff. February 1, 1976;*  
*Amended Eff. December 1, 2003; April 1, 1986;*  
*October 30, 1981.*

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

### **CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS**

#### **21 NCAC 50 .0308 REVIEW OF EXAMINATION**

- (a) Any person who fails to pass an examination may, on written request, review his or her examination at a time and place determined by the Board.
- (b) In the event an applicant fails an examination for a particular qualification three times, the applicant must present evidence of six months additional practical education directly involving both design and installation of systems of the type for which license is sought together with at least 32 contact hours of additional classroom education approved by the Board, as including all the subjects on the examination.

*History Note: Authority G.S. 87-18; 87-21(b); 87-25;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Amended Eff. December 1, 2003; August 1, 2002.*

#### **21 NCAC 50 .0402 PERMITS**

- (a) A licensed contractor shall ensure that a permit is obtained from the local Code Enforcement official before commencing any work for which a license is required by the Board. The contractor shall also ensure that a request for final inspection is made within 10 days of substantial completion of the work for which license is required, absent agreement with the owner and the local Code Enforcement official. Absent agreement with the local Code Enforcement official the licensee is not relieved by the Board of responsibility to arrange inspection until a certificate of compliance or the equivalent is obtained from the local code enforcement official or the licensee has clear and convincing evidence of his effort to obtain same.
- (b) A licensed contractor shall not allow a permit to be obtained or his license number to appear upon a permit except for work which he or his employees perform, over which he will provide general supervision until the completion of the work and for which he holds an executed contract with the general contractor or property owner.

*History Note: Authority G.S. 87-18; 87-21; 87-26;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Amended Eff. December 1, 2003; August 1, 2000; September 1, 1995; November 1, 1993; May 1, 1989.*

#### **21 NCAC 50 .0408 CHANGE OF TRADE NAME**

- (a) The trade name under which a license is issued may be changed upon request to and approval by the Board pursuant to these Rules. If the Board approves the name change, the last license issued to the licensee must be returned to the executive secretary.
- (b) A contractor license shall be issued or renewed using any corporate name, partnership name, or trade name which is not substantially similar to a name already in use according to the records of the Board.

(c) The licensee shall notify the Board of any change in location or mailing address from that shown on the last license renewal invoice within 30 days after the change takes place.

*History Note:* Authority G.S. 55B-5; 87-18; 87-26;  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Amended Eff. December 1, 2003; November 1, 1994;*  
*February 1, 1991; May 1, 1989.*

**21 NCAC 50 .0409 REINSTATEMENT OF EXPIRED LICENSE**

An expired license may be reinstated within three years of the date of expiration upon written request and upon payment of the current license fee, the license fee for the unpaid prior years, the processing fee imposed by G.S. 87-22, and evidence of continuing education for each prior as required by Rule .1401 herein.

*History Note:* Authority G.S. 87-18; 87-22;  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Amended Eff. April 1, 1991; May 1, 1989; August 1, 1984;*  
*August 1, 1982;*  
*Temporary Amendment Eff. August 31, 2001;*  
*Amended Eff. December 1, 2003; August 1, 2002.*

**21 NCAC 50 .1014 ADMINISTRATIVE HEARING PROCEDURES**

(a) The Rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby incorporated by reference, including subsequent amendments and editions, for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h). Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding administrative law judge in Title 26, Chapter 3 of the North Carolina Administrative Code and that 26 NCAC 03 .0101(2), .0102(a)(2), .0103, .0104, .0107, .0108(b) .0109, .0124, .0125, .0126, .0128 .0130, Section .0200 and Section .0300 shall not apply. The provisions of 26 NCAC 03.0108(a) prehearing conference are modified to require a prehearing conference directly between counsel or the parties without participation by the Board at least 15 days in advance of any hearing by the Board, and to exchange all documents and witness information at that time. The provisions of 26 NCAC 03 .0113(b) are modified to authorize service of subpoenas by mail, facsimile, or e-mail likely to result in delivery. Copies of Title 26, Chapter 3 of the North Carolina Administrative Code are on file in the Board's office and may be obtained at the cost of ten cents per page.

*History Note:* Authority G.S. 87-18; 150B-38; 150B-40;  
*Eff. August 1, 2000;*  
*Amended Eff. December 1, 2003.*

**21 NCAC 50 .1101 EXAMINATION FEES**

(a) An application to reissue or transfer a license to a different corporation, partnership or individual name requires a fee of twenty-five dollars (\$25.00).

(b) An application to issue or transfer a license to the license of an existing licensee requires a fee of twenty-five dollars (\$25.00).

(c) An application for a license by examination requires a fee of one hundred twenty-five dollars (\$125.00), consisting of an application fee of twenty-five dollars (\$25.00) and an examination fee of one hundred dollars (\$100.00), which is nonrefundable. Upon passage of the examination, the license fee set forth in 21 NCAC 50 .1102 or this Rule must be paid to obtain the license within 45 days of notification of the result of the examination, except that anyone passing the examination after November 1 of any year may elect to obtain license for the following year rather than the year in which the exam was passed.

*History Note:* Authority G.S. 87-18; 87-22.1; 87-22; 87-26;  
*Eff. May 1, 1989;*  
*Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;*  
*Amended Eff. August 1, 2000; November 1, 1993; March 1, 1990;*  
*Temporary Amendment Eff. August 31, 2001;*  
*Amended Eff. December 1, 2003; April 1, 2003; December 4, 2002.*

**21 NCAC 50 .1102 LICENSE FEES**

(a) Except as set out in this Rule, the annual license fee for statewide licenses by this Board is one hundred twenty-five dollars (\$125.00).

(b) The annual license fee for a licensed individual who holds qualifications from the Code Officials Qualification Board, is employed full-time as a local government plumbing, heating or mechanical inspector and who is not actively employed in business requiring license from this Board is fifteen dollars (\$15.00).

(c) The initial application fee for license without examination conducted by the Board is twenty-five dollars (\$25.00).

(d) The annual license fee for a contractor whose qualifications are listed as the second or subsequent individual on the license of a corporation, partnership, or business with a trade name under Paragraphs (a) or (c) of this Rule is twenty-five dollars (\$25.00).

*History Note:* Authority G.S. 87-18; 87-21; 87-22;  
*Eff. May 1, 1989;*  
*Temporary Amendment Eff. November 17, 1989 for a period of 77 days to expire on February 1, 1990;*  
*Amended Eff. November 1, 1994; July 1, 1991; March 1, 1990;*  
*Temporary Amendment Eff. August 31, 2001;*  
*September 15, 1997;*  
*Amended Eff. December 1, 2003; December 4, 2002.*

**21 NCAC 50 .1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS**

The Board charges the following fees:

(1)	copies of license	\$15.00
(2)	abstract of license record	\$15.00

- (3) processing fee for returned checks maximum allowed by law
- (4) copy of Board rules \$10.00
- (5) processing fee for late renewal \$25.00
- (6) Business and Project Management for Contractors \$40.00

*History Note:* Authority G.S. 25-3-506; 87-18; 87-22; 150B-19;

*Eff. September 1, 1994;*

*Amended Eff. July 1, 1998; November 1, 1994;*

*Temporary Amendment Eff. August 31, 2001;*

*Amended Eff. December 1, 2003; December 4, 2002.*

Leave Without Pay. Under these provisions, employees must pay for health benefits coverage.

(e) Temporary Employees - This Section does not cover temporary employees since the maximum length of a temporary employees' appointment is one year. The employee shall be covered if the employee has worked at least 1250 hours during the past 12-month period. Any leave granted to a temporary employee shall be without pay. This also applies to intermittent appointments.

*History Note:* Authority G.S. 126-4(5); P.L. 103-3; *Eff. August 2, 1993;*

*Amended Eff. October 1, 1995; December 1, 1993;*

*Temporary Amendment Eff. November 1, 2002;*

*Temporary Amendment Expired August 29, 2003;*

*Amended Eff. December 1, 2003.*

## **TITLE 25 - STATE PERSONNEL**

### **25 NCAC 01E .1402 ELIGIBLE EMPLOYEES**

(a) Determining Eligibility - An employee's eligibility for Family and Medical Leave shall be made based on the employee's months of service and hours of work as of the date leave is to commence.

(b) Permanent, Probationary, Trainee, and Time-Limited - An employee who has been employed with State government for at least 12 months and who has been in pay status at least 1040 hours (half-time) during the previous 12 month period shall be entitled to a total of 12 workweeks, paid or unpaid, leave during any 12 month period for one or more of the following reasons.

- (1) For the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth; (An expectant mother may also take Family and Medical Leave pursuant to Paragraph (b)(4) of this Rule before the birth of the child for prenatal care or if her condition makes her unable to work.)
- (2) For the placement of or to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption; (Family and Medical Leave must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.)
- (3) For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or
- (4) Because the employee has a serious health condition that makes the employee unable to perform one or more of the functions of the employee's position.

(c) Additional leave without pay shall be provided for employees to care for the employee's child, spouse or parent who has a serious health condition. See 25 NCAC 01E .1412 Family Illness Leave.

(d) Leave without pay for other reasons not covered under this Section shall be administered under 25 NCAC 01E .1100 Other

### **25 NCAC 01E .1412 FAMILY ILLNESS LEAVE**

In addition to the 12 weeks of leave per year provided by the Family and Medical Leave Act as outlined in 25 NCAC 01E .1401-.1411, an employee shall be entitled to up to 52 weeks of leave without pay during a five-year period in order to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition. The following provisions set forth guidelines for Family Illness Leave:

- (1) This leave shall be available to employees who qualify for Family and Medical Leave.
- (2) The same provisions and procedures shall apply to this additional leave that apply to the 12 weeks except the following:
  - (a) A part-time employee shall be entitled to 52 weeks regardless of their work schedule.
  - (b) During this period of leave without pay, the employees must pay the health plan premiums if they choose to maintain coverage.
  - (c) This period of leave may be accounted for separate from the 12 weeks. It shall not affect the method used to determine the 12-month period. The five-year period shall begin on the date that the employee uses the 52-week provision.

*History Note:* Authority G.S. 126-4(5); S.L. 2002-126, s. 28.3B;

*Temporary Adoption Eff. November 1, 2002;*

*Temporary Adoption Expired August 29, 2003;*

*Eff. December 1, 2003.*

### **25 NCAC 01K .0312 ELIGIBILITY**

(a) Full-time or part-time employees who have a permanent appointment shall be eligible for the Academic Assistance Program. Trainees may be determined as eligible by management after satisfactory performance for a period of not less than three months.

(b) Eligible Sources. Academic courses/degrees from accredited community colleges, colleges, universities via traditional classroom, video-based, distance learning, web-based,

e-learning and certain correspondence courses shall be eligible for approval. Accreditation must be via an accrediting agency authorized by the US Department of Education or the American Council on Education/CREDIT.

(c) Academic courses which are audited shall be eligible for academic assistance; however, an employee may be reimbursed for the same course or course equivalent only once.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003; August 1, 1995.*

**25 NCAC 01K .0313 APPROVED COURSES**

Management, when making the determination whether to provide assistance to take a specific course, must determine that it is beneficial to both the agency/university and the employee's knowledge, skills and abilities to fulfill current and potential job duties. Academic assistance shall not be approved for courses where management has determined that neither the course, nor the degree is of benefit to the agency/university.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003.*

**25 NCAC 01K .0316 ACADEMIC COSTS**

Academic costs are defined as charges assessed by an eligible source to every person enrolling for the course. Academic costs include tuition, fees and required, itemized course/lab fees. Agencies/universities may reimburse academic costs in accordance with these Rules and published in the State Personnel Manual.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003.*

**25 NCAC 01K .0320 EXCEPTIONAL SITUATIONS**

Courses taken at agency/university request shall be approved by the agency head (at Departmental/University level), or his/her designee. Courses taken under 25 NCAC 01K .0322 Extended Academic Leave shall be approved by the Office of State Personnel.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003.*

**25 NCAC 01K .0321 COURSES TAKEN AT AGENCY/UNIVERSITY REQUEST**

(a) Because of specific high priority skill needs of the agency/university, employees may be requested by management to take specific courses or degree programs. Under these circumstances, all limitations under the provisions of this policy are waived, except requirements for withholding taxes and FICA.

(b) If courses taken at agency request exceed the credit hour per fiscal year limits of the academic assistance program, then the situation shall be administered under 25 NCAC 01K .0322 Extended Academic Leave. Courses specified as part of an

employee's improvement/development plan are not considered to be at agency request unless approved by the agency/university head or designee.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003.*

**25 NCAC 01K .0322 EXTENDED ACADEMIC LEAVE**

(a) State agencies/universities may consider any employee (permanent, probationary, trainee or time-limited) for extended academic leave to participate in job or career-related work study, scholarship or fellowship programs based upon the following criteria:

- (1) Verification that both labor market and organizational needs exist for development in program requested.
- (2) Equal opportunity provided in selection of candidate(s).
- (3) Employees are informed of agency/university policies and procedures regarding:
  - (A) Announcement and application procedures;
  - (B) Screening and selection of employees;
  - (C) Limitations and restrictions on courses;
  - (D) Leave, salary and benefit conditions and any withholding taxes and FICA;
  - (E) Employment agreement.

(b) Requests for extended academic leave initiated by the employee and which do not meet with the criteria in this Rule shall be administered according to the State Personnel policy on leave without pay.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003.*

**25 NCAC 01K .0323 CERTIFICATION/LICENSING**

Incumbent employees who meet minimum educational and experience requirements and for whom certification/licensing is mandated after employment or is a policy requirement of the employing agency and approved by the agency/university head or their designee are eligible for academic assistance.

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;  
Amended Eff. December 1, 2003.*

**25 NCAC 01K .0324 ADMINISTRATION RESPONSIBILITY**

(a) The Office of State Personnel is responsible for the interpretation of this Rule, and approval of agency policy and procedures, and all subsequent agency revisions.

(b) Each state agency or university is delegated responsibility for, and authority to, administer the program within the provisions of this Rule. This includes retaining on a fiscal year basis records of academic assistance activity and reporting such information annually to the Office of State Personnel.

*Amended Eff. December 1, 2003.*

*History Note: Authority G.S. 126-4;  
Eff. September 1, 1989;*

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

*Chief Administrative Law Judge  
JULIAN MANN, III*

*Senior Administrative Law Judge  
FRED G. MORRISON JR.*

**ADMINISTRATIVE LAW JUDGES**

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade  
A. B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>				
Ice 2 K t/a Sports Dimensions, Inc. v. ABC Commission	02 ABC 0683	Gray	11/25/03	
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
<b><u>AGRICULTURE</u></b>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Regis A Urik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Richard Hart & Jeannette Hart, Little People Day Car, ID 3355048	01 DHR 1464	Wade	11/14/03	
v. Div of Child Dev Health & Human Services	01 DHR 1464	Wade	11/14/03	
Sunshine Schools, Inc. ID No. 9255424 v. DHHS, Div. of Child Dev.	02 DHR 0708	Wade	11/24/03	18:14 NCR 1209
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Lee Co. Dept of Social Services v. DHHS	02 DHR 1021	Elkins	12/01/03	18:14 NCR 1212
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development June Locklear	02 DHR 1672	Wade	06/10/03	
Bibby's Group Home, Billy McEachern v. Mental Health Licensure and	02 DHR 1749	Gray	12/08/03	
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	

# CONTESTED CASE DECISIONS

Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03	
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care Personnel Registry Section	02 DHR 2206	Wade	11/04/03	
Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
Lawyers Glen Retirement Living Ctr, Charlotte Elliotte v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
Valencia L Brown v Division of Medical Assistance (DMA)	03 DHR 0099	Chess	11/17/03	
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03	
Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03	
Southeastern Reg Med Ctr & Lumberton Radiological Assoc P.A. v DHHS, Div. of Facility Services	03 DHR 0226	Wade	10/31/03	18:12 NCR 1011
Little Angels Child Care Center v Arnette Cowan, Sup of Spec Nut. Prog.	03 DHR 0229	Lassiter	11/24/03	
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03	
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03	
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03	
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03	
Cahterine Williams v. DHHS	03 DHR 0320	Mann	07/17/03	
Rachel Peek,Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03	
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
Twan Fields v. DHHS, Div. of Facility Services	03 DHR 0355	Morrison	09/10/03	
Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnight v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03	
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03	
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03	
Janitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03	
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03	
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03	
Robert L Scott v DHHS	03 DHR 0527	Conner	12/02/03	
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03	
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03	
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Wallace C Levi v. Div. of Medical Assistance	03 DHR 0633	Wade	08/12/03	
Timothy Batts v. DHHS, Div. of Facility Services	03 DHR 0640	Gray	09/12/03	
Bestway Food's, Osama M Dari v. DOH WIC, Cory Menees, Unit Super.	03 DHR 0662	Morrison	07/28/03	
Charles Wakild & Susan Wakild v DENR, Div of Coastal Management	03 DHR 0663	Morrison	12/09/03	
Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03	
Wake Radiology Services, LLC, Wake Radiology Consultants, P.A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging of North Carolina, LLC	03 DHR 0676	Gray	07/07/03	
Nedall H Hassan d/b/a GNS Express Mart v. DHHS	03 DHR 0695	Lassiter	10/14/03	
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03	
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03	
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03	
Patti L Cain Small Fries by Patti v. Nutrition Services	03 DHR 0768	Morrison	07/31/03	
Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03	
Mrs Soon Ja An v. DHHS	03 DHR 0780	Morrison	07/28/03	
Kimberly Donyelle Miles v. DHHS, Div. of Facility Services	03 DHR 0795	Lassiter	09/11/03	
Pamela Powell v. DMA Outpatient Therapy	03 DHR 0834	Lassiter	10/13/03	
Angela Carter Precious Love Turtledove v. Tarin Goodwin, St. of NC, DCD	03 DHR 0850	Connor	09/23/03	
Donald Eugene Lowery by & through his guardian, Dennis Parise v. CAP (DMA) Div. of Medical Assistance	03 DHR 0868	Gray	12/17/03	
Nequita Williams v. DHHS, Div. of Medical Assistance	03 DHR 0895	Wade	11/21/03	
Ali Alsaras d/b/a University Market v. DHHS	03 DHR 0917	Conner	12/02/03	
Kimberly Roberts v. DHHS, Div. of Facility Services	03 DHR 0927	Gray	08/15/03	
Michael Hillis v. Department of Revenue	03 DHR 0935	Conner	07/28/03	
Alvin Paulk v. DHHS, Div. of Child Development	03 DHR 0971	Conner	07/25/03	
Nazih Hasan & Emao Hasan, Nes Convenient Mart v DHHS	03 DHR 0985	Lassiter	10/31/03	
Victor J Gray v Dorothea Dix Hospital	03 DHR 1039	Morrison	09/29/03	
Pine Forest Rest Home v DHHS, Div. of Facility Services	03 DHR 1066	Gray	10/10/03	
Doris Froneberger v. DHHS, Div. of Facility Services	03 DHR 1081	Gray	09/12/03	
Heather M Wood v. DHHS	03 DHR 1083	Morrison	10/30/03	
Lisa S Lincoln, Honeybees Creative Ctr v DHHS, Nutrition Branch	03 DHR 1091	Elkins	11/13/03	
Wardeh Abukeshk v DHHS	03 DHR 1117	Gray	12/10/03	
Jaris Davis v. DHHS, Div. of Facility Services	03 DHR 1136	Gray	10/07/03	
Albert Brower v. DHHS	03 DHR 1153	Wade	09/04/03	

# CONTESTED CASE DECISIONS

Angela Sadler v. DHHS, Div. of Facility Services	03 DHR 1210	Conner	11/04/03
Lisa Dupree v. NC State Veterans Nursing Home	03 DHR 1306	Lassiter	09/15/03
LaQuasha K Massey v. DSS, Mecklenburg County	03 DHR 1375	Elkins	12/16/03
Calvin Harris, Jr. v. Health Care Personnel Registry	03 DHR 1434	Wade	10/06/03
Karen J Andrews v. DHHS	03 DHR 1461	Lassiter	11/25/03
Apple Nursing Services v. DHHS	03 DHR 1488	Chess	12/10/03
Coastal Carolina Health Care PA d/b/a Coastal Carolina Imaging (P-6766-03)	03 DHR 1496	Lassiter	11/06/03
V DHHS Div of Facility Svcs, Certificate of Need Section			
Delaine Hairston v DHHS	03 DHR 1604	Mann	11/25/03
Ronald Bryan Gatlyn v. Health Care Personnel Registry	03 DHR 1655	Lassiter	10/28/03
Sheila Ferrell Meeks v Office of Administrative Hearings	03 DHR 1672	Lassiter	12/02/03
Willie S Neely v DHHS, Div. of Facility Services	03 DHR 1674	Gray	11/20/03
Christine Gordon v Health Care Personnel Registry	03 DHR 1697	Elkins	12/16/03
Doris Duff v DHHS, Div. of Facility Services	03 DHR 1720	Lassiter	12/02/03
Daniel H. Moore v. DHHS, Div. of Facility Services	03 DHR 1753	Lassiter	11/20/03
Angela Kay Hudson v. DHHS, Div. of Facility Services	03 DHR 1789	Elkins	12/19/03
Patricia A Fox, Adm, Community Care of Jackson #1 v. Div. of Facility Services, Adult Care Licensure Section	03 DHR 1856	Conner	12/18/03

## JUSTICE

### Alarm Systems Licensing Board

Gregory L Swicegood, Jr. v. Alarm System Licensing Board	03 DOJ 0503	Morrison	05/16/03
Alan Bradford Foehner v. Alarm System Licensing Board	03 DOJ 0709	Morrison	08/05/03

### Private Protective Services Board

Anthony Lamont Henderson v. Private Protective Services Board	03 DOJ 0502	Morrison	07/08/03
John Lee Powell v. Private Protective Services Board	03 DOJ 0694	Morrison	07/09/03
Howard Leon Fisher v. Private Protective Services Board	03 DOJ 0898	Morrison	08/14/03
William Houston King Jr v. Private Protective Services Board	03 DOJ 0899	Morrison	07/11/03
Derrick Lee McDonald v. Private Protective Services Board	03 DOJ 0946	Morrison	08/05/03
Jason William Kane v Private Protective Services Board	03 DOJ 1708	Morrison	10/28/03

### Sheriffs' Education & Training Standards Commission

Harvey Clinton Blanton v. Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1202	Gray	06/05/03	18:03 NCR	222
Jonathan Mims v. Sheriffs' Education & Training Standards. Comm.	02 DOJ 1263	Gray	06/03/03	18:03 NCR	229
Joshua Steven McCraw v Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1696	Conner	12/02/03		
Joshua Phillip Grant v Sheriffs' Education & Training Standards Comm.	02 DOJ 1787	Wade	10/27/03		
Laura Dawn Watts v. Sheriffs' Education & Training Standards Comm.	02 DOJ 1926	Lassiter	05/22/03		
Allen Wilson York v. Sheriffs' Education & Training Standards Comm.	02 DOJ 2042	Elkins	05/16/03		
Derek A Cousin v Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0250	Gray	11/13/03		
Fred Hines, Jr v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0428	Conner	07/29/03		
Alexander Draft: Registered Agent/Owner of A.D. Police Svcs., Inc. v. DOJ, Company Police Program	03 DOJ 0484	Mann	10/17/03		
Harvey Levale Cook v. Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0515	Lassiter	07/09/03		
Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03		
Mary Katherine McVey v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0517	Wade	08/11/03		
Kenneth Earl Brantley v Sheriffs' Educ & Trng Stds. Comm	03 DOJ 0604	Gray	11/14/03		
Brian Carroll Hatley v Sheriffs' Education & Trng. Stds. Comm.	03 DOJ 0649	Mann	10/02/03		
William Kelly Moore v Criminal Justice Educ & Trng Stds. Comm	03 DOJ 1068	Morrison	11/12/03		
Michael Ray Walker v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1138	Lassiter	09/23/03		
Loy S. Lentz Jr v. Sheriffs' Educ. & Trng. Stds. Comm.	03 DOJ 1229	Gray	10/02/03		
William Todd Streeter v. Sheriffs' Educ. & Trng Stds. Comm.	03 DOJ 1243	Chess	12/08/03		
Robert Lee Way v. Sheriffs' Educ. & Trng Stds. Comm.	03 DOJ 1263	Chess	12/08/03		
Charles D Metters, Jr. v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1471	Chess	12/09/03		

### DEPARTMENT OF TRANSPORTATION

Chris Azar v. Department of Transportation	03 DOT 1345	Morrison	09/08/03
--	-------------	----------	----------

### DEPARTMENT OF STATE TREASURER

Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03
---	-------------	-------	----------

### DEPARTMENT OF PUBLIC INSTRUCTION

Robert Andrew Bartlett Sr. v. Dept. of Public Instruction	00 EDC 1306	Gray	08/04/03
Charles Wordsworth v. State Board of Education	02 EDC 0572	Lassiter	10/17/03
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03

### ENVIRONMENT AND NATURAL RESOURCES

Larry E. Sadler v. DENR	00 EHR 1322	Gray	07/02/03
Lester Hill v. Person Co. Health Dept., DENR	00 EHR 1392	Gray	05/29/03
John Burr v. Health Department, Mecklenburg County	01 EHR 1204	Gray	05/28/03
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269 <sup>1</sup>	Chess	05/14/03
Rosa & Eddie Brame v. DENR	02 EHR 0319	Wade	06/27/03
Trafalgar Properties LLC v. County of Durham	03 EHR 0630	Wade	07/18/03
Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.)	02 EHR 0887	Mann	05/28/03
Forest Sound Homeowners Assoc, James P Hynes, Pres. V. DENR, Div. of Coastal Management	02 EHR 1078	Wade	06/09/03
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	02 EHR 1119 <sup>1</sup>	Chess	05/14/03
Raphael J Scharf & wife Guylene Scharf v. DENR	02 EHR 1155	Gray	11/24/03
Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03



# CONTESTED CASE DECISIONS

Lee Roy Smyre v. DENR, Div. of Water Quality	02 EHR 1509	Wade	09/05/03		
Murphy's All Land Dev Inc d/b/a Emerald Cove Town homes at Wells Lake v. DENR	02 EHR 1735	Conner	07/22/03		
Glenn Sasser v. DENR, Division of Coastal Management	02 EHR 1794	Morrison	08/28/03	18:07 NCR	485
Michael E Hendrix v. Caldwell Co. Dept of Environmental Health	03 EHR 0006	Gray	07/02/03		
Lawndale Service Ctr, Inc. C Valley v. DENR	03 EHR 0016	Lassiter	06/05/03		
Daniel W Bulla III v. Env. Health Section Stokes Co Health Dept.	03 EHR 0156	Conner	09/11/03		
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242	Lassiter	10/30/03		
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242 <sup>6</sup>	Lassiter	10/30/03		
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0254 <sup>6</sup>	Lassiter	10/30/03		
Robert Calvin Wyatt Jr, Calvin Wyatt v. DENR	03 EHR 0535	Wade	07/31/03		
Charles Wakild & Susan Wakild v DENR, Div. of Coastal Mgmt & Rick Gray	03 EHR 0663	Morrison	12/09/03		
Pacemaker Leasing Co v. DENR	03 EHR 0711	Conner	09/10/03		
Curtis Carney v. Pitt Co Health Dept., Env. Health Div.	03 EHR 0766	Conner	07/25/03		
J B Hooper v DENR	03 EHR 0876	Lassiter	10/22/03		
Danny L Ottaway v. DENR, Div. of Air Quality	03 EHR 0948	Gray	08/15/03		
Robert L Shepard v. Alamance Co. Health Board	03 EHR 0949	Gray	07/30/03		
Lorraine E. Caracci v. Nash Co. Health Dept. Env. Health	03 EHR 0986	Gray	11/26/03		
Megan Powell v. DENR	03 EHR 1071	Lassiter	08/18/03		
Redditt Alexander, Ida L Alexander v. Co. of Durham, Eng. Dept.	03 EHR 1074	Morrison	07/31/03		
St. Paul's Lutheran Church v. DENR	03 EHR 1151	Morrison	10/01/03		
Connell E Purvis v DENR, Div of Marine Fisheries	03 EHR 1228	Elkins	11/06/03		
Quible & Assoc PC; Joseph S Lassiter agent for Wilma M Midgett v. DENR, Div of Coastal Management	03 EHR 1193	Elkins	11/06/03		

## HUMAN RELATIONS FAIR HOUSING

Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03		
--	-------------	------	----------	--	--

## TEACHERS' & STATE EMPLOYEES COMP. MAJOR MED PLAN

Alma Louise Triplett v. Teachers' & St Emp Comp Maj Med Plan	02 INS 0268	Gray	07/15/03	18:04 NCR	338
Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan	02 INS 1257	Conner	08/06/03	18:05 NCR	405
Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan	02 INS 1285	Chess	08/26/03		
Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03		
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03		
Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan	03 INS 0975	Wade	10/22/03		
David C Karasow v St. of NC Teachers' & St Emp Comp Maj. Med Plan	03 INS 1227	Chess	11/20/03		
Cathy Penney v Teachers' & State Emp Comp Major Medical Plan	03 INS 1459	Gray	12/04/03		
Heather A Smith v. Teachers & St Emp Comp Major Medical Plan	03 INS 1558	Morrison	12/12/03		

## OFFICE OF STATE PERSONNEL

Alvin Earl Williams v Dir of Cumberland Co Dept of Social Services	00 OSP 1490	Chess	11/05/03		
Dorris D Wright v. Cabarrus Co. Dept. of Social Services	00 OSP 1506	Gray	04/22/03		
Robert Banks Hinceman v. DHHS/Broughton Hospital	01 OSP 0827	Elkins	05/01/03	18:01 NCR	45
Robin Ritzheimer Austin v. Jim Jones, Hlth Dir, Judie DeMuth, Admin Asst & the County of Stanly	01 OSP 0888 <sup>4</sup>	Lassiter	09/08/03		
Edward Allen Hughes, Jr v. Department of Correction	01 OSP 1011	Gray	08/01/03		
Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03		
James F Pridgen Jr v. A&T State University	01 OSP 2182	Gray	08/08/03		
Alan Foster v. Comm of Ag Meg Scott Phipps & DOA	02 OSP 0173	Lewis	09/26/03		
Jerry Thomas Ferrell v. Department of Correction	02 OSP 0375	Conner	09/15/03		
Angie Richardson v Department of Correction	02 OSP 0867 <sup>9</sup>	Wade	11/14/03		
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:05 NCR	410
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:07 NCR	494
Terence G Westry v A&T State University	02 OSP 1019	Conner	06/30/03		
Angie Richardson v Department of Correction	02 OSP 1027 <sup>9</sup>	Wade	11/14/03		
Robert L. Swinney v. Department of Transportation	02 OSP 1109	Gray	05/07/03		
Robin Ritzheimer Austin v. Jim Jones Hlth Dir Stanly County	02 OSP 1166 <sup>4</sup>	Lassiter	09/08/03		
Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03		
James Thomas Kinlaw v. ESC of NC	03 OSP 1343	Wade	10/23/03		
Norman Burton v. Chatham County	02 OSP 1483 <sup>2</sup>	Gray	05/12/03		
Jonah Uduagbomen v. Department of Transportation	02 OSP 1597	Gray	06/19/03		
Charles M Alexander v. ESC of NC	02 OSP 1613	Chess	07/01/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1624 <sup>3</sup>	Gray	07/23/03		
Norman Burton v. Chatham County	02 OSP 1625 <sup>2</sup>	Gray	05/12/03		
Edward K Royal v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	02 OSP 1631	Lassiter	06/25/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 <sup>3</sup>	Gray	07/23/03		
Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03		
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03		
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03		
Patricia Doggett v. Trend Mental Health	02 OSP 2128	Conner	07/08/03		
Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03		
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03		
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03		
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03		
Eric M Petree v. Department of Corrections	03 OSP 0116	Lassiter	06/24/03		
Monica Lynn Johnson v. NC School of the Arts	03 OSP 0180	Conner	07/29/03		

# CONTESTED CASE DECISIONS

Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03
Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03
Beverly M Jennings v. Juv Justice, Swannanoa Valley Youth Dev Center	03 OSP 0408	Chess	08/11/03
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03
James E. Sharpe v Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03
Joan Milligan, Patricia Flanigan, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03
Ty Atkinson v M S C Center	03 OSP 0577	Conner	10/28/03
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0599 <sup>8</sup>	Chess	10/20/03
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0629 <sup>8</sup>	Chess	10/20/03
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03
Henry Earl Stewart v Department of Transportation	03 OSP 0645	Lassiter	08/26/03
Derwin D Johnson v. Department of Correction	03 OSP 0660	Lassiter	06/24/03
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03
Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03
Jerry B Davis v. Dorothea Dix Hospital/DHHS	03 OSP 0678	Gray	07/14/03
Leslie Allen Whittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769	Conner	07/17/03
David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03
Joseph Nichols v UNC at Chapel Hill	03 OSP 0857	Gray	12/04/03
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJ&DP	03 OSP 0862 <sup>5</sup>	Morrison	09/29/03
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJ&DP	03 OSP 0863 <sup>5</sup>	Morrison	09/29/03
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03
Michael L Hillis v DHHS/Office of the Controller	03 OSP 0874 <sup>7</sup>	Lassiter	11/10/03
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03
Everette C Body v Department of Correction	03 OSP 0885	Conner	11/12/03
Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03
Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03
Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03
David Upchurch v. DOC	03 OSP 1076	Connor	09/23/03
Roberta Lane v DOC	03 OSP 1077	Conner	10/29/03
Mable Lynn Kelly v. NC SEAA	03 OSP 1129	Chess	10/20/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
Mable Lynn Kelly v NC SEAA	03 OSP 1184	Chess	10/20/03
Marcella Thorne v Department of Correction	03 OSP 1225	Elkins	11/14/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
Michael L Hillis v DHHS/ENCSD	03 OSP 1239 <sup>7</sup>	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1240 <sup>7</sup>	Lassiter	11/10/03
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1241 <sup>7</sup>	Lassiter	11/10/03
Luvae J Wall v. DHHS, Payroll Office	03 OSP 1259	Morrison	12/02/03
Russell M Haas v Edgecombe Co Health Department	03 OSP 1261	Elkins	11/06/03
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03
Victor Marc Sain v. Catawba Valley Community College	03 OSP 1380	Conner	11/19/03
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03
Gloria Bennett v Dept of Correction DART Cherry Program	03 OSP 1428	Morrison	12/04/03
Richard Todd McLean v. John Umstead Hospital	03 OSP 1448	Wade	11/26/03
Charles G Horne Jr v. DOC	03 OSP 1479	Lassiter	10/28/03
Charles G Horne Jr v. DOC	03 OSP 1480	Lassiter	10/29/03
Mable Lynn Kelly v State Educ. Assistance Authority	03 OSP 1502	Chess	12/03/03
Manuel C Fleming v Department of Revenue	03 OSP 1576	Morrison	11/12/03
Jesse C Whitaker v. Facilities Mgmt Operations of NCSU	03 OSP 1645	Lassiter	11/26/03
Peter A Fillare v. NCSU Dining	03 OSP 1646	Lassiter	12/02/03
A Louise Nilsen Mankes v. Dr. Gatewood, UNC Gen Admin Dept NCSEAA	03 OSP 1660	Lassiter	12/01/03
A Louise Nilsen Mankes v. Mr. Anthony Bordeaux, UNC Gen Admin Dept NCSEAA	03 OSP 1661	Lassiter	12/01/03
<b>UNIVERSITY OF NORTH CAROLINA HOSPITALS</b>			
Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03
Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03

---

## *CONTESTED CASE DECISIONS*

---

Michael Gray Simmons v. UNC Hospitals	03 UNC 0977	Wade	11/25/03
Keith Bagby Sr & Patricia Bagby v UNC Hospitals	03 UNC 1011	Elkins	11/07/03
D. Parker Lynch v. UNC Hospitals	03 UNC 1124	Wade	11/19/03
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03

\*\*\*\*\*

- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases
- 7 Combined Cases
- 8 Combined Cases
- 9 Combined Cases

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
02 DHR 0708

SUNSHINE SCHOOLS, INC.

ID NO. 9255424

Petitioner,

v.

N.C. DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF CHILD DEVELOPMENT

Respondent.

DECISION

**APPEARANCES**

Sunshine Schools, Inc.  
ID No. 9255424  
1900 Edwin Drive  
Raleigh, NC 27610  
PETITIONER

Ann B. Wall  
Assistant Attorney General  
NC Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629  
COUNSEL FOR RESPONDENT

**APPLICABLE STATUTES AND RULES**

N.C. Gen. Stat. §§1A-1, Rule 56; 84 - 4 , 84 - 5, 84 - 8, 110 - 94, 150B-33, -36; 26 NCAC 03 .0105, .0115.

**ISSUE**

Whether the Petition for a Contested Case Hearing in this case should be dismissed on the grounds that Petitioner is a Corporation, and, as such, may not represent itself, *pro se*.

**FINDINGS OF FACT**

1. On or about April 25, 2002, the Petition in the instant case was filed.
2. At the time of the filing of the Petition, Petitioner was a corporation, duly incorporated in the State of North Carolina, SOS ID No. 0287614. The corporation has recently been dissolved. Officers in the corporation included Herman Jones, President, and Carolyn Jones, Vice President.
3. Neither Petitioner nor Respondent has raised any questions regarding the jurisdiction of the Office of Administrative Hearings over the parties or whether the Office of Administrative Hearings has jurisdiction over the subject matter pursuant to Chapters 110 and 150B of the North Carolina General Statutes.
4. After Petitioner's December 2002 Motion to Continue was granted, Counsel for Petitioner Corporation withdrew from representation on February 11, 2003.
5. Based upon representations of Petitioner Corporation's President in a March 2003 conference call, the hearing was continued from March 31, 2003 to a date to be determined after Petitioner retained new counsel.
6. On Motion of Respondent in May 2003, a May 30, 2003 tentative notice of a July 1, 2003 hearing date issued, and was followed by a June 17, 2003 definite notice of the July 1, 2003 hearing date.
7. On June 30, 2003, Carolyn Jones fax filed a Motion for a Continuance on several grounds, including: a claim that the hearing was to have been set in August; that counsel had not been obtained and was necessary; and that the notices of hearing had been served on Petitioner at the wrong address.

8. Petitioner's motion was denied in a teleconference on the morning of July 1, 2003, and the hearing then began several hours later.
9. Without objection by Respondent, Petitioner Corporation was represented by Ms. Jones at the July 1, 2003 hearing. Ms. Jones is not an attorney licensed or duly authorized to practice law in the State of North Carolina.
10. At the close of the July 1, 2003 hearing, additional trial dates were set, including September 18, 2003.
11. The hearing was reconvened on September 18, 2003, and was devoted solely to the matter of the representation of Petitioner Corporation, and to rescheduling of the hearing due to Hurricane Isabel.
12. Petitioner was again represented by Ms. Jones, who initially indicated that an attorney, Bill Campbell, was going to represent Petitioner.
13. Ms. Jones later admitted that although she had discussed the case with Mr. Campbell, she was "trying to employ" Mr. Campbell, and that he had not been paid any fees.
14. During the September 18, 2003 hearing, Respondent objected to the representation of Petitioner Corporation by Ms. Jones, and stated that it would move to dismiss the case should she continue to represent Petitioner Corporation. The grounds for Respondent's objection and promised motion to dismiss were that Petitioner Corporation may not represent itself before the courts of this State.
15. Having failed to object at the time, Respondent did not, however, seek to have the record of the July 1, 2003 hearing stricken.
16. The undersigned Administrative Law Judge directed that Petitioner's counsel file a Notice of Appearance with the Office of Administrative Hearings no later than October 13, 2003.
17. The resumption of the hearing was then set for December 8, 2003 and days following.
18. As of this date, a Notice of Appearance has not been filed by Counsel for Petitioner.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact the undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 110 and 150B of the North Carolina General Statutes.
2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.
3. Petitioner is subject to the provisions of Chapter 110 of the North Carolina General Statutes and rules adopted pursuant thereto.
4. Respondent has authority, pursuant to N.C. Gen. Stat. § 110-88 and 110-90 to adopt, and has adopted, rules relating to the enforcement of the child care laws of North Carolina, including rules relating to licensure and inspection of child care facilities and to administrative actions such as the revocation of licenses.
5. Respondent has the authority, pursuant to N.C. Gen. Stat. § 110-98, 110-102.2 and 105.2, to issue various types of administrative action against child care facilities for violations of the Child Care Act.
6. Even considering the facts in the light most favorable to the Petitioner as the non-moving party, Petitioner is not excused from having retained counsel by the July 1, 2003 hearing date, because Petitioner did not receive the notices of hearing due to Ms. Jones having a new address. Petitioner failed to comply with rules duly adopted by the Office of Administrative Hearings which require parties to notify the Office of Administrative Hearings of changes in their address and telephone number. 26 NCAC 03 .0120.
7. Even considering the facts in the light most favorable to the Petitioner as the non-moving party, as a corporation, Petitioner is forbidden by the laws of the State of North Carolina from engaging in self-representation in this proceeding. G.S. §§ 84-4, 84-5, 84-8; LEXISNEXIS, Division of Reed Elsevier, Inc., v. Travishan Corporation, 155 N.C. App. 205, 209; 573 S.E.2d 547, 549; 2002 N.C. App. LEXIS 1635 (2002).

8. Even considering the facts in the light most favorable to the Petitioner as the non-moving party, since the withdrawal of its original counsel, Petitioner Corporation has had more than eight (8) months in which to retain counsel, and indeed, continually maintained that it intended to do so.

9. Even considering the facts in the light most favorable to the Petitioner as the non-moving party, Petitioner Corporation has either not retained counsel in the eight (8) months since the withdrawal of its original counsel in this matter, or if counsel has been retained, a notice of appearance has not been filed as directed by the Court.

10. Even considering the facts in the light most favorable to the Petitioner as the non-moving party, Petitioner Corporation has had ample time in which to retain counsel to represent it, including more than a month since it was placed on notice of Respondent's intent to seek dismissal of the matter at hand if Petitioner was not represented by counsel.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

**DECISION**

**IT IS HEREBY ORDERED** that the Petition for a Contested Case Hearing in the above-captioned case be and hereby is **DISMISSED**.

**NOTICE**

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the Superior Court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the Final Decision. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

This the 24<sup>th</sup> day of November 2003.

\_\_\_\_\_  
Beryl E. Wade  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
02 DHR 1021

LEE COUNTY DEPARTMENT OF SOCIAL SERVICES,  
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,  
Respondent.

DECISION

**THIS MATTER** was called for hearing and was heard by the undersigned Administrative Law Judge, Augustus B. Elkins II on February 25, 2003 in Raleigh, North Carolina.

**APPEARANCES**

For Petitioner: Beverly D. Basden  
Attorney at Law  
1503 Woodland Ave.  
Sanford, North Carolina 27330

For Respondent: Ann B. Wall  
Assistant Attorney General  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, North Carolina 27602-0629

**APPLICABLE STATUTES, RULES AND OTHER LEGAL AUTHORITY**

N.C. Gen. Stat. §§ 110-108 (current and repealed), 147-86.11  
Chapter 150B, Article 3 of the North Carolina General Statutes  
10 NCAC 1B .0418  
45 CFR part 98

**ISSUE**

Can Respondent lawfully require Petitioner to immediately repay the Respondent the amount of \$39,198.00 representing disallowed costs resulting from individual daycare provider fraud?

**EXHIBITS**

The following exhibits were admitted into evidence:

Petitioner's Exhibits:

- #3 45 CFR 98.2
- #5 45 CFR 98.60
- #7 Minutes of NCDSS Director's Association January 8, 2003 Child Care Committee Meeting
- #8 November 7, 2002 letter to Sherry Arnold
- #9 November 20, 2002 letter to Peggy Ball, Director DCD
- #10 N.C. Gen. Stat. § 110-108
- #11 N.C. Gen. Stat. § 110-108 (Repealed)
- #12 Breakdown of child care overpayments

#13      Memo to Vimillar Simmons

Respondent's Exhibits:

- #1      May 13, 2002 letter to Lee County Manager from DHHS Controller
- #2      June 21, 2002 letter to NC Counties
- #3      February 8, 2002 letter to Peggy Ball
- #4      November 30, 2001 Letter to James Harrell
- #5      Compilation of correspondence between DCD and Federal agencies
- #6      Portion from 2001 Lee County Independent Single Audit
- #7      April 3, 2000 letter to Bennett
- #8      April 11, 200 letter to Bennett
- #10     Chapter 25 from 1997 Child Care Subsidy Services Manual

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1.      A Petition for a contested case hearing was filed in the North Carolina Office of Administrative hearings on or about June 18, 2002. The Petitioner contested Respondent's request for immediate reimbursement of the sum of \$39,198.00 paid by Petitioner to a day care provider, Marilyn Brown.

2.      The parties are properly before the Court, adequate notice of the hearing was received by all parties, and all documents were properly introduced and were stipulated to in open court.

3.      The State demanded immediate payment of Thirty-Nine Thousand One Hundred Ninety Eight Dollars (\$39,198.00) which it contends Lee County improperly paid to Marilyn Brown, a day care provider, who committed fraud.

4.      Marilyn Brown d/b/a Shekinah Day Care, fraudulently kept children who were no longer attending the day care on her rolls, kept children at one of her day care centers instead of at the appropriate day care center, and improperly charged Lee County more than she charged parents who were paying their child care.

5.      The money for the child care subsidies comes from the State and Federal level. The Department of Health and Human Services ("the Department") receives State and Federal funds for use in the Subsidized Child Care Program ("the program"). The Division of Child Development ("DCD") within the Department has the responsibility for providing State supervision of the program. Those funds are blended with State funds and then allocated to the County Departments of Social Services ("County DSS"). (T pp. 27, 40, 48)

6.      The State distributes the federal money to the local counties who then determine the eligibility of recipients and administer the program through their Department of Social Services. DCD's policies are provided to the County DSS for use in determining eligibility for the program. (T pp. 27-28). DCD is responsible for issuing the Subsidized Child Care Services Policy Manual. The manual describes the policies and procedures that apply to the use of State and Federal funds for the Subsidy Program. (T pp 197-198)

7.      The State has a duty to monitor the funds it distributes and oversee that they are paid in accordance with Federal guidelines. To participate in the program, a family applies with the County DSS for financial assistance for child care. If the family is eligible, they receive a voucher. Using the voucher, the family takes it into the community to select the child care provider. The child care provider is then enrolled in the program with the help of the County DSS staff. Enrollment involves executing certain documents such as a provider agreement which explains the requirements for receipt of State and Federal funds. Once services are provided, the provider submits an attendance report to the County DSS, and then the County DSS determines the payment amount to be paid to that provider. The following month, the County DSS claims reimbursement from the State for the funds the County DSS paid out for eligible children. DCD reviews the information in the reimbursement system with regard to the individual children to identify which children qualify for which funding source. (T pp. 28, 41) The County DSS conducts regular reviews of the parents' eligibility to make sure they are still eligible for services. The County DSS has the option of visiting the providers to review payment records, attendance reports, and receipts from private paying parents. (T pp. 29-30)



8. The Lee County Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2001 indicated a finding of an “improper payment” in the amount of \$39,198.00. The County provides the audit to the local government commission which approves the audit and forwards it to the State. During an audit resolution the Department asks the County DSS to provide the Department with its position on the questioned cost submitted by the CPA and what corrective action has the County DSS put in place to ensure that this does not occur again. The Department then consults with the programmatic divisions and then makes a determination whether it agrees with the corrective action taken by the County DSS. A management decision is then issued by the Department to the County Manager. (T p. 89). If Federal funds are at issue, the Department must follow the Federal guidance from that funding agency.

9. As a result of the audit, Mr. Gary Fuquay, Controller for Respondent, sent a letter dated May 13, 2002, to the Lee County Manager. (T pp. 92, 107-109, R Exs. 1 and 6) At the time Mr. Fuquay issued the May 13, 2002, letter, he was aware that N.C. Gen. Stat. § 110-108 had been enacted. N.C. Gen. Stat. § 110-108 provided that the Department would allow the counties to retain the money that they collect. The State statute was subsequently repealed. (T pp. 96-97, 120, P Exs. 10 and 11) The parties agree that the day care provider fraudulently obtained money from the County by falsifying her records.

10. Upon receiving the audit that characterized the payment as an “improper payment” the Controller’s office of Respondent demanded repayment from Lee County of the full amount of the noted “improper payment” of \$39,198.00. Although the May 13, 2002, letter to Lee County stated that the amount to be remitted by the county was \$39,198.00, the Department had and has not yet determined whether the money that Lee County owes is State or Federal money or if the \$39, 198.00 is the true and accurate amount of monies owing. The Federal funds are from the Child Care Development Fund (“CCDF”). (T pp. 97-98, 111, 124-125, 129-130 R Ex. 1).

11. Sherry Arnold is a Certified Welfare Fraud Investigator for the Lee County Department of Social Services. Ms. Arnold investigated the Shaquino Child Care Centers I and II and Ms. Brown who was the operator. She determined, through her investigation, that Ms. Brown, the provider, was billing DSS for children who were no longer in her care and charging Lee County DSS more than what she was charging her private paying children, as well as other discrepancies. Ms. Arnold contacted the District Attorney’s office in January 2000. Ms. Arnold provided the District Attorney with the figure of \$39,198.00 and Ms. Brown was charged as a result. Ms. Arnold also gave the \$39,198.00 figure to the auditor. The auditor took the figures given by a county employee and the fraud investigator, Sherry Arnold, as the correct figure and no actual audit relating to the amount of monies due was done by the auditor. The correct figure at the time of the hearing seemed to be approximately \$38, 791.03. The auditor made the finding of improper payment indicating that “fraudulently spent funds and erroneous payments due to administrative error are considered improper payment under a CCDF regulation.” Petitioner did not “fraudulently spend funds” or make any payments due to “administrative error” in the instant case.

12. Sherry Arnold testified that the initial figure given by her and used in the audit was incorrect because of an addition error. The auditor(s) relied on the figures given by Ms. Arnold as opposed to independent calculations. Some of the funds that Sherry Arnold considered as being due and contained in the initial \$39,198.00 figure were for children that were in a daycare other than the one in which they were enrolled, but were, in fact, eligible for the program.

13. During the summer of 2002, after the Department had had multiple correspondence with Federal representatives to get a written interpretation of the regulations pertaining to repayment of improper payments and the requisite time frames, the Secretary of the Department issued a letter explaining to the County government that the Department had received clarification of existing Federal policies. Those policies required the State to repay the Federal government, Federal dollars owed regardless of whether the Department was able to obtain the funds from the counties or the perpetrator. The Secretary also informed the counties that due to the budget crisis, the State could not “front” repayments; therefore, the counties would have to remit repayment within sixty days. (T pp. 99-100, R Ex. 2)

14. Under the Respondent’s policy, if an improper payment has been made, either because of client error, agency error or provider error, correction must be made meaning that those funds which were improperly paid out must be returned to the State. The amount of the funds improperly paid out is then withheld from the County DSS’ reimbursement check for that month. (T p. 31) The State’s basis for the demand for immediate repayment is a combination of accounting principles, OMB Circular A-133, regulations and policies. The State contends that it must immediately repay the funds to the Federal government but has not yet paid any sums to the Federal government and has asked for clarification from the Federal government on the amount due.

15. The Department has not been told by the Federal government how much monies will need to be repaid. Some programs require immediate repayment and some programs allow repayment over time as the money is recovered from the perpetrator. Some programs allow the State to deduct funds overpaid from funds to be received. Further, Smart Start monies are not paid back to the Federal government. Also, some funds are paid to the counties which are purely State funds and do not have to be repaid to the Federal government.

16. The State legislature enacted a law on or about July 1, 1999 under Article 7 of Chapter 110 (NCGS 110-108) that permitted the counties to retain the monies they recovered in a fraud investigation. At the time, a County DSS would collect fraudulent payments from parents and providers and the County DSS was holding the funds in county accounts and waiting for DCD to provide them with instructions on how they would report the recovered fraud payments. At that time the County DSS was keeping the funds to either put a percentage back into their Subsidized Child Care Services program or into staff for the program. (T p. 73) These financial incentives were given to encourage the Counties to aggressively pursue fraud. This law was repealed by the legislature in Session Law 126 on or about September 30, 2002 (effective September 1, 2002); however it was in place at all times when the fraud and investigation were being handled by Petitioner.

17. From the State's perspective it is the responsibility of the County DSS to pursue a provider who fraudulently obtains child care subsidy. The State does not have a contractual relationship with the provider. As to the relationship between the State and the Federal government, the State is the Lead Agency and the lead agency is responsible for returning improper payments to the Federal government. Mr. Fuquay, in his May 13, 2002, letter to the Lee County Manager incorrectly characterized Lee County as the Lead Agency. (T p. 112-113, 115-116)

18. Petitioner determined that the contract with Marilyn Brown should be terminated due to her fraud in March 2000. However, the State required that Lee County continue to contract with Ms. Brown and put her on a probationary period. After the probationary period it was found that Ms. Brown was continuing with her fraudulent practices. A new request to terminate the contract was made and it was granted in September 2000.

19. The amount of funds expended during the period between the initial request when the County wanted to terminate the contract and the actual date that the State allowed termination was approximately \$11,263.33.

20. The State of North Carolina DHHS has a duty to request the funds from Marilyn Brown. Lee County DSS is obligated to assist in collecting the funds.

21. The day care provider was prosecuted for the fraud and is to repay the County the sum of Ten Thousand Dollars over a period of four years while on probation.

22. It is admitted by both parties that some funds should be repaid to the State. The disagreement is who should be responsible for repaying the funds, which funds should be repaid, the correct amount of the funds and how should the funds be repaid.

23. Lee County DSS is the collector of the funds owed by Ms. Brown. Lee County DSS pursued criminal prosecution against Ms. Brown which led to the restitution amount of \$10,000. Lee County DSS is pursuing civil prosecution against Ms. Brown to try to recover more of the money fraudulently taken.

24. The State admits that there is a need for clarification from the federal government concerning repayment of the funds. The State witnesses admitted that some funds paid to Lee County DSS were from the State and not the federal government and would not have to be paid back to the federal government. The States witnesses admitted that they did not know how much would need to be repaid to the federal government.

25. The State contends that because the Federal government requires repayment that it can require repayment from the County notwithstanding the State statute that allowed the county to retain the funds.

26. Under federal guidelines the lead agency is required to obtain the funds from the fraudulent provider and return the improper payment.

27. The Child Care Development Fund Plan for the State of North Carolina designates the Division of Child Development in the Department of Health and Human Services as the lead agency.

**BASED UPON** the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 110 and 150B of the North Carolina General Statutes. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

2. N.C.G.S. §§110-108 (now repealed) was in effect throughout the period during which Ms. Brown perpetrated her fraud. This statute allowed the County to retain all sums collected when they pursued fraud cases. This would apply to State funds. Federal regulations regarding Federal funds would override any conflict with the State law in effect.

3. Respondent is to follow State and Federal laws and regulations in the collection of any funds due it. The State is designated as the lead agency in the documents covering this matter and it is the lead agency that has the duty to repay the Federal government. The Respondent is legally obligated to return improper payments to the Federal government. 45 CFR 98.60, -.66; N.C. Gen. Stat. § 147-86.11; 10 NCAC 1B .0418; 10 NCAC 46D .0114. The Petitioner and Respondent have obligations to each other as set forth in law, regulations, and policies and by contractual arrangements.

4. Respondent has never determined how much should be repaid to the Federal government and has asked for clarification from the Federal government. The Petitioner should not be required to reimburse the State for more than the State would reimburse the Federal government. That is, Respondent should recover no funds not actually required to be repaid to the Federal government with adjustments as explained below.

5. The State controlled when the fraudulent day care provider could be terminated and caused approximately \$11,263.33 to be distributed during the period after the Petitioner first requested termination from March 2000 to September 2000. The State bears the responsibility of the continued fraud after notice by Petitioner was given with a desire to terminate in March which the State refused.

6. A combination of State and Federal law, regulations and policies places obligations of repayment on both the Petitioner and the Respondent.

7. Using the figure of approximately \$38,791.03 equity dictates that \$11,263.33 be subtracted from that amount as money obtained by fraud due to the inaction to stop the fraud by the Respondent. Calculations perhaps by percentages would need to be made to see which monies were State and which were Federal. Federal and State monies owing in this calculation would be the sole responsibility of the Respondent. The new figure for consideration of repayment by the Petitioner now becomes approximately \$27,527.70.

8. From the amount of \$27,527.70 Respondent needs to calculate the amount of State funds that are represented and the amount of Federal funds that are represented. Once that calculation is made the State funds need to be subtracted from the above \$27,527.70. The State law in effect at the time of this fraud would free the Petitioner from repayment and allow the Petitioner to retain those funds. This would not be the case with Federal funds.

9. With that new figure which represents a Federal fund obligation, any Federal monies not required to be repaid to the Federal government should be subtracted. The remaining figure is that amount of money Petitioner must repay to the Respondent.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

**DECISION**

The Respondent's decision to require Petitioner to immediately repay the Respondent the amount of \$39,198.00 representing disallowed costs resulting from daycare provider fraud was in error. Calculations in accord with Paragraphs 7, 8 and 9 in the Conclusions of Law represent the correct amount of monies owing by Petitioner and shall be calculated by the Respondent with all due haste and reported to the Petitioner for payment by Petitioner to Respondent within 30 days of notice of the actual dollar amount.

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and to present written arguments regarding this Decision issued by the Undersigned in accordance with N. C. Gen. Stat. § 150B-36.

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Department of Health and Human Services.

This the 1st day of December, 2003.

---

Augustus B. Elkins II  
Administrative Law Judge