

NORTH CAROLINA REGISTER

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March 1, 2011

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Contact List for Rulemaking Questions or Concerns

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

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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NORTH CAROLINA REGISTER
Publication Schedule for January 2011 – December 2011

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 31st legislative day of the session beginning:	270 th day from publication in the Register
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
25:16	02/15/11	01/25/11	03/02/11	04/18/11	04/20/11	06/01/11	05/2012	11/12/11
25:17	03/01/11	02/08/11	03/16/11	05/02/11	05/20/11	07/01/11	05/2012	11/26/11
25:18	03/15/11	02/22/11	03/30/11	05/16/11	05/20/11	07/01/11	05/2012	12/10/11
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26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
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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. 81

**IMPROVING THE ENVIRONMENT WHILE PROTECTING SMALL BUSINESS AND
INDUSTRY FROM UNNECESSARY COSTS FROM GREENHOUSE GAS PERMITTING**

WHEREAS, on January 2, 2011, the first U.S. Environmental Protection Agency (EPA) regulations addressing greenhouse gas (GHG) emissions under the Clean Air Act took effect nationwide; and

WHEREAS, to avoid a harsh result on small businesses and industry, EPA "tailored" the federal greenhouse gas program to limit the impact of the new permitting requirements to large industrial sources, thereby shielding millions of small businesses from GHG permitting requirements and avoiding more than \$54 billion in additional costs for those small businesses nationally; and

WHEREAS, North Carolina businesses should have the benefit of the federal GHG thresholds that limit the impact of new greenhouse gas permitting requirements to the largest industrial sources; and

WHEREAS, the North Carolina Environmental Management Commission adopted a tailoring rule designed to protect North Carolina's small businesses by raising the permitting threshold under the state air quality program to require permits only for large greenhouse gas sources that are required to have a permit under the federal rule; and

WHEREAS, the Rules Review Commission approved this proposed state tailoring rule, but approximately 18 citizens subsequently filed letters objecting to that rule; and

WHEREAS, under laws adopted by the General Assembly, the filing of these letters of objection had the effect of prohibiting the implementation of the state tailoring rule until the General Assembly has had an opportunity to evaluate the merits of that rule; and

WHEREAS, North Carolina General Statute § 150B-21.3(c) empowers the Governor to adopt an executive order providing for the immediate implementation of a rule to which objections have been filed when the Governor determines that immediate implementation of the rule is necessary to protect the public health, safety or welfare; and

WHEREAS, if the state tailoring rule does not go into effect, greenhouse gas permitting requirements will apply to tens of thousands of residential and commercial buildings and small businesses in North Carolina that emit relatively small amounts of greenhouse gases and will impact the state's economy by imposing over a billion dollars in unnecessary costs; and


WHEREAS, North Carolina continues to experience high unemployment as a result of the severe recession and imposing unnecessary burdens on business and industry would further slow economic recovery and harm the public welfare.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, particularly N.C. Gen. Stat. § 150B-21.3(c), **IT IS ORDERED:**

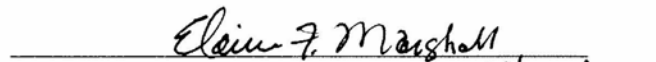
15A NCAC 02D .0544 as amended by the Environmental Management Commission on November 18, 2010, and approved by the Rules Review Commission on December 16, 2010, shall become effective this date and shall remain in effect unless the rules are disapproved by act of the General Assembly in accordance with N.C. Gen. Stat. § 150B-21.3(b1) or a court order makes modification or rescission of this Executive Order appropriate or necessary.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-eighth day of January in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.




 Beverly Eaves Perdue
 Governor

ATTEST:


 Elaine F. Marshall *by and through*
 Secretary of State *Radney S. Moore*
Chief Deputy Secretary

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Dick Bachelder
ADS, Inc/PSA, Inc
4640 Trueman Blvd
Hilliard, OH 43206

For: Revised Innovative Approval for "Biodiffuser" gravelless subsurface wastewater system

DENR Contact: Ted Lyon
1-919-715-3274
Fax: 919-715-3227
ted.lyon@ncdenr.gov

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: http://www.deh.enr.state.nc.us/osww_new/new1//index.htm.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or ted.lyon@ncdenr.gov, or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

**Department of Health and Human Services
Medical Care Commission**

Notice of Comment Period

The Department of Health and Human Services will be receiving comments on the following Report during the 30 day period (March 2, 2011 through March 31, 2011).

Comments should be addressed to the following:

Christopher B. Taylor, CPA, Assistant Secretary
North Carolina Medical Care Commission
2701 Mail Service Center
Raleigh, North Carolina 27699-2701
Chris.Taylor@dhhs.nc.gov

With a copy to:

Kip Sturgis, Esquire Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001
ksturgis@ncdoj.gov

**An Economic Analysis of the
Certificate of Public Advantage (COPA) Agreement
Between the State of North Carolina and Mission Health**

February 10, 2011

Prepared by
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Vice President
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Washington, DC

An Economic Analysis of the Certificate of Public Advantage Agreement Between the State of North Carolina and Mission Health

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I. EXECUTIVE SUMMARY

In late 1995, the only two acute-care hospitals in Asheville, North Carolina, merged to form Mission Hospital, an entity owned and operated by Mission Health Systems ("MHS").¹ Due to concerns that the merger would significantly increase Mission Hospital's market power in one or more markets in Western North Carolina ("WNC"),² the State of North Carolina entered into a Certificate of Public Advantage ("COPA") agreement with the hospitals as a condition for allowing the merger to go forward.³ The regulatory requirements embodied in the COPA were designed to provide an offset to the competitive discipline being eliminated by the merger, thus helping to ensure that consumers would not face higher prices or reduced quality of care as a result of the merger.

In the years since the initial COPA agreement was entered into, health care markets have changed considerably. In recognition of this, the State of North Carolina commissioned this economic study to assess whether the existing Second Amended COPA (hereafter, simply "the COPA") should be modified in any way to better protect consumers against the loss of competition that resulted from the 1995 merger.⁴ In assessing whether such modifications were warranted, I was asked to focus solely on competitive issues, and not to consider whether the COPA should be modified to better address policy issues such as access to care, the financial impact of the COPA on MHS or other entities, or the COPA's impact on physicians' incentives to practice in the WNC region.

The assessment of what, if any, modifications to the COPA are warranted is a very fact-specific one. In conducting this study, I collected and assessed information from a variety of sources, including interviews (both in-person and over the telephone) with individuals at MHS and other area hospitals, with health insurance plans operating in the WNC region, and with local physicians. I also reviewed and analyzed regulatory filings and data, public documents relating to competition in the WNC region, public data relating to physician admitting practices and

¹ Memorial Mission Hospital and St. Joseph's Hospital signed a cooperative agreement in December 1995 to manage and operate the two hospitals as an integrated entity. Three years later, Memorial Mission Hospital acquired St. Joseph's Hospital under the ownership of Mission-St. Joseph's Health System, Inc. In December 2003, Mission-St. Joseph's Health System, Inc. was renamed Mission Health, Inc. and the merged hospitals were renamed Mission Hospital. In the remainder of this report I refer to the initial integration of the two hospitals, and their subsequent merger, simply as the 1995 merger. See the Second Amended Certificate of Public Advantage at pages 1 and 2.

² For the purposes of this report, I define the WNC region as the Service Area defined under the COPA (Section I Definitions): the 17 county region consisting of Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey. For the purposes of this report, I define MHS's Primary Service Area ("PSA") as Buncombe and Madison counties.

³ See the initial COPA agreement dated December 21, 1995. The COPA agreement was subsequently amended on October 8, 1998 to account for the formal merger of the two hospitals and again in June 2005 "to reflect changes in facts and circumstances, including the accomplishment or expiration of certain provisions of the COPA, and to provide better tools and mechanisms for oversight by the State." See Second Amended COPA at page 1.

⁴ The two entities within the State that commissioned this study were the North Carolina Department of Health and Human Services and the Office of the Attorney General for North Carolina.

patient hospital choice, and confidential business data and documents. More generally, I drew upon my experience conducting similar types of economic analyses, especially in the area of hospital mergers, over the last 20 years as a private economic consultant at Charles River Associates and while serving in senior positions at the Antitrust Division of the U.S. Department of Justice and at the Federal Trade Commission's Bureau of Economics.

In assessing whether modifications to the COPA are warranted, I have adopted the following critical assumption: that the regulatory scope of the COPA should be limited to addressing competitive problems that arose as a result of the 1995 merger, and that the COPA should not seek to regulate conduct or markets that were unlikely to have been impacted by that merger. Rather, any problems that exist but that are unrelated to the 1995 merger should instead be addressed through other means such as existing state or federal antitrust laws, or existing Certificate of Need laws.

The motivating justification for the COPA's restrictions likely remains valid today: the 1995 merger likely resulted in a significant and enduring reduction in competition in one or more markets. Thus, the COPA's regulatory restrictions to replace that lost competitive discipline remain appropriate. Certain modifications of those regulations, however, are warranted as a means of increasing the regulatory protection that the COPA offers while simultaneously ensuring that the COPA is targeted solely on those areas where the merger likely reduced competition.

The four principal conclusions and recommendations from this study are summarized below.

1. *The COPA's Margin Cap creates an incentive and opportunity for MHS to evade the intent of the COPA: by expanding into other markets (with respect to either geography or service), MHS can increase prices and realize higher margins than the COPA seeks to allow.*

The COPA regulates MHS's average margin across all services and geographies. By expanding into lower-margin markets, MHS can reduce its average margin, thus allowing MHS to raise price without violating the Margin Cap. MHS can also lower its average margin, thus allow it to increase price, by incurring additional expenses that are not covered by the COPA's Cost Cap. Finally, although the Margin Cap is intended to protect commercial payers from incurring excessive rate increases, by looking at MHS's margin across both commercial and government payers, MHS may be able to impose excessive rate increases.

To address these problems, I recommend that:

- The existing Margin Cap should be replaced with a Price Cap so that MHS cannot meet its margin cap by incurring additional costs relating to services outside the scope of the Cost Cap.
- The Price Cap should only be applied to those markets originally affected by the merger, and a separate Price Cap should be calculated for each of those markets.
- The Price Cap should be limited to regulating prices to commercial payers, not to government payers or other payers for whom prices are unlikely to depend significantly on hospital competition.

2. *The COPA's Cost Cap offers only limited regulatory protection for consumers, yet it creates undesirable incentives for MHS to increase outpatient prices and volumes.*

The COPA's Cost Cap regulates Mission Hospital's inpatient and outpatient expenses, but does not prevent MHS from incurring excessive expenses relating to other markets or services (e.g., the cost of acquiring physician practices). As a result, it provides only limited protection to consumers. Moreover, if the COPA's Margin Cap is replaced by a Price Cap, then there may be little need for a Cost Cap. Finally, the methodology by which the COPA Cost Cap is calculated also creates an incentive for MHS to reduce the COPA's measure of expenses by increasing outpatient prices and, in some cases, by increasing outpatient volume.

To address these issues, I recommend that:

- The State should consider eliminating the COPA's Cost Cap. The greater the State's confidence in the effectiveness of a new Price Cap (to replace the existing Margin Cap), the greater the justification for eliminating that Cost Cap.
- If the State retains the Cost Cap, then the COPA should address incentive problems relating to the Cost Cap methodology by adopting a separate Cost Cap for inpatient services and for outpatient services, and change the methodology by which "Equivalent Outpatient Discharges" are calculated.

3. *The COPA creates an incentive and opportunity for MHS to engage in "Regulatory Evasion" by which MHS can evade price (or margin) regulation in one market by instead imposing price increases in a related, but unregulated, market.*

MHS has an incentive to evade price (or margin) caps by tying the sale of its regulated services to other unregulated services, and then raising the price of that unregulated service. Although the COPA currently prevents MHS from tying with respect to physician services, I recommend that the scope of the COPA's restrictions on tying be expanded to also cover any other services that MHS offers.

The State may also wish to also provide additional protection against Regulatory Evasion by requiring MHS to adopt contracting firewalls requiring MHS to contract separately, and with distinct contracting teams, for services in markets affected by the 1995 merger and for services in all other markets. In determining whether contracting firewalls are warranted, the State should balance what may be limited incremental benefits from these contracting firewalls with possible costs associated with impeding legitimate efforts by MHS to more fully integrate the provision of care between distinct contracting entities, and thus lower costs and improve quality.

4. *The COPA's Physician Employment Cap may be unnecessary to address competitive concerns attributable to the 1995 merger.*

The 1995 merger did not result in any significant reduction in competition between the two Asheville hospitals with respect to physician services, and thus the COPA's Physician Employment Cap is unnecessary to counter any merger-related increase in MHS's market power associated with physician services.

An alternative merger-related justification for the COPA's physician restrictions is that the merger may have increased the risk that MHS could foreclose competition with rival hospitals by employing physicians that might otherwise split their practice between MHS and those rival hospitals. The evidence suggests, however, that the COPA's Physician Employment Cap may have limited value in preventing such a problem. On the other hand, the Physician Employment Cap may cause harm by preventing MHS from pursuing legitimate efforts to integrate care, and thus lower costs and improve quality. Thus, the State should consider dropping the COPA's restrictions on MHS's employment of physicians and instead let MHS's acquisitions of physician practices be governed by the same laws and regulations that govern other hospitals.

II. QUALIFICATIONS

I am an economist with a specialty in the fields of industrial organization and the economics of competition. I hold a Ph.D. in economics from Stanford University and a B.A. in economics from the University of California at Berkeley. I have published, made professional presentations, testified, and consulted in the areas of industrial organization, competition, and antitrust economics for approximately 20 years. A copy of my curriculum vitae is provided in Appendix 1.

During my professional career, I served as Deputy Director for Antitrust in the U.S. Federal Trade Commission's ("FTC's") Bureau of Economics. In that position, I was responsible for directing the economic analysis of all antitrust matters before the FTC and overseeing its staff of approximately 40 Ph.D. economists. Prior to that, I held several positions in the Economic Analysis Group of the U.S. Department of Justice's ("DOJ's") Antitrust Division, including Assistant Chief of the Economic Regulatory Section. In all of these positions, my antitrust analyses have focused on assessing competition and evaluating the likely competitive effects of firms' conduct.

I am currently a Vice President in the Washington, DC office of Charles River Associates ("CRA"), an economics and business consulting firm. At CRA, my work has focused almost exclusively on issues relating to competition, with a substantial portion of that work relating to both merger and non-merger matters before the FTC and the Antitrust Division of the DOJ, including matters in which I have been retained by the government to serve as an expert witness on its behalf.

Both while I was with the DOJ and FTC, and since joining CRA, I have been actively involved in analyzing competition in the healthcare industry. While at the DOJ, I was a member of the small working group that wrote, and subsequently updated, the DOJ/FTC *Statements of Antitrust Enforcement Policy in Health Care*. I also served during that period as a member of President Clinton's Health Care Task Force, and as a member of President Bush's Interagency Task Force on Information in the Health Care Industry. Since joining CRA, I have testified at the Federal Trade Commission/Department of Justice *Joint Hearings on Health Care and Competition Law and Policy*, and have been retained by private parties, and both state and federal antitrust agencies, to provide analysis and expert testimony regarding competitive issues in the health care sector. Finally, I have made presentations and published articles in peer-reviewed journals regarding competition in the health care industry.

III. BACKGROUND

The 1995 merger likely provided Mission Hospital with substantial market power with respect to inpatient services and possibly with respect to outpatient services.⁵ The COPA addresses that market power through three principal regulatory constraints: a Cost Cap; a Price Cap; and a Physician Employment Cap.

A. Regulatory scope of the COPA

When analyzing competition, economists typically consider whether a firm enjoys significant market power, where market power can be thought of as a firm's ability to increase price above competitive levels. Here, the relevant question is whether the 1995 merger of Memorial Mission and St. Joseph in Asheville, the event which led to the original COPA agreement between the State and the hospitals, likely created significant market power in any relevant market. If so, then regulatory efforts to offset or reverse the effects of that increased market power may be appropriate.

However tempting it may be, the COPA should not be viewed as a vehicle for addressing competitive problems or healthcare policy issues that are unrelated to the merger. Rather, the regulatory scope of the COPA should be limited to addressing competitive problems that can be attributed to the 1995 merger.⁶ Problems unrelated to the 1995 merger, to the extent they exist, should instead be addressed through existing state or federal antitrust laws and regulations (e.g., North Carolina's Certificate of Need laws).

B. The impact of the 1995 merger

The proper scope of the COPA depends on an assessment of where the merger likely created substantial market power. As discussed below, the 1995 merger likely only created significant market power regarding inpatient, and possibly outpatient, services.

1. Merger-related market power in inpatient hospital services

In assessing what, if any, modifications to the COPA are warranted, I have not been asked to address whether the 1995 merger resulted in substantially increased market power with respect to inpatient hospital services, and thus warranted regulatory restrictions: such an inquiry would go well beyond the scope of this study and require a much more fact-intensive inquiry. Instead, I

⁵ References to inpatient and outpatient services in this report should be understood to refer to acute care and related medical services, not psychiatric, rehabilitation, substance abuse or other types of services.

⁶ Regardless of any philosophical considerations about the proper scope for regulation, this limitation on the scope of the COPA is necessary purely from a practical perspective: unless the scope of the COPA is limited to merger-related issues, there is no clear boundary for how far-reaching the COPA's regulations should be. Absent those boundaries, there is no way in which to assess whether further modifications to the COPA are warranted so as to achieve those broader (but undefined) goals.

have assessed the COPA given the assumption of a merger-related increase in inpatient hospital services market power.

Yet, while I do not independently seek to assess whether Mission Hospital has market power relating to inpatient hospital services that stems from the 1995 merger, the evidence I have seen is fully consistent with that assumption. Prior to the merger, Memorial Mission and St. Joseph likely provided significant competition to each other. These two hospitals were located only blocks away from each other, and were both viewed as large, full-service hospitals. Consistent with what I have learned from health insurers operating in the area, those two hospitals appear to have provided important competitive discipline to each other. In contrast, other hospitals in the WNC region appear to have provided, and continue to provide, substantially less competitive discipline to the Asheville hospitals. Thus, by merging Memorial Mission and St. Joseph, the most important competitive discipline facing these hospitals appears to have been lost, thereby creating substantial market power.

The facts are generally consistent with this assumption that Mission Hospital realized significant market power from the merger. While potentially a very imperfect proxy for market power, Mission Hospital's share of inpatient discharges in several counties in WNC is consistent with the assumption that Mission Hospital enjoys substantial market power with respect to inpatient hospital services. As shown in Table 1, Mission Hospital's share of discharges from several counties in WNC is not only quite high (e.g., Mission Hospital accounts for approximately 90 percent of all hospitalizations of patients living in Buncombe County), it has been growing over time.

Mission Hospital is also significantly different in several regards from neighboring hospitals, thus likely reducing payers' willingness to substitute from Mission Hospital to those other hospitals. As shown in Table 2, Mission Hospital is substantially larger than other hospitals, both in terms of bed capacity and patient census. For example, Mission Hospital averaged approximately 522 patients/day in 2009, with the next largest hospital in WNC (Pardee Memorial Hospital in Henderson County) averaging only 72 patients/day. Mission Hospital is also substantially larger than other area hospitals in terms of the number of physicians actively admitting to the hospital: Mission has over 300 actively admitting physicians on its staff, while the next largest hospital in WNC has only 58.⁷

Mission Hospital also offers a broader, and more specialized, scope of services than do the other hospitals in WNC. For example, Mission Hospital is the only hospital in the WNC region offering Level II trauma care and is the recognized center for specialized care in the region. Consistent with this, other hospitals in the area generally recognize that Mission Hospital is an

⁷ For the purposes of counting actively admitting physicians, I considered physicians with at least 12 admissions in the 12 month period ending June 30, 2010 (based on the State Inpatient data provided by Thompson Reuters). Alternative means of counting physicians (including counting only physicians that are not employed by a hospital) would not affect the conclusion that MHS has a much larger physician staff than any other local hospital.

important partner in providing healthcare services to the local community by offering services that those smaller hospitals cannot provide themselves. This difference in scope of services would make it difficult for payers to substitute away from Mission Hospital to those other hospitals in the region.

Geographic location also matters. In contrast to the two merging hospitals that now make up Mission Hospital and which were located only blocks away from each other, other hospitals in the WNC region are located many miles away from Asheville where managed care plans seek hospital coverage. The largest neighboring hospital (Pardee Memorial Hospital) that competes with Mission Hospital is approximately 25 miles away, while other hospitals in the WNC region are 15 to 110 miles away.

These data, as well as the information that I learned while interviewing physicians, health insurance providers and hospitals, are all consistent with the premise that Mission Hospital continues to enjoy substantial market power with respect to inpatient hospital services, and that this market power likely increased significantly as a result of the 1995 merger.

2. Merger-related market power in outpatient hospital services

I understand that both Memorial Mission and St. Joseph offered competing outpatient services at the time of the merger. Thus, the merger would have eliminated any competition between those two providers with respect to outpatient hospital services.

I have not sought to determine the extent to which Mission Hospital faces significant competition in the provision of those services. This competition could have come from physician clinics and offices, outpatient clinics or facilities, or other hospitals' outpatient facilities. Thus, I do not have a basis to conclude whether the merger likely created significant market power with respect to outpatient hospital services at the time of the merger or whether any such increased market power in outpatient hospital services remains today. Inasmuch as the COPA regulatory restrictions do cover outpatient services provided by Mission Hospital, however, I assume for the purposes of my study that the merger did create significant market power that endures today.⁸

3. Merger-related market power and physician services

I have seen no evidence suggesting that the creation of Mission Health resulted in a significant increase in market power with respect to physician services. In particular, I understand that neither of the merged hospitals employed any significant number of physicians prior to the

⁸ If this assumption can be shown invalid, it may be appropriate to drop regulations in the COPA that relate to those outpatient services.

merger. Thus, the 1995 merger does not appear to have resulted in a significant increase in physician market power that warrants offsetting regulatory restrictions.⁹

C. The COPA imposes three principal regulatory constraints

I focus on three key regulations in the COPA: a Cost Cap; a Margin Cap; and a Physician Employment Cap.¹⁰ A general description of those constraints is provided below.

1. The COPA's Cost Cap

Under the COPA, the rate at which Mission Hospital's "cost per adjusted patient discharge" ("CAPD") increases must not exceed the rate of increase in the producer price index for general medical and surgical hospitals in the U.S.¹¹

The CAPD as defined by the COPA measures MHS's costs over both inpatient and outpatient operations, but only for the two merged Asheville hospitals. Thus, the scope of the COPA's Cost Cap regulation is appropriately limited to just those services and geographies for which the 1995 merger likely significantly increased MHS's market power.

2. The COPA's Margin Cap

Under the COPA, the operating margin of MHS over any three-year period shall not exceed by more than one percent the mean of the median operating margin of comparable hospitals (provided that this cap will not fall below three percent).¹²

The COPA's Margin Cap covers MHS's margins across its entire scope of operations: inpatient and outpatient, hospital and physician services, and all the geographic regions in which MHS operates. Thus, the scope of this regulation extends well beyond those services and geographies in which the 1995 merger likely significantly increased MHS's market power.

3. The COPA's Physician Employment Cap

Under the COPA, MHS is not permitted to employ, or enter into exclusive contracts with, more than 20 percent of the physicians practicing in Buncombe and Madison counties. This restriction

⁹ As discussed below, I have also considered whether the 1995 merger was likely to have increased concerns that MHS could engage in a vertical foreclosure strategy that might warrant regulatory restrictions relating to physician services.

¹⁰ Although the COPA also includes other regulatory restrictions, I have seen no evidence suggesting that modifications to any of those restrictions is warranted.

¹¹ See Section 4.1 of the COPA.

¹² See Section 4.2 of the COPA.

applies to primary care physicians in each of the three following areas: family practice/internal medicine; general pediatrics; and obstetrics/gynecology.

D. The interplay between cost and margin caps

There exists an important interplay between the COPA's Cost and Margin caps in preventing problems that might otherwise emerge following the creation of significant market power following the 1995 merger. This interplay means that changes to one aspect of the COPA's regulatory structure cannot necessarily be done without regard to how, or whether, other aspects of the COPA's regulatory structure is changed.

The COPA's margin cap helps prevent post-merger price increases that might otherwise result from increased market power. Regulators often use margin caps, rather than price caps, in situations where the regulated firm's costs are likely to change over time in ways that the regulator cannot readily observe: since changes in costs normally warrant changes in a regulated price cap, the lack of cost observability can make a price cap difficult to implement. A margin cap, however, offers the promise of automatically compensating for changes in costs: higher costs allow the regulated firm to impose a comparable price increase while leaving margins unchanged.

A margin cap by itself, however, can be of limited effectiveness in regulating a monopolist. Absent additional regulation, a monopolist can meet its margin cap by simultaneously increasing both prices and costs. Moreover, while this strategy of spending any merger-related revenue increase may at first seem unattractive, in fact such a strategy may be quite attractive – especially for non-profit firms such as Mission Hospital.¹³ For example, a non-profit hospital might have an incentive to increase post-merger prices to fund extensive architectural renovations that have little impact on quality of care, increased salaries that may (or may not) allow the hospitals to attract higher-quality employees, or investments in new medical technologies that yield significant consumer benefits (e.g., new operating rooms or new capital equipment). A regulated monopolist hospital may also respond to increased market power by raising prices so that it can fund an expanded scope of services (e.g., expanded outpatient services, offering a new transplant program, or acquiring physician practices) or to extend the geographic region in which it operates.

This incentive for a regulated monopolist to increase costs as a way of relaxing a margin cap can be addressed by imposing a cost cap along with the margin cap. Note, however, that in order to be fully effective, the cost cap needs to be broad enough in scope that it covers all areas that are covered by the margin cap. For example, if the margin cap covers all geographies and services

¹³While I use the economic terminology "monopolist" throughout this report to describe certain economic phenomenon that are relevant to understanding MHS's incentives and the COPA, and while I believe that MHS likely enjoys substantial market power in certain markets, I do *not* mean to suggest that MHS is a monopolist facing absolutely no competition.

(as is the case with the COPA Margin Cap), then a cost cap that is limited to costs relating to inpatient and outpatient services in a particular geography (as is the case with the COPA Cost Cap) will still allow the monopolist to increase inpatient and outpatient prices, yet still meet the margin cap by increasing expenditures relating to physician services or by opening or acquiring facilities in other geographies outside the scope of the Cost Cap.

IV. INCENTIVE PROBLEMS UNDER THE EXISTING COPA REGULATIONS

Economists have long recognized the difficulties of regulating monopolists and how regulation, no matter how carefully crafted and implemented, can inadvertently create undesirable incentive problems. Not surprisingly, some of these incentive problems emerge with respect to the COPA's regulation of MHS.¹⁴ These problems are described below, with recommendations on how the COPA can be modified to address those problems provided in the next section.

A. Incentive problems created by the Cost Cap

The COPA's Cost Cap suffers from two problems. First, the mechanics of how Mission Hospital's costs are calculated creates an incentive (whether or not it is acted upon) for MHS to game the system: by increasing outpatient prices, MHS makes it easier to meet its Cost Cap. Second, the scope of the Cost Cap is too narrow to adequately prevent MHS from raising prices with respect to inpatient or outpatient services at Mission Hospital, and then using those merger-related revenues to expand into other services or geographies.

1. Incentives to raise outpatient prices and expand outpatient services

The COPA's Cost Cap limits Mission Hospital's "cost per adjusted patient discharge" ("CAPD"). The manner in which the COPA defines the CAPD, however, has the effect that Mission Hospital can increase its number of effective calculated outpatient discharges, thus lower the CAPD, by increasing outpatient prices. This can be seen by looking at the specifics by which the CAPD is calculated.¹⁵

- 1) Calculate Mission Hospital's "case mix adjusted discharges" by multiplying its inpatient discharges by its case mix index.
- 2) Calculate Mission Hospital's "revenue per inpatient discharge" by dividing its inpatient revenue by its case mix adjusted discharges (as calculated in (1) above).

¹⁴ It should be stressed that although some of MHS's conduct appears to be consistent with the incentive problems I identify below, I offer no opinion as to whether MHS has actually acted on those incentives. Addressing that question would likely require an extremely fact-intensive investigation.

¹⁵ See Section 4.1 of the COPA.

- 3) Calculate Mission Hospital's "equivalent outpatient discharges" by dividing its outpatient revenue by its revenue per inpatient discharge (as calculated in (2) above).
- 4) Calculate Mission Hospital's "total adjusted discharges" by adding its case mix adjusted discharges and its equivalent outpatient discharges (as calculated in (3) above).
- 5) Calculate Mission Hospital's "cost per adjusted patient discharge " (CAPD) by dividing its operating expenses by total adjusted discharges (as calculated in (4) above).

In essence, the COPA calculates the CAPD by first defining a common measure of volume across both inpatient and outpatient services. The COPA does this by defining a unit of outpatient service (the "equivalent outpatient discharges") as the volume of outpatient services that ends up equalizing inpatient revenue per unit and outpatient revenue per unit. This is illustrated in the Base Case in Table 3 which provides a hypothetical example in which the hospital is assumed to do 1,200 inpatient procedures at a price of \$1,000/procedure, and 800 outpatient procedures at a price of \$800/procedure. Here, the "equivalent outpatient discharges" is calculated so that the price per procedure is equalized at \$1,000 for both inpatient and outpatient procedures. Once outpatient volume is calculated in this way, Table 3 shows how it is straightforward to then calculate the hospital's "cost per adjusted patient discharge" (based on the hospital's assumed costs).

Calculating Mission Hospital's CAPD in this way, however, creates a serious incentive problem. As illustrated in the middle block of Table 3, Mission Hospital can increase outpatient revenue by increasing outpatient prices. That increased outpatient revenue in turn increases the number of "equivalent outpatient discharges" that are calculated according to the COPA methodology.¹⁶ That increased number of equivalent outpatient discharges will, in turn, increase total adjusted discharges, and thus reduce the calculated CAPD: as illustrated in Table 3, the assumed 20 percent outpatient price increase lowers the CAPD from \$800 to \$762, a reduction of almost 5 percent. Thus, the COPA creates an incentive for Mission Hospital to lower its CAPD, and make it easier to meet the Cost Cap, by raising outpatient prices.¹⁷

The COPA Cost Cap may also create an incentive for Mission Hospital to increase outpatient volume as a means of lowering the calculated CAPD. Just like an increase in outpatient prices, increased outpatient volumes increase equivalent outpatient discharges. Increased outpatient volume, however, will also increase Mission Hospital's operating expenses. Whether that increase in outpatient volume increases, or reduces, the CAPD will depend how much the increase in outpatient volume increases total expenses. This effect is illustrated in the bottom

¹⁶ In essence, the COPA defines a unit of outpatient services to be equal to \$1,000 worth of outpatient services. If the prices for all individual outpatient services increase, then the actual volume of outpatient services associated with that \$1,000 of outpatient care has to fall. Thus, even with no change in the actual amount of outpatient care, the measured volume of outpatient care (i.e., a package of \$1,000 of outpatient care) will increase.

¹⁷ As discussed in more detail below, the COPA's Margin Cap cannot be relied upon to prevent this increase in outpatient prices.

block of Table 3 which shows how increasing outpatient volume by 20 percent in addition to increasing outpatient prices by 20 percent can further reduce the CAPD.¹⁸

2. Differing scope of the Cost Cap and the Margin Cap

The principal purpose of the Cost Cap is to prevent MHS from meeting its Margin Cap by pairing price increases with an accompanying increase in costs, and thus keeping margins unchanged. Yet, the Cost Cap can only prevent this form of regulatory evasion if the scope of the Cost Cap is as broad as the scope of the Margin Cap.

The COPA's Cost Cap, however, only covers inpatient and outpatient services provided by MHS's Mission Hospital. Thus, while the Cost Cap prevents MHS from spending money relating to post-merger price increases on inpatient and outpatient services in Asheville, the Cost Cap does not prevent MHS from satisfying the Margin Cap by spending merger-related revenues in other areas, e.g., expanding its geographic reach outside Mission Hospital's PSA, or expanding the scope of services it provides in Mission Hospital's PSA.

B. Incentive problems created by the Margin Cap

The COPA's Margin Cap creates several undesirable incentives that should be addressed.

1. The COPA creates incentives for MHS to increase its costs

As discussed, MHS has an incentive to evade the Margin Cap by pairing price increases in markets where it enjoys market power with accompanying cost increases. Moreover, the COPA's Cost Cap cannot be relied upon to prevent these cost increases since the Cost Cap does not cover all services or geographies.

2. The COPA may create an unfair competitive advantage for MHS

The COPA's Margin Cap creates an incentive for MHS to engage in cross-subsidization across markets whereby it raises price in those markets where it has market power, and uses those revenues to subsidize its operations in other more competitive markets. Thus, the Margin Cap creates an incentive for MHS to offer particularly low prices when expanding into new geographic regions (e.g., offering outpatient services in counties other than its PSA) or offering new services. This willingness to offer particularly low prices, while benefitting consumers in the short run, could lead to market distortions and create what might be viewed as an unfair advantage for MHS relative to other competitors.

¹⁸ Mission Hospital has, in fact, been increasing its outpatient revenues more rapidly over time than its inpatient revenues. From 2004 to 2009, Mission Hospital's inpatient gross revenues increased by approximately 57 percent, while its outpatient gross revenues increased by approximately 77 percent. As a result, outpatient services increased from approximately 30 percent of Mission Hospital's gross revenue to 33 percent.

The Margin Cap also creates an incentive for MHS to lower its margin by paying higher-than-normal prices for certain inputs. This might take the form of MHS being willing to pay more than others in competitive bidding for hospitals, for empty land on which to build new facilities, or to outbid rivals when purchasing physician practices.

3. The COPA creates incentives for MHS to expand into low margin markets

The COPA's Margin Cap requires that MHS's average margin across all services and all geographies not exceed a specified margin. MHS, however, can reduce its average margin, and thus make it easier to meet the Margin Cap, by expanding into new services and geographies in which MHS anticipates realizing a lower-than-average margin.¹⁹

The incentive for MHS to expand operations to lower-margin markets is consistent with the observation that, by adding McDowell Hospital and Blue Ridge Hospital to its system, MHS has reduced its average margin subject to the COPA's Margin CAP: as shown in Table 4, by expanding its scope of operations beyond just Mission Hospital, MHS's operating margin falls from approximately 5.1 percent to 4.5 percent.²⁰ Similarly, the margins at two other hospitals with which MHS is in the process of affiliating (Transylvania Community Hospital and Angel Medical Center) are also likely to be lower than the margin at Mission Hospital.²¹ Thus, if either of those two hospitals were eventually acquired by MHS it would likely further reduce the average margin that is currently subject to the Margin Cap.

4. The Margin Cap may provide limited relief for commercial payers

Because Medicare and Medicaid payments to hospitals are largely unaffected by competition, the principal category of payers requiring protection from the reduced competition resulting from the 1995 merger are commercial health plans and their enrollees. The COPA Margin Cap, however, does not distinguish between MHS's margin on commercial accounts versus its margin relating to other patients (e.g., Medicare, Medicaid and self-pay/uninsured). To the extent that Medicare and Medicaid patients represent lower margin business (as generally believed to be the case), then MHS's margin on commercial patients can exceed the Margin Cap, even though MHS's average margin will still meet that Margin Cap.

¹⁹ The COPA's Cost Cap cannot be relied upon to prevent this type of expansion into low-margin services and geographies: as noted above, the COPA's Cost Cap only covers Mission Hospital's inpatient and outpatient services, and would not prevent MHS from expanding into other services (e.g., employing more physicians) or into other geographies.

²⁰ I do not address whether MHS's expansion into these low-margin markets serves some other important public policy goal, e.g. the infusion of necessary capital or helping to ensure that a hospital can remain open.

²¹ Although I do not have data confirming these relative margins, small rural hospitals such as Transylvania Community Hospital and Angel Medical Center frequently face significant financial difficulties, with those financial difficulties oftentimes a reason for why those hospitals seek a relationship with a financially stronger partner.

The greater MHS's share of Medicare and Medicaid patients (or more generally, the greater the share of non-commercial pay patients with low margins), the more that MHS's margin on commercial patients can exceed the regulated Margin Cap. With the COPA's regulated margin cap based on margins at comparable hospitals,²² then if MHS's payer mix becomes more heavily weighted towards Medicare and Medicaid than those comparable hospitals, MHS will be able to increase prices to commercial payers without exceeding the regulated Margin Cap.²³

C. The COPA creates incentives for Regulatory Evasion

The COPA creates an incentive for MHS to engage in what economists often refer to as "Regulatory Evasion," a situation in which a regulated monopolist responds to price regulation in one market by instead raising prices in a second unregulated market.²⁴ In the context of the COPA, this evasion can arise if MHS, unable to increase inpatient or outpatient prices because of regulation, instead increases the price it charges for unregulated services such as physician services or services at another facility. If MHS can condition the sale of its regulated inpatient or outpatient services (where it likely has significant market power) on a health insurers' willingness to also purchase its higher-priced unregulated service, then MHS essentially "shifts" the market in which it extracts its higher price.²⁵

The traditional approach to preventing Regulatory Evasion is to attempt to prevent the monopolist from tying its regulated product to some other unregulated problem. If those ties can be prevented, then the monopolist can no longer impose a price increase in the secondary market since consumers no longer need to purchase that higher-priced product as a condition to purchasing the regulated product.

The COPA currently incorporates language that limits MHS's ability to engage in a tie by requiring that MHS "shall not require managed-care plans to contract with its employed doctors

²² See Section 4.2 of the COPA.

²³ According to data provided by MHS, Medicare and Medicaid accounted for approximately 63 percent of its gross revenue in 2008 (increasing slightly to 65 percent in 2010). This is slightly higher than the nationwide average across community hospitals in which Medicare and Medicaid accounted for approximately 56 percent of gross revenue in 2007. (See "The Economic Downturn and Its Impact on Hospitals," The American Hospital Association, January 2009, page 4). It is also higher than the average for hospitals rated by Moody's Investors Service as Aa2 and Aa3 in which Medicare and Medicaid accounted for approximately 48 percent and 50 percent of gross revenue, respectively. These Moody's credit rated hospitals are particularly relevant because the operating margins at these hospitals are used in part to determine the operating margin benchmark specified by Section 4.2 of the COPA. (See "Moody's U.S. Public Finance – Not-for-Profit Hospital Medians for Fiscal Year 2008," Moody's Investors Service, August 2009, page 21).

²⁴ Regulatory evasion can also occur when the second market is regulated, as long as the second market is somehow "less" regulated.

²⁵ It may seem that the solution to Regulatory Evasion is to expand the scope of regulation by extending price (or margin) caps to those secondary markets. Expanding the scope of regulation, however, can create a slippery slope of increased regulatory entanglement in which price (or margin) caps end up being applied to an increasing number of otherwise competitive secondary markets in an effort to prevent the monopolist from finding a market in which it can shift its price increase.

as a precondition to contracting with it or its constituent hospitals."²⁶ This language, however, only succeeds in preventing MHS from tying physician services to its sale of hospital services, while failing to prevent possible ties between Mission Hospital and other MHS services such as outpatient services in other geographies, or inpatient services provided at other MHS hospitals.

D. MHS conduct appears to be consistent with incentive problems

The incentive problems associated with the COPA regulation appear to be consistent with MHS's observed conduct and complaints about MHS's conduct that have been voiced by certain parties.²⁷

1. MHS expansion into other geographies and services

The COPA creates a variety of incentives for MHS to expand its operations into other services and into new geographies. These incentives are consistent with MHS's historical conduct, as well as its possible plans for the future:

- MHS historically expanded its hospital network with the acquisition of Blue Ridge Regional Hospital in Mitchell county and the McDowell Hospital in McDowell county;
- MHS further expanded its hospital network by recently agreeing to manage the operations of Transylvania Community Hospital in Transylvania county;²⁸
- MHS has plans to further expand its hospital network to include Angel Medical Center in Macon county;²⁹
- MHS attempted to expand its scope of hospital operations by bidding to manage the operations of Haywood Regional Medical Center in Haywood county and the WestCare Health System with hospitals in Swain and Jackson counties;³⁰

²⁶ See Section 5.2 of the COPA.

²⁷ It is worth repeating that, while the above-mentioned conduct is consistent with the previously discussed incentive problems created by the COPA, I have not sought to determine the extent to which the COPA likely caused any of that conduct. Yet, even without showing that MHS is necessarily acting on these incentives to any significant degree, it would be prudent to seek to reduce or eliminate those incentive problems.

²⁸ MHS recently announced that it will manage Transylvania Community Hospital and its affiliates as of January 1, 2010. See Mission Health System press release dated December 27, 2010.

²⁹ According to a recent publication, "[o]n May 13, Angel Medical Center's Board of Trustees decided to actively begin exploring a potential partnership with the Asheville-based Mission Health System." See "Angel Medical Center and Mission Health System consider partnership," The Macon County News, May 27, 2010.

³⁰ Press release: "HRMC, WestCare move forward together with Carolinas HealthCare System," Haywood Regional Medical Center (<http://www.haymed.org/about/news-and-events/43-main-news/63-hrmc-westcare-move-forward-together-with-carolinas-healthcare-system.html>).

- Concerns have been expressed that MHS plans to further expand its scope of employed physicians;
- MHS has plans to engage in a joint venture with Pardee Hospital to construct a new outpatient facility on the Buncombe/Henderson county line;³¹

2. *MHS expansion into lower margin services*

Consistent with MHS's incentive to expand into lower margin services as a means of lowering its average margin and thus relaxing the margin constraint, MHS continues to expand its relationships with rural hospitals that enjoy lower margins than the rest of MHS's operations.³² This comparison of margins is shown in Table 4.

3. *Joint contracting across services and geographies*

Regulatory Evasion could be achieved by MHS tying the sale of Mission Hospital's inpatient and outpatient services to the sale of some other more competitively provided service. This is consistent with what I understand MHS's contracting practice to be. In particular, I understand that, while MHS typically enters into separate contracts at separate rates for its different services (e.g., it does not charge the same rates for Mission Hospital as it does for its Blue Ridge hospital), there is at least some degree of informal linkage between these contracts. I also understand that the contracting personnel at MHS and at the managed care plans are generally the same individuals, and the contracts for MHS's different hospitals and services are generally negotiated concurrently.

4. *Concerns about "unfair competition"*

In the course of my interviews, some providers have expressed concerns that, as MHS has expanded the geographic scope of the services it offers, those providers will be at a competitive disadvantage. To some extent, this concern may simply reflect a competitor's normal concern that, as a new rival comes to town, there will be some loss of business.³³

Concerns about MHS's entry into new geographic or service markets, however, are also consistent with the fear that MHS is competing on an unequal competitive footing. In particular, concerns about competing with MHS may stem from MHS's potential incentive to cross-

³¹ Press release: "Mission and Pardee Announce Collaboration to Expand Healthcare Services," Mission News, July 1, 2010 (<http://www.missionhospitals.org/body.cfm?id=111&action=detail&ref=141>).

³² Policymakers will have to decide whether they view this incentive effect of the COPA as a good, or a bad, thing. While MHS's incentive to acquire those hospitals may reflect a market distortion caused by the COPA, policymakers may ultimately conclude that the benefits of the financial support that MHS provides those hospitals outweighs any harm from that market distortion.

³³ This concern would be heightened if the entrant came to town with a reputation for high quality service and the ability to offer certain services that the incumbent was less capable of offering.

subsidize services and offer lower-than-normal prices on new services so as to avoid exceeding the Margin Cap, or to offer higher-than-normal prices when competing to acquire physician practices or existing healthcare facilities.

V. ADDRESSING THE INCENTIVE PROBLEMS CREATED BY THE COPA

To address the previously discussed incentive problems, I recommend several modifications to the COPA.

A. Changing the Margin Cap to a market-specific Price Cap

I recommend that the COPA replace its existing Margin Cap with a Price Cap that limits the annual amount by which an aggregated measure of price can increase. Perhaps the most important reason for recommending this change is that the usual reasons for relying on a margin cap rather than a price cap do not apply here. As previously discussed, economists typically rely on margin caps when a price cap is not workable. This is most often the case when there are likely to be significant unobservable cost changes over time that would otherwise necessitate changes in the price cap. Absent a means to either observe underlying cost changes, or to observe how prices should be changing by looking at other (competitive) markets, a price cap may be impractical. Those impediments to a price cap, however, do not exist here. In particular, price changes over time can be regulated to ensure they do not exceed price increases at comparable hospitals in competitive markets.

Switching from a margin cap to a price cap should improve regulation in several ways. First, a price growth cap is a more direct means of addressing the concern that the 1995 merger created market power that allows MHS to raise price. Second, a price cap eliminates MHS's ability to evade the margin cap by inflating expenses along with prices. Third, a price cap eliminates the incentives that a margin cap can create for cross-subsidization, creating unfair competition, and creating distorting incentives by promoting MHS entry into low-margin markets. Fourth, switching from the Margin Cap to a price cap will make it easier for regulators to focus the regulation on those markets originally affected by the 1995 merger: inpatient and outpatient services at Mission Hospital.³⁴

In designing a new Price Cap for the COPA, the following considerations should apply:

- The Price Cap should regulate rates of change over time, not absolute levels.³⁵
- There should be separate Price Caps that apply to inpatient and to outpatient services.

³⁴ This focus would be much more difficult to achieve with a Margin Cap given the difficulties that would arise in allocating costs that were common across a variety of services or different geographies.

³⁵ This approach, unfortunately, locks in any excessive rates that Mission Hospital may already be charging.

- The Price Cap should apply only to those markets originally affected by the merger: inpatient and outpatient services in Mission Hospital's PSA.
- The Price Cap should only apply to, and be calculated with respect to, commercial payers.³⁶ This focus on commercial payers is consistent with the view that the original merger only affected competition for commercial contracts, and thus the regulation should only be directed at controlling price increases to that payer segment.

Calculating Mission Hospital's price for use in a price cap will involve three steps. First, a measure of Mission Hospital's case-weighted output should be defined, separately for inpatient and for outpatient services.³⁷ Second, Mission Hospital's net patient revenue should be determined, separately for inpatient and for outpatient services. Third, net patient revenue should be divided by case-weighted output to obtain an average case-mix adjusted price across all inpatient services, and across all outpatient services. Increases in these case-mix adjusted prices can then be restricted to not exceed increases of a suitably defined index.³⁸

Should the State replace the Margin Cap with a Price Cap, the State needs to decide whether that Price Cap should encompass the services that MHS hopes to offer at its proposed joint venture facility to be located on the Buncombe/Henderson county line.³⁹ As discussed below, a decision not to extend the Price Cap to cover those joint venture services may create strong incentives for MHS to engage in regulatory evasion whereby it seeks to force payers to purchase services from the joint venture but pay prices that exceed competitive levels. Thus, the State's decision not to extend the Price Cap to those services should depend on its comfort that it can prevent such Regulatory Evasion. Ultimately, however, I believe that the State can sufficiently limit concerns regarding Regulatory Evasion so that it is *not* necessary to extend the Price Cap to cover the joint venture's services.

³⁶ I recommend that the Price Cap apply to MHS's net revenues across all commercial payers rather than having the cap apply to each individual payer. A payer-specific Price Cap may be impractical and undesirable for several reasons. First, a payer-specific cap would leave open the question of how much MHS could charge a new payer. If no restrictions applied, the MHS would have strong incentives to charge a very high initial price so that subsequent growth would leave the Price Cap at a very high level. Such incentives would also reduce the likelihood that new payers would seek to enter the Asheville area, an undesirable outcome given the apparently very high payer concentration in the Asheville region. Second, a payer-specific cap would be more difficult to practically implement given that hospital rates to payers typically depend significantly on payer volume.

³⁷ For inpatient services, this can be done in the same way that case-mix adjusted discharges are calculated for purposes of the COPA's Cost Cap (see Section 4.1 of the COPA). For outpatient services, a comparable approach can be used; such approaches are used, for example, by the Centers for Medicare and Medicaid Services for use in the Outpatient Prospective Payment System.

³⁸ The COPA already uses a Producer Price Index for general medical and surgical hospitals, as well as an index of comparable hospitals (see Section 4.1 of the COPA) in calculating acceptable cost changes.

³⁹ See note 31.

B. Dropping, or revising, the Cost Cap

The principal motivation for the COPA's Cost Cap is to prevent MHS from increasing expenditures as a means of satisfying the Margin Cap. Once the Margin Cap is replaced by a Price Cap, however, the Cost Cap is largely relegated to providing "backup regulation" in the event that the Price Cap is imperfect. Accordingly, as long as the State replaces the COPA's Margin Cap with a Price Cap, the State should consider dropping the COPA's Cost Cap entirely.

Should the State choose to retain the Cost Cap as a type of regulatory backup to the Price Cap, that Cost Cap should be revised to eliminate the incentive that it currently gives Mission Hospital to increase outpatient prices, and possibly expand outpatient volume, as a means of reducing the estimated cost per adjusted patient discharge. As previously noted, this problem stems from how the COPA calculates equivalent outpatient discharges, and it can be addressed by adopting the following two changes.

- ***Adopt a separate Cost Cap for inpatient services and for outpatient services.*** Separating the Cost Cap for inpatient and outpatient services means that it is no longer necessary to find a common output measure for both inpatient and outpatient procedures.⁴⁰ As previously discussed, this need to find a common measure of output created the incentive for MHS to increase outpatient prices and possibly outpatient volumes.
- ***Calculate Case-Weighted Outpatient Discharges.*** Case-weighted outpatient discharges should be calculated in the same way that outpatient volume is calculated when estimating an average outpatient price for use in a new Price Cap.⁴¹

C. Reducing Regulatory Evasion concerns

Replacing the Margin Cap with a Price Cap, and then limiting that Price Cap to just Mission Hospital's inpatient and outpatient services, increases incentives for MHS to engage in Regulatory Evasion in which it would instead raise prices in unregulated secondary markets such as physician services. As mentioned above, this concern may be particularly acute with respect to MHS's proposed joint venture with Pardee Memorial Hospital.

The cleanest means of preventing Regulatory Evasion is to prevent tying, explicit or otherwise. Accordingly, the COPA's existing language prohibiting tying of physician services should be extended to prevent MHS from requiring managed care plans to contract with any of its

⁴⁰ This may, however, create certain problems relating to allocation of costs that are common to both inpatient and outpatient services, e.g., certain corporate costs, certain facilities costs, and certain capital costs associated with technology that is used for both inpatient and outpatient procedures.

⁴¹ See note 37 above.

employed physicians *or any other MHS service provider* as a precondition to contracting with Mission Hospital.⁴²

Imposing a regulatory prohibition on tying, however, may be insufficient to completely solve the Regulatory Evasion problem: firms often have a variety of ways of imposing ties that are not clearly in violation of regulatory language.⁴³ Accordingly, the State should be vigilant in guarding against such tying, whether explicit or implicit, and particularly with respect to the proposed joint venture with Pardee Memorial Hospital where incentives to engage in Regulatory Evasion might be particularly strong.

Should the State become concerned that that a "no tying" restriction will be insufficient to protect against Regulatory Evasion, the State may wish to add language in the COPA that gives the State the option of making such tying more difficult by requiring a contracting firewall between MHS's inpatient and outpatient services at Mission Hospital and the other services it provides. This contracting firewall could include the following elements:

- That the COPA require MHS to establish distinct contracting teams: one of which focuses on MHS's contracts relating to Mission Hospital in Asheville and its operations, the other of which focuses on all other services and geographies (including all physician-related contracts and contracts with McDowell Hospital and Blue Ridge Regional Hospital);
- That the two MHS contracting teams maintain an information firewall to prevent communications or coordination across contracting;
- That MHS does not engage in simultaneous contracting for Mission Hospital and any other MHS service provider (e.g., McDowell Hospital).

⁴² The joint venture may also create strong incentives to engage in another form of Regulatory Evasion: substitution of where MHS offers its services: if services offered at Mission Hospital are covered by the price cap, but similar services offered at the joint venture are not covered by the price cap, then MHS has incentives to shift patients from the regulated Mission Hospital to the unregulated joint venture (presuming that MHS can tie the sale of those joint venture services in a way that allows it to realize higher-than-competitive prices at the joint venture). In fact, I understand that an express goal of MHS is to shift the location where it treats many of its patients from Mission Hospital to the new joint venture facility. I note, however, that Mission Hospital argues that such shifting is an important means of improving healthcare quality and access to care given its concern that Mission Hospital has little slack capacity. Thus, by shifting patients, MHS has indicated that it hopes to better serve the community by focusing on more complex care at Mission Hospital while shifting less complex care to other sites that may be closer to where patients actually live. If, however, tying between Mission Hospital and the joint venture can be prevented, then MHS can pursue its goal of shifting patients, and thus benefitting consumers, without raising any concomitant concerns about Regulatory Evasion.

⁴³ The alternative regulatory approach of trying to prevent regulatory evasion by extending price (or margin) regulation into otherwise unregulated secondary markets, however, seems even less attractive and less beneficial to consumers.

The value of a contracting firewall, however, is unclear. In particular, a contracting firewall is a cumbersome regulatory obligation that may create inefficiencies for both payers and MHS.⁴⁴ Moreover, even contracting firewalls often fail to operate as cleanly and as effectively as might be wished. As a result, I recommend that, even if the State opts to include language in the COPA regarding contracting firewalls, those firewalls only be imposed if the State concludes that tying is occurring in a way that cannot otherwise be prevented through the "no tying" language of the COPA.

VI. THE COPA'S RESTRICTIONS ON PHYSICIAN EMPLOYMENT

The COPA's restrictions on physician employment do not appear necessary to address concerns that the 1995 merger reduced competition relating to physician services. Those restrictions also appear to be of limited value in preventing a merger-related problem associated with MHS foreclosing competition with rival hospitals by restricting those rival hospitals' access to physicians. As a result, I recommend that the State consider dropping the COPA's Physician Employment Cap, and instead let MHS's acquisitions of physician practices be governed by the same laws and regulations that govern other hospitals.

A. The 1995 merger did not significantly reduce physician competition

At the time of the 1995 merger, neither of the merging Asheville hospitals employed a significant number of physicians. As a result, the merger did not significantly increase Mission Hospital's market power with respect to physician services. It follows that COPA regulation of physician services is not necessary to counter any merger-related creation of market power.⁴⁵

B. The 1995 merger and foreclosure concerns

Physician employment by MHS creates a potential foreclosure concern involving MHS employing physicians as a means of harming rival hospitals. To the extent such foreclosure is deemed possible, and that the 1995 merger increased the either likelihood of, or effects from, such foreclosure, the COPA's Physician Employment Cap may be warranted. As discussed below, however, I have seen little evidence that such foreclosure concerns are sufficiently likely to warrant restrictions on how many physicians MHS can employ.

⁴⁴ My discussions with payers, however, indicate that, despite the inefficiencies that firewalls and sequential contracting will likely create, they tend to either support, or be neutral towards, requiring such a firewall.

⁴⁵ I have also considered whether the merger might have resulted in buy-side market power (typically referred to by economists as "monopsony power"). Yet, even if the merger had created buy-side market power (a supposition for which I have seen no evidence), a cap on physician employment would not be the proper regulatory solution.

1. Foreclosure concerns and rationale for a Physician Employment Cap

In the course of my interviews with different health care providers in WNC, several MHS rivals have expressed a variant of the following type of foreclosure concern. By employing physicians, MHS may be able to cause those physicians to shift their admissions from rival hospitals to MHS (their new employer). By employing enough physicians, MHS might reduce admissions at rival hospitals by so much that those rival hospitals become financially, and thus compressively, weakened.⁴⁶ In addition, by employing enough physicians who previously admitted at rival hospitals, MHS might increase the importance of MHS, and reduce the importance of those rival hospitals, to managed care plans. This, in turn, would make it more difficult for those managed care plans to drop MHS hospitals from their network, and thus result in reduced competition. Thus, a cap on the number of physicians that MHS can employ might be necessary to prevent such foreclosure.

The foregoing foreclosure concern is also generally consistent with the COPA's existing Nondiscrimination restrictions.⁴⁷ Those restrictions prevent MHS from requiring physicians to render services only at MHS hospitals, consistent with an underlying foreclosure concern. The COPA's nondiscrimination restrictions do not, however, apply to MHS's employed physicians. Thus, the COPA's Physician Employment Cap can be viewed as a complement to the Nondiscrimination restriction by helping to ensure that MHS does not control too many physicians' admitting decisions, and thus cannot put rival hospitals at too much at risk of having MHS cut off their access to the physicians that they rely upon for patients.

2. The likelihood of successful foreclosure by MHS

In order for the foreclosure concern to be appropriately addressed by the COPA (rather than other antitrust or competition laws that address foreclosure concerns), the foreclosure concern should be related to the 1995 merger. The evidence, however, provides little support for the belief that the 1995 merger increased the likelihood that such a foreclosure by MHS would be successful.

The most likely means by which the 1995 merger might have increased foreclosure concerns is that the merger may have given MHS the ability to "force" physicians into employment contracts that they otherwise would rejected.⁴⁸ The evidence, however, suggests that MHS is not in a position where it can force such employment contracts on physicians.

⁴⁶ Whether or not this shift in admitting patterns would occur in reality is unclear. I understand that MHS claims that, for physicians located outside of Buncombe County, it does not necessarily seek to change that physician's admitting patterns. At this point, the empirical evidence relating to such practice acquisitions is too sparse to properly evaluate this issue.

⁴⁷ See Section 6.1 of the COPA.

⁴⁸ Perhaps the only other possible linkage between the 1995 merger and the foreclosure concern is that the 1995 merger likely increased the harm that would likely result from foreclosure (if, in fact, MHS successfully engaged in

- MHS's employment of a physician will have the greatest impact on a rival hospital when that physician admits a significant number of patients to the rival hospital.⁴⁹ Yet physicians that already rely heavily on a rival hospital would be the least vulnerable to pressure from MHS. Conversely, those physicians that are most vulnerable to MHS pressure would be the ones that admit most of their patients to Mission Hospital, meaning that rival hospitals would lose little if those physicians began admitting exclusively to Mission Hospital.⁵⁰
- There have been instances in which MHS has sought to employ a physician, yet that physician has turned down MHS's offer and instead remained unaffiliated or else affiliated with a different organization.
- One of the factors behind the recent departure of MHS's CEO is that local physicians were unhappy with what they perceived to be excessive pressure from MHS regarding the nature of their affiliation with MHS.⁵¹ Thus, MHS's ability to force employment contracts on local physicians appears quite limited.

C. Restrictions on physician employment may harm consumers

In assessing whether to eliminate the COPA's restrictions on physician employment, the State should consider what, if any, consumer harm may result from those restrictions. Such harm should be balanced against what the previous discussion suggests are limited benefits from those restrictions.

The Physician Employment Cap may cause harm in several ways. First, unnecessarily regulating MHS with respect to physician services may effectively handicap MHS in its ability to compete

a foreclosure strategy). The 1995 merger increases the harm from foreclosure since, by significantly reducing competition for inpatient hospital services, further reductions in competition due to foreclosure would likely be even more problematic. This linkage between the 1995 merger and the foreclosure concern, however, appears to be a relatively tenuous basis for using the COPA to guard against foreclosure rather than existing antitrust laws that would also prohibit such conduct.

⁴⁹ This suggests, however, that the COPA's Physician Employment Cap may be targeting the wrong physicians: rather than limit MHS's employment of primary care physicians in Buncombe and Madison counties – physicians that are already typically admitting almost exclusively to Mission Hospital – the cap should perhaps apply instead to physicians in the outlying counties that are more likely to otherwise be admitting to Mission Hospital's rival hospitals.

⁵⁰ Consider, for example, data on the admitting patterns for the top 50 physicians at one of Mission Hospital's local hospital rivals. These physicians, who collectively accounted for approximately 99 percent of all inpatient admissions at that hospital, made *no* admissions to Mission Hospital. Absent admissions to Mission Hospital, MHS is unlikely to have significant leverage over those physicians.

⁵¹ See "Trauma Center," *Business North Carolina*, April 2010 and "Mission Exit Reflects Trend," *Asheville Citizen-Times*, November 1, 2009.

with other health care providers.⁵² At least one payer I spoke to indicated that many physician practices in the WNC region were likely to be acquired in the future – either by a larger physician group, another hospital, or another health system (e.g., Novant Health or the Carolinas Healthcare System). A view was expressed that, of all these possible suitors for a physician practice, MHS might be the most desirable.

Second, preventing MHS from acquiring certain physician practices will reduce physicians' options. In some cases, this may mean that physicians leave the region (or decide not to come to the region in the first place). For physicians intent on selling their practice, the elimination of MHS as a potential bidder for that practice may significantly reduce the value that physicians receive for their practice.

Third, the Physician Employment Cap may preclude MHS from bringing new physicians to town. Bringing new physicians to town, however, is the type of output expansion that is likely to be procompetitive. The current Physician Employment Cap, however, would prohibit such recruitment of new physicians if it ended up pushing MHS over the 20 percent cap.⁵³

Perhaps most important, to the extent that MHS can successfully integrate its acquired physicians in a way that will lower overall healthcare costs and increase quality, then preventing MHS from acquiring those physician practices could end up denying consumers the benefits of lower prices and better outcomes.⁵⁴

D. Balancing likely benefits and harm from the Physician Employment Cap

Balancing the potentially significant downsides to the Physician Employment Cap against the weak merger-related justifications, I recommend that the Physician Employment Cap be dropped from the COPA.

⁵² According to the American Hospital Association, 65 percent of community hospitals are making efforts to increase the number of employed physicians. See “The State of America’s Hospitals – Taking the Pulse, Results of AHA Survey of Hospital Leaders,” March/April 2010, The American Hospital Association.

⁵³ The COPA contains provisions by which MHS can appeal the cap (see Section 8.3 of the COPA). Yet, even if an appeal were possible, the need to go through the appeal process likely constitutes a significant disincentive to pursue such physician recruitment.

⁵⁴ See, for example, articles co-authored by MHS's new CEO, Ronald A. Paulus, M.D., that describe benefits that he helped to achieve at the Geisinger Clinic which pursued an active strategy of physician integration (“Continuous Innovation In Health Care: Implications Of The Geisinger Experience,” Ronald A. Paulus, Karen Davis, and Glenn D. Steele, *Health Affairs*, Volume 27, Number 5, September/October 2008, pages 1235 to 1245; “How Geisinger’s Advanced Medical Home Model Argues The Case For Rapid-Cycle Innovation,” Ronald A. Paulus et al., *Health Affairs*, November 2009, pages 2047 to 2053; “ProvenCare - A Provider-Driven Pay-for-Performance Program for Acute Episodic Cardiac Surgical Care,” Ronald A. Paulus et al., *Annals of Surgery*, Volume 246, Number 4, October 2007, pages 613 to 623; “The Electronic Health Record and Care Reengineering: Performance Improvement Redefined, Ronald A. Paulus et al., Redesigning the Clinical Effectiveness Research Paradigm: Innovation and Practice-Based Approaches: Workshop Summary, National Academy of Sciences, 2010, pages 221 to 265; “Value and the Medical Home: Effects of Transformed Primary Care,” Ronald A. Paulus et al., *The American Journal of Managed Care*, Volume 16, Number 8, August 2010, pages 607 to 615.).

Should the Physician Employment Cap be retained, however, the State should consider adjusting that cap in a number of regards, including expanding the scope (both with respect to covered specialties and covered geographies), and allowing for exceptions relating to single-practice physician groups or for physicians that move into the Asheville area. The State should also require additional documentation by which MHS demonstrates its compliance with this aspect of the COPA regulation.

E. Other laws limit hospitals' ability to employ physicians

Dropping the Physician Employment Cap from the COPA will not leave MHS free to acquire as many physician practices as it likes. Rather, even though no longer subject to the COPA's restrictions, MHS will be subject to the same regulatory and legal constraints facing any other party with respect to acquiring competing physician practices.⁵⁵

The extent to which MHS can acquire more physician practices without running afoul of existing antitrust laws will depend on the extent to which MHS can show that the likely benefits of such acquisitions will outweigh the likely competitive harm.⁵⁶ MHS can then decide for itself whether to increase its share of physicians above 20 percent of the market, with that decision based in part on whether it believes such acquisitions will prompt an antitrust investigation and its expectations about the likely outcome of any such investigation.

⁵⁵ I assume that MHS will not be able to avoid such constraints by claiming some type of State Action exemption.

⁵⁶ See, for example, The U.S. Department of Justice/Federal Trade Commission 1996 *Statements of Antitrust Enforcement Policy in Health Care*. The potential costs and benefits of allowing greater physician concentration are also actively being debated in the context of policy discussions about Accountable Care Organizations ("ACOs") See, for example, the October, 2010 volume of *Competition Policy International*, including the following articles: Braun, C., "Clinical Integration: The Balancing of Competition and Health Care Policies;" Fischer, A. and Marx, D., "Antitrust Implications of Clinically-Integrated Managed Care Contracting Networks and Accountable Care Organizations;" and Vistnes, G., "The Interplay Between Competition and Clinical Integration: Why the Antitrust Agencies Care About Medical Care."

Table 1: Mission Hospital County-Level Market Shares Over Time in Western North Carolina

	Total Patient Count in 2009*	Mission Hospital's Share of Patients						1st Half
		2005	2006	2007	2008	2009	2010	
Buncombe	26,045	86.3%	86.9%	87.3%	87.8%	89.6%	90.5%	
Henderson	12,740	22.1%	22.7%	23.8%	25.3%	29.6%	36.4%	
Burke	10,548	5.3%	5.7%	5.8%	6.1%	5.8%	5.8%	
Rutherford	8,613	5.9%	6.3%	6.7%	8.0%	7.2%	7.2%	
Haywood	8,298	28.7%	27.2%	28.4%	35.9%	33.5%	32.8%	
McDowell	5,131	31.5%	33.3%	32.9%	34.4%	37.8%	35.8%	
Jackson	3,807	17.5%	21.1%	21.5%	24.5%	27.3%	28.8%	
Macon	3,734	27.5%	31.0%	27.8%	31.0%	29.3%	29.6%	
Transylvania	3,523	32.1%	32.4%	32.0%	35.4%	34.6%	35.8%	
Cherokee	2,671	18.8%	17.9%	20.0%	19.2%	18.5%	19.8%	
Swain	2,494	22.7%	21.6%	24.4%	26.2%	26.8%	23.7%	
Yancey	2,329	45.5%	49.4%	48.6%	47.5%	50.2%	49.5%	
Madison	2,172	88.9%	89.9%	88.5%	89.7%	90.8%	91.2%	
Mitchell	2,138	27.4%	29.1%	28.0%	25.7%	28.1%	29.6%	
Polk	1,790	11.9%	15.7%	14.5%	17.2%	16.6%	18.0%	
Graham	1,116	22.3%	26.6%	24.4%	26.4%	27.5%	29.2%	
Clay	916	20.8%	20.4%	20.2%	19.7%	21.4%	21.6%	

Note:

* Total Patient Count represents the number of patients that reside in the county.

Sources:

Patient Shares 2005 to 2008: Second Amended and Restated Certificate of Public Advantage Periodic Report, September 30, 2009, Mission Hospital, Inc.

Patient Shares 2009 to June 2010: Thompson Reuters, Inpatient Data for North Carolina.

Table 2: Short-Term Acute Care and Critical Access Hospitals in Western North Carolina

Hospital Name	County	City	Hospital Type	Beds	Average Patients Per Day	# of Physicians Actively Admitting Patients*	Distance in Miles from Mission Hospital
Mission Hospital	Buncombe	Asheville	Acute Care	728	522	342	0
The McDowell Hospital	McDowell	Marion	Acute Care	49	16	16	35
Blue Ridge Regional Hospital	Mitchell	Spruce Pine	Acute Care	49	22	28	51
Transylvania Community Hospital	Transylvania	Brevard	Critical Access	35	17	22	29
Pardee Hospital	Henderson	Hendersonville	Acute Care	216	72	58	27
Murphy Medical Center	Cherokee	Murphy	Acute Care	190	27	22	111
Grace Hospital	Burk	Morganton	Acute Care	184	59	56	58
Rutherford Hospital	Rutherford	Rutherfordton	Acute Care	143	53	42	57
Valdese Hospital	Burk	Connellys Springs	Acute Care	131	27	26	65
Haywood Regional Medical Center	Haywood	Clyde	Acute Care	121	62	37	27
Highlands-Cashiers Hospital	Macon	Highlands	Critical Access	104	7	7	67
Park Ridge Hospital	Henderson	Hendersonville	Acute Care	98	43	42	15
Harris Regional Hospital	Jackson	Sylva	Acute Care	86	43	33	47
Saint Luke's Hospital	Polk	Columbus	Critical Access	35	15	5	39
Angel Medical Center	Macon	Franklin	Critical Access	25	17	16	69
Swain County Hospital	Swain	Bryson City	Critical Access	24	6	6	66

Notes:

* An active physician is defined as any physician with at least 12 admissions in the 12-month period ending June 30, 2010 based on State Inpatient data provided by Thompson Reuters.

The Asheville VA Medical Center and the Cherokee Indian Hospital have been excluded from the table because these facilities are primarily government funded.

Sources:

American Hospital Directory (ahd.com), November 8, 2010.
Thompson Reuters, Inpatient Data for North Carolina.

Table 3: The COPA's Cost Cap Methodology - Illustrative Example

Base Case					
	Volume	"Price" per procedure	Total Revenue	Cost per Procedure	Total Cost
Inpatient Procedures	1,200	1,000	1,200,000	800	960,000
Outpatient Procedures	800	500	400,000	400	320,000
TOTAL			1,600,000		1,280,000
"Equivalent Outpatient Discharges"					
	400	1,000			
"Total Adjusted Discharges"					
	1,600				
"Cost/Adjusted Patient Discharge"					
	800				
20% Increase in Outpatient Price					
	Volume	"Price" per procedure	Total Revenue	Cost per Procedure	Total Cost
Inpatient Procedures	1,200	1,000	1,200,000	800	960,000
Outpatient Procedures	800	600	480,000	400	320,000
TOTAL			1,680,000		1,280,000
"Equivalent Outpatient Discharges"					
	480	1,000			
"Total Adjusted Discharges"					
	1,680				
"Cost/Adjusted Patient Discharge"					
	762				
20% Increase in Outpatient Price and Volume					
	Volume	"Price" per procedure	Total Revenue	Cost per Procedure	Total Cost
Inpatient Procedures	1,200	1,000	1,200,000	800	960,000
Outpatient Procedures	960	600	576,000	400	384,000
TOTAL			1,776,000		1,344,000
"Equivalent Outpatient Discharges"					
	576	1,000			
"Total Adjusted Discharges"					
	1,776				
"Cost/Adjusted Patient Discharge"					
	757				

Table 4: Mission Health System Operating Income
For the year ending September 30, 2009

	Total Revenue (\$000)	Operating Income (\$000)	Operating Income Margin
Mission Health Inc.	897,742	40,391	4.5%
Individual Components of Mission Health Inc.:			
Mission Hospital, Inc.	805,191	41,281	5.1%
McDowell Hospital, Inc.	33,980	(2,080)	(6.1%)
Blue Ridge Regional Hospital, Inc.	39,410	530	1.3%
Other	19,161	660	3.4%

Source:

Mission Health System, Inc. and Affiliates, Combined Financial Statements and Schedules, September 30, 2009 and 2008, KPMG, page 32.



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Dr. Vistnes is an antitrust and industrial organization economist who works in a broad array of industries, including financial services, insurance, defense and aerospace, medical equipment, chemicals, software, energy, pharmaceuticals, steel, and various retail and industrial products. Dr. Vistnes is also an expert in the healthcare industry where he has frequently testified, published, and spoken at professional conferences.

In the course of his work, Dr. Vistnes regularly presents his analyses to the U.S. Department of Justice (DOJ) and the U.S. Federal Trade Commission (FTC). He also provides economic analyses for clients involved in private antitrust litigation, for clients involved in matters before state attorney generals, and for firms interested in anticipating the competitive implications of alternative strategies. Dr. Vistnes has also provided expert testimony in a variety of antitrust matters, both on behalf of private sector firms and government antitrust agencies.

Prior to joining CRA International, Dr. Vistnes was the Deputy Director for Antitrust in the Federal Trade Commission's Bureau of Economics. In that position, he supervised the FTC's staff of approximately 40 Ph.D.-level antitrust economists and directed the economic analysis of all antitrust matters before the FTC. Before that, he served as an Assistant Chief in the Antitrust Division of the U.S. Department of Justice. At both the FTC and DOJ, Dr. Vistnes headed analytical teams responsible for investigating pending mergers and acquisitions or alleged anticompetitive behavior. As part of his duties, he regularly advised key agency decision makers, including FTC commissioners and the Assistant Attorney General for Antitrust.

REPRESENTATIVE PROJECTS AND INDUSTRY EXPERTISE

- *Real Estate.* Dr. Vistnes served as the testifying expert for the DOJ in their multi-year litigation *U.S. v. National Association of Realtors (NAR)* regarding NAR's rules on how real estate brokers could use the Internet to compete. Dr. Vistnes has also testified before several states regarding competition in the title insurance industry, and worked on several mergers (e.g., *Fidelity/LandAmerica*) involving title insurance providers.
- *Aftermarkets.* Dr. Vistnes testified before a jury in the *Static Control Components v. Lexmark International* litigation relating to replacement toner cartridges for laser printers. The jury agreed with Dr. Vistnes' opinion that the evidence showed that the aftermarket of replacement toner cartridges was the appropriate relevant market.

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GREGORY S. VISTNES

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- *Insurance and Financial Services.* Dr. Vistnes has testified and provided analyses to both state and federal competition authorities regarding mergers of both insurance carriers (e.g., *MetLife/Travelers*) and insurance brokers (e.g., *Aon/Benfield*). Dr. Vistnes has also analyzed price fixing claims regarding initial public offerings (IPOs) and private equity firms.
 - *Healthcare and Medical Products and Equipment.* Dr. Vistnes has provided court testimony and economic analyses relating to hospital mergers, hospital certificate of need applications, health plan mergers, and physician conduct. He has also provided analyses and testimony related to mergers and conduct issues relating to MRI providers, medical products and equipment, and medical technology.
 - *Computer Software and Technology.* Dr. Vistnes has provided economic analyses in several software mergers that helped the merging parties avoid a second request by the government. Examples include matters involving software that provides security for internet websites; billing software used by large health plans; and the provision of electronic business-to-business services between trading partners.
 - *Energy.* Dr. Vistnes has provided economic analyses of several antitrust matters in different sectors of the energy industry, including the oil, electricity, gas pipelines and gas storage sectors. In addition to overseeing the FTC's economic analyses of mergers such as *BP/Arco* and *Mobil/Exxon*, Dr. Vistnes has also presented his analyses to the Department of Justice regarding price fixing claims in this industry.
 - *Price Fixing Cases.* Dr. Vistnes has provided analyses and reports regarding price fixing cases in the chemicals industry. Dr. Vistnes' work in these matters helped to determine the relevant scope of products affected by the alleged conspiracy, the time periods over which price effects may have arisen, and the magnitude of any damages associated with the conspiracy. Dr. Vistnes' work in this area has been used both in presentations to the Department of Justice and in private litigation.

PROFESSIONAL EXPERIENCE

2000–Present *Vice President*, CRA International, Washington, D.C.

Dr. Vistnes' work focuses on analyzing antitrust and competition issues such as:

- Horizontal and vertical mergers;
- Contractual provisions such as exclusivity provisions, most favored customer clauses, bundling provisions, and price discount schedules;
- Intellectual property and antitrust;
- Price fixing and conspiracy allegations;
- Class action litigation.

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1997–2000 *Deputy Director for Antitrust*, Bureau of Economics, U.S. Federal Trade Commission, Washington, D.C.

- Directed the economic analyses of all antitrust matters before the Commission.
- Briefed Commissioners and the Director of the Bureau of Economics regarding all antitrust matters before the Commission, including mergers, vertical restraints, and joint ventures.
- Advised the Commission on whether to challenge mergers or other anticompetitive activities.
- Developed strategies for the investigation and litigation of antitrust matters before the Commission.
- Directed the FTC's antitrust staff of 55 Ph.D. economists, managers, and support staff.

1996–1997 *Assistant Chief*, Economic Regulatory Section, Antitrust Division, U.S. Department of Justice, Washington, DC.

- Directed economic analyses at the Antitrust Division in the health care and telecommunications industries;
- Briefed the Assistant Attorney General and Deputies on the economic aspects of health care and telecommunications matters;
- Played a key role in writing the 1996 Department of Justice/Federal Trade Commission's Statements of Antitrust Enforcement Policy in the Health Care Area;
- Led the Antitrust Division's economic analyses of hospital and HMO mergers and/or joint ventures in the health care industry;
- Directed the economic analyses of Bell Operating Company mergers;
- Headed DOJ's economic assessment of the conditions under which Bell Operating Companies should be allowed to enter into long-distance markets;
- Directed the economic analyses of the wave of radio station mergers following passage of the 1996 Telecommunications Act.

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- 1995–1996 *Manager, Health Care Issues Antitrust Division, U.S. Department of Justice, Washington, DC.*
- Directed the economic analyses of all health care matters at the Division.
- 1990–1995 *Staff Economist, Antitrust Division, U.S. Department of Justice, Washington, DC.*
- Analyzed antitrust and competition-related matters in the health care, entertainment, natural resources, and industrial machinery industries;
 - Designated as the Antitrust Division's economic testifying expert in numerous hospital mergers;
 - Analyzed hospital and HMO mergers, physician joint ventures, healthcare information exchanges, and physician/hospital affiliations and mergers;
 - Played a key role in writing the 1993 and 1994 Department of Justice/Federal Trade Commission's *Statements of Antitrust Enforcement Policy in the Health Care Area*;
 - Designated as DOJ's Economic Representative to President Clinton's 1993 White House Task Force on Health Care Reform.
- 1988–1990 *Economic Consultant, Putnam, Hayes and Bartlett, Washington, DC.*
- Analyzed health care matters;
 - Wrote strategy reports for clients interested in directing the course of health care reform at the local and federal levels;
 - Developed pricing methodologies to promote competition in the electric utility industry.
- 1987–1988 *Visiting Professor, Department of Economics, University of Washington, Seattle.*
- Taught graduate and undergraduate health care economics, industrial organization & strategic firm behavior, and intermediate price theory.

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SELECTED INDUSTRY EXPERTISE

- Healthcare
- Chemicals
- Insurance
- Software
- Financial Markets
- Pharmaceuticals
- Supermarkets
- Aerospace and Defense
- Medical Equipment and Services
- Energy

ORAL TESTIMONY

Wendy Fleischman, et al. v. Albany Medical Center, et al., U.S. District Court, Northern District of New York (Case No. 06-CV-0765/TJM/DRH), July 2009 and January 2010. [Deposition testimony on behalf of plaintiff class]

Pat Cason-Merenda et al. v. Detroit Medical Center, et al., Eastern District of Michigan, Southern Division (Case No. 06-15601), April 2009. [Deposition testimony on behalf of plaintiff class]

Munich Reinsurance Group Application for the Acquisition of Control of Hartford Steam Boiler. Testimony before the Commissioner of Insurance of the State of Connecticut, March 2009. [Oral hearing testimony on behalf of Munich Reinsurance Group]

United States of America v. National Association of Realtors. U.S. District Court (Northern District of Illinois – Eastern Division), July 2007 and December 2007. [Deposition testimony on behalf of the U.S. Department of Justice]

Funeral Consumers Alliance, Inc., et al. v. Service Corporation International, et al. U.S. District Court (Southern District of Texas), Civil Action 3H-05-3394, July 2007. [Deposition testimony on behalf of Funeral Consumers Alliance, Inc.]

Static Control Components v. Lexmark International. U.S. District Court (Eastern District of Kentucky at Lexington), June 2007. [Trial and deposition testimony on behalf of Static Control Components, Wazana Brothers International and Pendl Companies]

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Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP; and MRI Associates, LLP v. Saint Alphonsus Diversified Care, Inc. and Saint Alphonsus Regional Medical Center. District Court for the Fourth Judicial District of the State of Idaho, May 2007. [Deposition testimony on behalf of Saint Alphonsus Regional Medical Center]

Louisiana Municipal Police Employees' Retirement System, et al., v. Crawford, et al., and Express Scripts, Inc. v. Crawford, et al. Del. Ch., C.A., No. 2635-N and 2663-N, February 2007. [Deposition testimony on behalf of Caremark Rx, Inc.]

MetLife, Inc. Application for the Acquisition of Control of The Travelers Insurance Company. Testimony before the Commissioner of Insurance of the State of Connecticut, June 2005. [Oral hearing testimony on behalf of MetLife]

Group Hospitalization and Medical Services, Inc. (GHMSI)/CareFirst Hearing. Testimony before the Department of Insurance, Securities and Banking, Washington, DC, March 2005. [Oral hearing testimony and written report on behalf of GHMSI]

Holmes Regional Medical Center, Inc. v. Agency for Health Care Administration and Wuesthoff Memorial Hospital, Inc., State of Florida Division of Administrative Hearings, Tallahassee, FL, December 2004. [Trial and deposition testimony on behalf of Holmes Regional Medical Center]

Application of The St. Paul Companies for the Acquisition of Control of Travelers Property and Casualty Corp. Testimony before the Commissioner of Insurance of the State of Connecticut, February 2004. [Oral hearing testimony on behalf of The St. Paul Companies and Travelers]

Anheuser-Busch Companies, Inc. Metal Container Corporation, and Anheuser-Busch, Inc. v. Crown Cork & Seal Technologies Corporation. U.S. District Court (Western District of Wisconsin), October 2003. [Deposition testimony on behalf of Crown Cork & Seal]

Wal-Mart Stores v. the Secretary of Justice of the Commonwealth of Puerto Rico. U.S. District Court (District of Puerto Rico), December 2002. [Trial testimony on behalf of Wal-Mart]

United States v. North Shore Health System and Long Island Jewish Medical Center. U.S. District Court (Eastern District of New York), August 1997. [Trial and deposition testimony on behalf of the U.S. Department of Justice]

SELECTED EXPERT REPORTS AND WRITTEN TESTIMONY

Yakima Valley Memorial Hospital v. Washington State Department of Health, U.S. District Court, Eastern District of Washington (Case CV-09-3032-EFS). Expert report submitted on behalf of Yakima Valley Memorial Hospitals, April 2010.

DAW Industries, Inc. v. Hanger Orthopedic Group and Otto Bock Healthcare, U.S. District Court, Southern District of California (Case 06-CV-1222 JAH (NLS)). Expert report submitted on behalf of Otto Bock Healthcare, May 2009.

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Hometown Health Plan, et al., vs. Aultman Health Foundation, et al., Court of Common Pleas, Tuscarawas County, OH (Case No. 2006 CV 06 0350). Expert report submitted on behalf of Hometown Health Plan, March 2008.

Texas Title Insurance Biennial Hearing, Docket Nos. 2668 and 2669. Pre-filed direct testimony on behalf of Fidelity National Financial, Inc., January 2, 2008.

An Economic Analysis of Competition in the Title Insurance Industry. Report on behalf of Fidelity National Financial, Inc., submitted to the US GAO, March 20, 2006.

The St. Paul Companies/Travelers Property and Casualty Corp Merger. Expert report on behalf of St. Paul and Travelers, submitted to the California Department of Insurance, February 2004.

Granite Stone Business International (aka Eurimex) v. Rock of Ages Corporation. International Court of Arbitration, ICC Arbitration No. 11502/KGA/MS. Expert reports submitted on behalf of Granite Stone Business International, October 2002 and March 2003.

General Electric/Honeywell Merger. Expert reports (co-authored with Carl Shapiro and Patrick Rey) on behalf of General Electric, submitted to the U.S. Department of Justice and the European Commission, 2001.

United States and State of Florida v. Morton Plant Health System, Inc., and Trustees of Mease Hospital. U.S. District Court (Middle District of Florida – Tampa Division). Expert report on behalf of the U.S. Department of Justice, May 1994.

SELECTED PRESENTATIONS

"Interpreting Evidence Regarding Price Effects in Consummated Mergers," ABA Spring Meetings, Washington, DC, April 2010.

"Are There Different Rule of Reason Tests for Vertical and Horizontal Conduct?" ABA Joint Conduct Committee, teleconference presentation, June 2009.

"The Economics of Information Sharing and Competition," ABA Section on Business Law, Vancouver, BC, April 2009.

"United States versus the National Association of Realtors: The Economic Arguments and Implications for Trade Associations," ABA Spring Meetings, Washington, DC, March 2009.

"The Use of Price Effects Evidence in Consummated Merger Analysis," ABA Section of Antitrust Law, teleconference presentation, February 2009.

"Competition in the Title Insurance Industry – An Economic Analysis." National Association of Insurance Commissioners, Washington, DC, June 2006.

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"Antitrust Issues in the BioTech Industry." Biotech Industry Organization BIO 2005 International Meetings, Philadelphia, June 2005.

"Cartels and Price Fixing – Ensuring Consistency Between Theory and the Facts." The Use of Economics in Competition Law, Brussels, January 2005.

"Intellectual Property and Antitrust in High-Tech Industries." ABA Section on Business Law, Atlanta, August 2004.

"Antitrust, Intellectual Property and Innovation." Biotech Industry Organization BIO 2004 International Meetings, San Francisco, June 2004.

"Quality, Healthcare and Antitrust." Petris Center/UC Berkeley Conference on Antitrust and Healthcare, University of California at Berkeley, April 2004.

"Unilateral Effects - Be Careful What You Wish For." Second Annual Merger Control Conference, The British Institute of International and Comparative Law, London, December 2003.

"Geographic Market Definition in Hospital Antitrust Analysis – Theory and Empirical Evidence." Federal Trade Commission/Department of Justice Joint Hearings on Health Care and Competition Law and Policy, Washington, DC, March 2003.

"Trade Barriers and Antitrust: Foreign Firms – Down But Not Out." Antitrust Issues in Today's Economy, The Conference Board, New York City, March 2003.

"Bundling and Tying: Antitrust Analyses in Markets with Intellectual Property." Department of Justice/Federal Trade Commission Joint Hearings on Intellectual Property and Antitrust, Washington, DC, May 2002.

"Practical Issues in Intellectual Property Investigations: Balancing Rules versus Discretion." Department of Justice/Federal Trade Commission Joint Hearings on Intellectual Property and Antitrust, Washington, DC, May 2002.

"Bundling and Tying: Recent Theories and Applications." Antitrust Section of the American Bar Association Meeting, Washington, DC, April 2002.

"Antitrust Issues in the Pharmaceutical Industry: The Hatch-Waxman Cases." ABA Healthcare and Intellectual Property Sections Brownbag, Washington, DC, February 2002.

"The GE/Honeywell Deal: Is Europe Raising the Yellow Flag on Efficiencies?" CRA Conference on Current Topics in Merger and Antitrust Enforcement, Washington, DC, October 2001.

"Marching to the Sounds of the Cannon: Antitrust Battlegrounds of the Future." National Association of Attorneys General Conference, San Diego, October 2000.

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"The Joint Venture Guidelines: Navigating Outside the Safety Zones." The 8th Annual Golden State Antitrust and Unfair Competition Law Institute, Los Angeles, October 2000.

"Strategic Behavior in the Pharmaceutical Industry: The Hatch-Waxman Act and Blockading Entry." Antitrust Section of the American Bar Association Meeting, Washington, DC, April 2000.

"Working With Economic Experts." Antitrust Common Ground Conference, Chicago, IL, December 1999.

"Merger Enforcement Trends." CRA Conference on Current Topics in Merger and Antitrust Enforcement, Washington, DC, December 1998.

"Hot Topics in Health Care Antitrust." Antitrust Fundamentals for the Health Care Provider, Sponsored by the Wisconsin Field Office of the Federal Trade Commission, the US Department of Justice, and Marquette University Law School, Milwaukee, WI, December 1998.

"Federal Antitrust Enforcement in the Health Care Industry: New Directions." Fourth Annual Health Care Antitrust Forum, Northwestern University, September 1998.

"Hospital Competition in HMO Networks." American Economic Association Meetings, San Francisco (1996) and Chicago (1998).

"Creating Competitive Markets Amidst Barriers to Entry." Weeklong Presentation to the Russian State Committee of Antimonopoly Policy, Volgograd, Russia, January 1997.

"The Economics of Antitrust Law." Maine Bar Association, January 1995.

"The Competitive Impact of Differentiation Across Hospitals." Fourth Annual Health Economics Conference, Chicago, 1993.

"Multi-Firm Systems, Strategic Alliances, and Provider Integration." Pennsylvania State University, the University of California at Santa Barbara, and the Johns Hopkins School of Public Health, 1992 and 1993.

PUBLICATIONS

"Presumptions, Assumptions and the Evolution of U.S. Antitrust Policy." With Andrew Dick. *Trade Practices Law Journal*, December 2005.

"Commentary: Is Managed Care Leading to Consolidation in Health Care Markets?" *Health Services Research*, June 2002.

"Employer Contribution Methods and Health Insurance Premiums: Does Managed Competition Work?" With Jessica Vistnes and Phillip Cooper. *The International Journal of Health Care Finance and Economics*, 2001.

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"Hospital Competition in HMO Networks: An Empirical Analysis of Hospital Pricing Behavior." With Robert Town. *The Journal of Health Economics*, September 2001.

"Hospitals, Mergers, and Two-Stage Competition." *The Antitrust Law Journal*, January 2000.

"Defining Geographic Markets for Hospital Mergers." *Antitrust*, Spring 1999.

"The Role of Third Party Views in Antitrust Analysis: Trust But Verify." *Government Antitrust Litigation Advisory*, American Bar Association, July 1998.

"Hospital Mergers and Antitrust Enforcement." *The Journal of Health Politics, Policy and Law*, Spring 1995.

"An Empirical Investigation of Procurement Contract Structures." *The Rand Journal of Economics*, Summer 1994.

PROFESSIONAL ACTIVITIES

Referee for:

- *The American Economic Review*
- *The Antitrust Law Journal*
- *Health Services Research*
- *Inquiry*
- *The Journal of Industrial Economics*
- *The Rand Journal of Economics*
- *The Review of Industrial Organization*

Grant Reviewer for:

- Robert Wood Johnson Foundation/Academy Health
- The Alpha Center
- Agency for Health Care Policy and Research

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HONORS AND AWARDS

- Named one of *Global Competition Review's* 2006 "Top Young Economists" (identifying the top 22 antitrust economists in the U.S. and Europe under the age of 45)
- Assistant Attorney General's Merit Award (1994), Antitrust Division, U.S. Department of Justice
- Distinguished Teaching Fellowship (1986), Department of Economics, Stanford University
- Academic Fellowship (1983–1984), Department of Economics, Stanford University
- Phi Beta Kappa (1983)

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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 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10C .0305 and .0401.

Proposed Effective Date: August 1, 2011

Public Hearing:

Date: March 28, 2011

Time: 7:00 p.m.

Location: Bladen County Courthouse, 166 Courthouse Drive, Elizabethtown, NC 28337

Public Hearing:

Date: March 29, 2011

Time: 7:00 p.m.

Location: Craven County Courthouse, 302 Broad Street, New Bern, NC 28560

Public Hearing:

Date: March 30, 2011

Time: 7:00 p.m.

Location: Chowan County Agriculture Center, 730 North Granville Street, Suite A, Edenton, NC 27932-1434

Public Hearing:

Date: March 31, 2011

Time: 7:00 p.m.

Location: NC Wildlife Resources Commission Headquarters, NCSU Centennial Campus, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: Enactment of this rule will allow creel and size limits for sea trout, flounder, red drum, and gray trout taken in inland waters to conform to those set for that species by the Marine Resources Commission (MRC) by proclamation in Coastal waters. This will allow WRC to immediately adjust to such proclamations, and will result in consistency of seasons and creel limits between the two waters.

In turn, this will eliminate confusion on the part of both anglers and law enforcement of both agencies.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing or via electronic mail during the comment period which ends May 2, 2011 to C. Norman Young, Jr., NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001 or email nyoung@ncdoj.gov.

Comments may be submitted to: Christian Waters, NC Wildlife Resources Commission, 1721 Mail Service Center, Raleigh, NC 27699-1721; phone (919) 707-0223; email christian.waters@ncwildlife.org

Comment period ends: May 2, 2011

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

Fiscal Impact:

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

DAILY CREEL	MINIMUM
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PROPOSED RULES

GAME FISHES	LIMITS	SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	1	42 in.	ALL YEAR
Pickereel: Chain and Redfin	None	None	ALL YEAR
Walleye	8 (exc. (9))	None (exc. (9))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5 (exc. (21))	14 in. (excs. (8,10&21))	ALL YEAR (exc. (17))
Smallmouth and Spotted	5 (exc.(21))	12 in. (excs. (8,10&21))	ALL YEAR
Roanoke and Rock Bass	None (exc. (24))	None (exc. (24))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	40 (exc. (19))	14 in. (exc. (19))	ALL YEAR (exc. (19))
Flounder	8 (exc. (19))	14 in. (exc. (19))	ALL YEAR (exc. (19))
Red drum (channel bass, red fish, puppy drum)	4 (exc. (19))	18 in. (exc. (19))	ALL YEAR (exc. (19))
Striped Bass and their hybrids	8 aggregate (excs. 1,2,5,6,11,&13)	16 in. (excs.1,2,5,6,11&13)	ALL YEAR (excs. 6,13&15)
Shad: (American and hickory)	10 aggregate (exc. (22))	None	ALL YEAR (exc. (18))
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish	None (excs. 4,12&16)	None (exc. (12))	ALL YEAR (exc. (4))
NONGAME FISHES	None (excs. 14,20,23&25)	None (excs. 14,20,23&25)	ALL YEAR (exc. (7) 7&25)

(b) Exceptions

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|-----|--|-----|--|
| (1) | In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam and in John H. Kerr Reservoir the creel limit on striped bass and Morone hybrids is two in the aggregate and the minimum size limit is 26 inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone hybrids is four in aggregate with no minimum size limit. | | Gaston and Roanoke Rapids Reservoir the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 20 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30. |
| (2) | In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in B. Everett Jordan Reservoir the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake | (3) | In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from |

- Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (4) On Mattamuskeet Lake, special federal regulations apply.
 - (5) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95, subject to the exceptions listed in this Paragraph, the daily creel limit for striped bass and their hybrids is two fish in aggregate. The minimum length limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed. In these waters, the season for taking and possessing striped bass is closed from May 1 through September 30. In the inland fishing waters of the Cape Fear River and its tributaries, the season for taking and possessing striped bass is closed year-round. In the Pee Dee River and its tributaries from the South Carolina line upstream to Blewett Falls Dam, the season for taking and possessing striped bass and their hybrids is open year-round, the daily creel limit is three fish in aggregate and the minimum length limit is 18 inches.
 - (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
 - (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
 - (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, Lake Raleigh in Wake County, Randleman Reservoir in Randolph and Guilford counties, Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95 (except Tar River Reservoir in Nash County), South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed. In Lake Norman the minimum size limit for black bass is 14 inches.
 - (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
 - (10) The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
 - (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
 - (12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir and in the Roanoke River and its tributaries downstream of Roanoke Rapids dam and in the Cashie, Middle, and Eastmost rivers and their tributaries. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: all public waters west of Interstate 77, South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls

- Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and Roanoke River and tributaries below Roanoke Rapids dam, as listed above. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) Size and creel limits on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass shall be possessed from December 1 through March 31.
- (18) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (19) ~~No red drum greater than 27 inches in length may be possessed.~~ In inland fishing waters, sea trout (spotted or speckled), flounder, and red drum seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamation in adjacent joint or coastal fishing waters.
- (20) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other inland fishing waters east of Interstate 95.
- (21) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) no black bass between 14 and 20 inches in length shall be possessed and only one black bass greater than 20 inches may be possessed in the daily creel limit. No minimum size limit applies to black bass less than 14 inches in length in this section of New River.
- (22) In the inland waters of Roanoke River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad. In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American shad may be possessed.
- (23) In Lake Norman and Badin Lake the daily creel limit for blue catfish greater than 32 inches in length is one fish.
- (24) In all public fishing waters east of Interstate 77, the minimum length for Roanoke and rock bass is 8 inches and the daily creel limit is two fish in aggregate.
- (25) ~~In inland fishing waters the minimum length for gray trout (weakfish) is 12 inches and the daily creel limit is one fish.~~ In inland fishing waters, gray trout (weakfish) seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamation in adjacent joint or coastal fishing waters.

Authority G.S. 113-134; 113-292; 113-304; 113-305.

SECTION .0400 – NONGAME FISH

**15A NCAC 10C .0401 MANNER OF TAKING
NONGAME FISHES: PURCHASE AND SALE**

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.
- (2) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, and in all other inland fishing waters east of Interstate 95.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir and Lake Wylie, except that one fish per day may be taken by bow and arrow.
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
- (6) The minimum size limit for gray trout (weakfish) is 12 inches and the daily creel limit is one fish. In inland fishing waters, gray trout (weakfish) seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamation in adjacent joint or coastal fishing waters.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters is the same as the trout fishing season.

(c) Nongame fishes, except alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties), blue crab, and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Eels less than six inches in length may not be taken from inland waters for any purpose.

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It is unlawful to possess more than 200 freshwater mussels.

(e) Size and creel limits as set in this Rule on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.

(f) In Lake Norman and Badin Lake, the daily creel limit for blue catfish greater than 32 inches is one fish.

Authority G.S. 113-134; 113-272; 113-292.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0376.

Proposed Effective Date: August 1, 2011

Public Hearing:

Date: March 16, 2011

Time: 10:00 a.m.

Location: NC WRC, 5th Floor Meeting Room, 1751 Varsity Dr., Raleigh, NC 27606

Reason for Proposed Action: Establishment of a "no-wake" zone for boater safety around the Boating Access Area in the vicinity of Emerald Isle.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing or via electronic mail during the comment period which ends May 2, 2011 to C. Norman Young, Jr., NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001 or email nyoung@ncdoj.gov.

Comments may be submitted to: Betsy Foard, NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1721; phone (919) 707-0013; email betsy.foard@ncwildlife.org

Comment period ends: May 2, 2011

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

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

- ☒ **State**
☐ **Local**
☐ **Substantial Economic Impact** ($\geq \$3,000,000$)
☐ **None**

Fiscal Note posted at

http://www.osbm.state.nc.us/files/pdf_files/WRC01132011.pdf

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0376 TOWN OF EMERALD ISLE

(a) Regulated Area. This Rule applies to waters within the territorial jurisdiction of the Town of Emerald Isle, as described in Paragraph (c) of this Rule.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated area described in Paragraph (c) of this Rule.

(c) Affected Areas are:

- (1) the entire length of the Bogue Sound Drive Channel, which is .6 miles in length, located adjacent and roughly parallel to the shoreline in the vicinity of Kelly Lane and Bogue Sound Drive; ~~and Drive;~~
- (2) the waters of the Coast Guard Channel at a point extending from the north entrance of the channel behind 419 Channel Drive to the west entrance of the channel near 116 Bogue Court; ~~and~~
- (3) the channel in Bogue Sound north of Archer Point beginning at 34.67718, -77.01528, extending southeast a distance of approximately 3700 feet to the Emerald Isle Boating Access Area, at 34.67105, -77.00622.

(d) Placement and Maintenance of Markers. The Town of Emerald Isle is designated a suitable agency for placement and maintenance of the markers or signs implementing this Rule.

Authority G.S. 71A-15; 72A-3.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 25 - INTERPRETER AND TRANSLITERATOR BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Interpreter and Transliterator Licensing Board intends to amend the rule cited as 21 NCAC 25 .0209.

Proposed Effective Date: August 1, 2011

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): If you want the Board to schedule a public hearing on this rule, mail a written request for hearing to the Board at P.O. Box 1632, Garner, NC 27529 within 15 days after the notice of text is published in the NC Register.*

Reason for Proposed Action: *The purpose of the proposed amendment is the creation of a cost-effective way to collect civil penalties assessed against licensees pursuant to G.S. 90D-14(a). It is not practical to file civil actions to collect fifty dollars (\$50.00) civil penalties.*

Procedure by which a person can object to the agency on a proposed rule: *If you wish to object to the adoption of this proposed amendment, state the reasons for your objection in a written comment and mail your objection to: The NC Interpreter and Transliterator Licensing Board, P.O. Box 1632, Garner, NC 27529.*

Comments may be submitted to: *Laurie Shaw, Executive Secretary, The NC Interpreter and Transliterator Licensing Board, P.O. Box 1632, Garner, NC 27529; phone (919) 779-5709; fax (919) 779-5642; email lshaw@mgmt4u.com*

Comment period ends: May 2, 2011

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

Fiscal Impact:

- ☐ **State**
☐ **Local**
☐ **Substantial Economic Impact** ($\geq \$3,000,000$)
☒ **None**

SECTION .0200 – LICENSING

21 NCAC 25 .0209 PERSONS WHO ARE INELIGIBLE TO APPLY FOR A LICENSE

(a) Any person who violates G.S. 90D-4(a) shall be ineligible for licensure for a period of up to two years following the last date on which the person violated G.S. 90D-4(a).

(b) Any person whose license application is denied by the Board on the ground that the person gave false information to, or

withheld information from, the Board while seeking a license shall be ineligible for licensure for a period of two years following the denial.

(c) Any person whose license is revoked by the Board on any grounds other than G.S. 90D-12(5) shall be ineligible for licensure for a period of two years following the revocation.

(d) Any person whose license has been revoked pursuant to G.S. 90D-12(5) for failing to pay child support after having been ordered to do so by a court of competent jurisdiction, or for failing to comply with a subpoena issued pursuant to a child support or paternity establishment proceeding, shall be ineligible to apply for a new license until the Board receives a certification from the appropriate clerk of court that the person is no longer delinquent in child support payments or that the person has complied with, or is no longer subject to, the subpoena.

(e) Any person who has not paid or timely appealed a civil penalty assessed pursuant to G.S. 90D-14 shall be ineligible to apply for license renewal until the civil penalty has been paid. Any person who has exhausted all appeals without overturning a civil penalty shall be ineligible to apply for license renewal until the civil penalty has been paid.

Authority G.S. 50-13.12; 90D-6; 90D-12.

CHAPTER 60 - BOARD OF REFRIGERATION EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Refrigeration Examiners intends to adopt the rules cited as 21 NCAC 60 .1201-.1206 and amend the rule cited as 21 NCAC 60 .0102.

Proposed Effective Date:

21 NCAC 60 .0102 – July 1, 2011

21 NCAC 60 .1201, .1202, .1203, .1204, .1205, .1206 – June 1, 2012

Public Hearing:

Date: *April 5, 2011*

Time: *2:00 p.m.*

Location: *Hanes Board Room, Marriott, 425 N. Cherry Street, Winston-Salem, NC 27101*

Reason for Proposed Action:

21 NCAC 60 .0102 – Is proposed to be amended to correct the physical and mailing address of the Board.

21 NCAC 60 .1201 – Sets out continuing education requirements.

21 NCAC 60 .1202 – Sets out minimum requirements for course sponsor approval for continuing education.

21 NCAC 60 .1203 – Sets out minimum requirements for course instructor approval for continuing education.

21 NCAC 60 .1204 – Sets out the contact hour requirements for continuing education.

21 NCAC 60 .1205 – Sets out the computation of continuing education hours.

21 NCAC 60 .1206 – Sets out requirements for publishing approved course sponsors and instructors.

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to these rules by contacting Barbara Hines, SBRE, 889 Hwy 70 W., Garner, NC 27529.*

Comments may be submitted to: *Barbara Hines, 889 Hwy 70 W., Garner, NC 27529; phone (919) 779-4711; fax (919) 779-4733; email refrgexs@bellsouth.net*

Comment period ends: *May 16, 2011*

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

Fiscal Impact:

- ☐ **State**
- ☐ **Local**
- ☐ **Substantial Economic Impact (≥\$3,000,000)**
- ☒ **None**

SECTION .0100 - ORGANIZATION AND DEFINITIONS

21 NCAC 60 .0102 OFFICE OF BOARD

The Board's office is located at ~~893~~ 889 Highway 70, West, Suite 208, Garner, North Carolina. The Board's mailing address is ~~Suite 208, 893-889~~ Highway 70 West, Garner, North Carolina, NC 27529. The Board's rules are available for inspection at this office during regular office hours. The materials used in rule-making decisions shall be available for inspection at said office.

Authority G.S. 87-54; 150B-11(2).

SECTION .1200 – CONTINUING EDUCATION

21 NCAC 60 .1201 CONTINUING EDUCATION REQUIREMENTS

(a) Every licensed individual pursuant to G.S. 87-57, shall complete continuing education for each annual license period to renew the license for the next annual license period, except as follows:

- (1) Individuals becoming licensed by examination during the 12 month period immediately preceding the license renewal date;
- (2) Licensees unable to fulfill the required number of hours as the result of illness as certified in writing by the attending physician and who will not be engaged in bidding, supervising or other activities for which a license is required may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests shall be approved within 90 days consistent with the requirements applicable to all licensees; or
- (3) Approved instructors presenting courses in accordance with this Section; or
- (4) Licensees over the age of 65, who shall not be engaged in bidding, supervising or other activities for which a license is required during the coming year, except as an employee of another licensee, may apply to the Board and obtain an exemption. If an exemption is granted and the licensee thereafter wishes to engage in activity requiring a license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken; or
- (5) Licensees who have been called to active duty with any branch of the United States Military Service are not required to obtain continuing education credit hours during times they are deployed on active duty outside North Carolina and will not be required to obtain continuing education credit hours for the license year in which they return to North Carolina from active duty. The licensee will be required to obtain continuing education credit hours the years following return from deployment on active duty outside North Carolina. In order to qualify for exemption from continuing education credit hours based on active military duty, the licensee must submit a copy of the military orders documenting their active duty military deployment and return.

(b) Licensees shall be required to complete at least four hours of approved continuing education for license renewal.

(c) The Board, pursuant to Rules .1202 and .1203 of this Section approves course sponsors, instructors and courses. Because of the differences in the refrigeration contracting industry and individual needs of licensed contractors, each contractor must exercise judgment in selecting courses for which continuing education is claimed and in choosing only those courses that will advance the individuals' knowledge.

(d) Course sponsors may be, but are not limited to, colleges or universities, community colleges, trade associations, providers of self-study programs, employers, third party professional examination companies, private instructors and the like.

(e) North Carolina licensees residing within the state must obtain the required continuing education hours by taking a course provided by an approved sponsor.

(f) North Carolina licensees residing outside North Carolina may obtain credit for courses offered in North Carolina. They may also obtain credit for courses offered in their state, province or country of residence and provided by non-approved sponsors or instructors provided the Board subsequently approves the courses taken, pursuant to Rule .1202(b) of this Section.

(g) All persons seeking to renew their licenses must demonstrate that a minimum of one-half of the continuing education hours for each annual license period were obtained by Classroom or seminar attendance.

Authority G.S. 87-64.

21 NCAC 60 .1202 MINIMUM REQUIREMENTS FOR COURSE SPONSOR APPROVAL

(a) Each course sponsor shall submit an application for continuing education course sponsor approval to the Board on a form provided by the Board by March 1 prior to the calendar year in which the course will be offered. The application shall include but is not limited to:

- (1) The name of the sponsor;
- (2) Sponsor contact person, address and telephone number;
- (3) Course title and outline;
- (4) Course contact hours;
- (5) Schedule of courses, if established, including dates, time and locations;
- (6) Course fee; and
- (7) Name(s) of instructor(s).

(b) To qualify as an approved continuing education course sponsor:

- (1) All courses offered by the sponsor shall last no fewer than two contact hours; and
- (2) All courses offered by the sponsor shall cover articles of the current National Electrical Code; N.C. Mechanical Code; G.S. 87, Article 5; this Chapter; or other subject matter satisfying the requirements in G.S. 86-64 as approved by the Board.

(c) The course offered shall be presented by one or more instructors approved by the Board.

(d) The course sponsor or instructor shall provide the Board with a certified class roster of all attending licensees within 30 days after the completion of the course.

(e) The course sponsor or instructor shall provide each attending qualified individual with a certificate of completion within 30 days after completion of each course.

(f) The Board shall approve or deny applications at its second quarter meeting.

(g) Upon arrival of the application, each approved sponsor shall agree to conduct courses in accordance with this Section and shall indicate its agreement by signing a continuing education sponsor agreement form provided by this Board.

Authority G.S. 87-64.

21 NCAC 60 .1203 MINIMUM REQUIREMENTS FOR COURSE INSTRUCTOR APPROVAL

(a) Each course instructor shall submit an application for continuing education course instructor approval to the Board on a form provided by the Board by March 1 prior to the calendar year in which the course will be offered. The application shall include but is not limited to:

- (1) The name of the instructor;
- (2) Instructor's address and telephone number;
- (3) The name of the course sponsor;
- (4) Course title;
- (5) Course contact hours; and
- (6) Qualifications of instructor.

(b) No applicant shall be considered for approval as a continuing course instructor unless the applicant satisfies at least one of the following:

- (1) Be a licensed contractor as defined in G.S. 87-58.
- (2) Be found by the Board to have professional or trace experience or other special qualifications qualifying him to teach courses in the license classification or classifications determined by the Board.

(c) The Board may deny an application if it finds that the applicant has failed to comply with the terms of any agreement as provided in Paragraph (g) of this Rule or Rules of the Board.

(d) The course instructor application shall be submitted together with the application for the continuing education course sponsor approval as prescribed in Rule .1202 of this Section.

(e) The Board shall approve or deny applications at its second quarter meeting.

(f) Appeals from denials shall be heard by the Board at a scheduled meeting in July.

(g) Upon approval of the application, each approved instructor shall agree to conduct courses in accordance with this Section and shall indicate his agreement by signing a continuing education instructor agreement form provided by the Board.

Authority G.S. 87-64.

21 NCAC 60 .1204 CONTACT HOURS

(a) Approved courses must be offered for no fewer than two contact hours.

(b) Credit shall be granted to the licensee only upon completion of any entire course.

(c) No credit shall be granted for courses attended prior to being qualified by examination.

(d) No contact hours over the required amount will be carried forward to the next calendar year.

Authority G.S. 87-64.

21 NCAC 60 .1205 COMPUTATION OF CONTINUING EDUCATION HOURS

(a) Group Courses: Non-college Courses. Continuing education credit for a group course that is not a part of a college curriculum is given based on contact hours. A contact hour is 50 minutes of instruction. Credit is granted only for full contact hours.

(b) College Courses. Continuing education credit for a college course in the college curriculum is given based on college credit hours. One semester hour of college credit is 16 contact hours; and one continuing education unit is 10 contact hours.

(c) Self-study Courses. Continuing education credit for a self-study course is given based on the average number of contact hours needed to complete the course. The course shall include a written examination having a minimum of 25 questions for each two contact hours course credit and a minimum passing grade of 70. A sponsor must determine the average number of contact hours it takes to complete the self-study course and submit this information with its application for continuing education course sponsor approval.

(d) Examination. Continuing education for an examination is based on the type of examination, number of questions, number of hours permitted to take the examination and passing grade. The examination shall include a minimum of 25 questions for each two contact hours course credit and a minimum passing grade of 70. A sponsor must set the number of hours permitted to take the examination and submit this information with its application for continuing education course sponsor approval.

(e) Total Annual Hours. No credit shall be allowed for a course having fewer than two contact hours.

Authority G.S. 87-64.

21 NCAC 60 .1206 LIST OF APPROVED COURSE SPONSORS AND INSTRUCTORS

In July of each year the Board shall publish and/or post a link on the Board Website that shall include but is not limited to:

- (1) All approved course sponsors and instructors for that fiscal year; and
- (2) Contact information for all approved course sponsors and instructors.

Authority G.S. 87-64.

CHAPTER 63 – SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Social Work Certification and Licensure Board intends to adopt the rules cited as 21 NCAC 63 .0106, .0406 and amend the rules cited as 21 NCAC 63 .0102, .0609.

Proposed Effective Date: July 1, 2011

Public Hearing:

Date: April 1, 2011

Time: 9:00 a.m.

Location: NCSWCLB Office, 1207 S. Cox Street, Suite F, Asheboro, NC 27203

Reason for Proposed Action:

21 NCAC 63 .0102 – Define surrender of a license which is required to be reported to the National Practitioner Data Bank in accordance with Section 1921 of the Social Security Act.

21 NCAC 63 .0106 – Pursuant to G.S. 93B-2, the Board is proposing procedures for the proper filing of a financial report with the required State Offices.

21 NCAC 63 .0406 – Pursuant to G.S. 93B-15, the Board is establishing procedures for postponing or waiving continuing education requirements for certified and licensed individuals serving in the armed forces of the United States.

21 NCAC 63 .0609 – Clarify to licensees, the adverse action reporting requirements outlined by the National Practitioner Data Bank as required under Section 1921 of the Social Security Act, and to reflect a change in the name of the Disciplinary Action Reporting Service (DARS) to Public Protection Database (PPD).

Procedure by which a person can object to the agency on a proposed rule: State the objection and reasons for the objection. Specify the text of the rule to which the objection pertains. Submit the objection in writing to the Rule Making Coordinator, Micki Lilly, Executive Director, NCSWCLB, P.O. Box 1043, Asheboro, NC 27204.

Comments may be submitted to: Micki Lilly, NCSWCLB Executive Director, P.O. Box 1043, Asheboro, NC 27204

Comment period ends: May 5, 2011

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

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantial Economic Impact (≥\$3,000,000)
☒ None

SECTION .0100 - GENERAL

21 NCAC 63 .0102 DEFINITIONS

Whenever used in this Chapter, the definitions set forth in G.S. 90B-3 are herein incorporated by reference. The following definitions apply in this Chapter:

- (1) NCSWCLB - this designation represents the North Carolina Social Work Certification and Licensure Board.

- (2) CSW - this designation represents the certified social worker level of certification.
- (3) CMSW - this designation represents the certified master social worker level of certification.
- (4) CSWM - this designation represents the certified social work manager level of certification.
- (5) LCSW - this designation represents the licensed clinical social worker level of certification.
- (6) P-LCSW - this designation represents the provisionally licensed clinical social worker level of certification.
- (7) Reprimand. Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.
- (8) Censure. Censure is an act involving severe condemnation and a sanction by the Board for practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.
- (9) Probation. Probation is a stay of revocation or suspension allowing limited practice within preconditions established by the Board. Violations of these conditions may result in revocation.
- (10) Suspension. Suspension is the withdrawal of privilege to practice for a specific period of time.
- (11) Revocation. Revocation is the withdrawal of privilege to practice as a certified or licensed social worker in the State of North Carolina.
- (12) Clinical Social Work Experience. As it relates to the work experience required for LCSW licensure, two years of clinical social work experience in direct practice shall mean the professional application of master or doctoral social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial function. Clinical social work experience requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of one or more of the following disorders or conditions: mental, emotional, addictive, or behavioral disorders and conditions. In addition, the clinical social work experience may also include clinical case management, information and referral, mediation, client education, clinical supervision and clinical consultation that is directly related to the treatment plan or personal care plan of a client/consumer.
- (13) Diagnosis. In the context of licensed clinical social work practice is the process of

distinguishing, beyond the general social work assessment, among one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions; within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classifications systems.

- (14) Clinical Case Management. A comprehensive approach to care integrating a broad array of interventions; to include planning, implementation and management of care for clients with one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions. Interventions by the clinical case manager shall involve face-to-face contact with the client on a regular basis, shall be grounded in clinical social work theory, and guided by the client's treatment plan or personal care plan.
- (15) Treatment. Clinical social work intervention, including individual, couples, family, or group psychotherapy, that is empirically grounded and used to help resolve symptoms of one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions.
- (16) Surrender. Surrender is the voluntary relinquishment of a certification or license by its holder. The Surrender of a certification or license will only be accepted by Consent Order with the Board.

Authority G.S. 90B-3; 90B-6.

21 NCAC 63 .0106 ANNUAL REPORTS

- (a) Not later than October 31 of each year, the Board shall file the reports required by G.S. 93B-2.
- (b) In the event the reports required by G.S. 93B-2 are not timely filed, and the Board's authority to expend any funds is suspended, the Board shall continue to issue and renew licenses and deposit any fees or funds received during the period of suspension into an escrow account established by the Board solely for this purpose.
- (c) The Board shall not expend the fees or funds until the Board has filed the required reports in accordance with G.S. 93B-2.

Authority G.S. 93B-2.

SECTION .0400 - RENEWAL OF CERTIFICATION

21 NCAC 63 .0406 MILITARY WAIVER OR EXTENSION OF TIME FOR RENEWAL OF CERTIFICATION OR LICENSURE

- (a) If a social worker is currently certified or licensed in good standing by this Board and is serving in the armed forces of the United States and who has been granted an extension of time to file a tax return under G.S. 105-249.2, the Board shall grant a

waiver or the same extension of time to fulfill the requirements for renewal of his or her certification or licensure.

(b) Prior to the expiration of his or her license or certificate, the licensee or certificate holder shall submit a written request for extension to the Board to include a copy of the social worker's military orders and the extension approval granted by the Internal Revenue Service or the State Department of Revenue.

(c) During the extended time period, the existing license or certification shall not expire until a decision on the renewal application is made by the Board. If the application is denied or the terms of the license or certification are limited, the existing license or certification shall not expire until the last day for applying for judicial review of the Board order.

(d) Continuing education credits approved during the extended time period shall not be utilized for future renewal periods.

Authority G.S. 90B-6; 90B-6.2; 93B-15.

SECTION .0600 - DISCIPLINARY PROCEDURES

21 NCAC 63 .0609 REPORTING OF DISCIPLINARY ACTIONS

The Board shall report all disciplinary actions specified in G.S. 90B-11 through the ~~Disciplinary Action Reporting Systems (DARS), the Federal Data Bank~~ Public Protection Database (PPD), the National Practitioner Data Bank – Healthcare Integrity and Protection Data Bank (NPDB-HIPDB), and may report them to any requesting public or private entity. Disciplinary actions do not include complaints.

- (1) In compliance with NPDB-HIPDB requirements, the N.C. Social Work Certification and Licensure Board shall report negative action or finding that is publicly available. Consistent with 45 C.F.R. 60.3, the following negative actions shall be reported:
 - (a) Injunctions for unlicensed practice;
 - (b) Issuance of a cease and desist order;
 - (c) Revocation;
 - (d) Suspension;
 - (e) Censure;
 - (f) Reprimand;
 - (g) Probation;
 - (h) Withdrawal or denial of initial applications or reapplications proximate to an ethics matter;
 - (i) Surrender of certification or license during an investigation;
 - (j) Practice limitations connected to the delivery of health care services as defined by 45 C.F.R. 60.3; and
 - (k) Limitations on the right of a licensee or certificate holder to supervise.
- (2) For purposes of this Rule, the following matters shall not constitute negative actions: monitoring independent of restrictions or discipline; and letters of concern.

Authority G.S. 90B-6(h); 90B-11.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on January 20, 2011.

**REGISTER CITATION TO THE
NOTICE OF TEXT****STRUCTURAL PEST CONTROL COMMITTEE**

<u>Definitions</u>	02	NCAC 34	.0102*	24:24 NCR
<u>Re-Inspections</u>	02	NCAC 34	.1103*	24:09 NCR

AGRICULTURE, BOARD OF

<u>The Transportation of Bees</u>	02	NCAC 48A	.0246*	25:05 NCR
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BANKS, OFFICE OF THE COMMISSIONER OF

<u>Seller Discounts for Use of Affiliated Mortgage Lender or...</u>	04	NCAC 03M	.0602*	24:09 NCR
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HOME INSPECTOR LICENSURE BOARD

<u>Continuing Education Required for Renewal of Active License</u>	11	NCAC 08	.1302	25:08 NCR
<u>Elective Course Component</u>	11	NCAC 08	.1318*	25:08 NCR
<u>Application for Original Approval of an Elective Course</u>	11	NCAC 08	.1319*	25:08 NCR
<u>Per Student Fee</u>	11	NCAC 08	.1332	25:08 NCR
<u>Renewal of Course and Sponsor Approval</u>	11	NCAC 08	.1336*	25:08 NCR

INSURANCE, DEPARTMENT OF

<u>Long-Term Care Partnership Standards</u>	11	NCAC 12	.1030*	25:08 NCR
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Admission of Trainees</u>	12	NCAC 09B	.0203	25:08 NCR
<u>Basic Law Enforcement Training</u>	12	NCAC 09B	.0205*	25:08 NCR
<u>Required Annual In-Service Training Topics</u>	12	NCAC 09E	.0102	25:08 NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC 09E	.0105*	25:08 NCR

LABOR, DEPARTMENT OF

<u>Scope</u>	13	NCAC 07F	.0901	25:07 NCR
<u>Incorporation by Reference</u>	13	NCAC 07F	.0902	25:07 NCR
<u>Definitions</u>	13	NCAC 07F	.0903	25:07 NCR
<u>Operator Qualification and Certification</u>	13	NCAC 07F	.0904	25:07 NCR
<u>Signal Person Qualification</u>	13	NCAC 07F	.0905	25:07 NCR
<u>Maintenance and Repair Employee Qualification</u>	13	NCAC 07F	.0906	25:07 NCR
<u>Training</u>	13	NCAC 07F	.0907	25:07 NCR
<u>Fall Protection</u>	13	NCAC 07F	.0908	25:07 NCR

APPROVED RULES

<u>Design, Construction and Testing</u>	13	NCAC 07F .0909	25:07 NCR
<u>Equipment With a Rated Hosting/Lifting Capacity of 2,000 ...</u>	13	NCAC 07F .0910	25:07 NCR
<u>Equipment Modifications</u>	13	NCAC 07F .0911	25:07 NCR
<u>Assembly and Disassembly of Equipment</u>	13	NCAC 07F .0912	25:07 NCR
<u>Power Line Safety</u>	13	NCAC 07F .0913	25:07 NCR
<u>Wire Rope</u>	13	NCAC 07F .0914	25:07 NCR
<u>Inspections</u>	13	NCAC 07F .0915	25:07 NCR
<u>Operation of Equipment</u>	13	NCAC 07F .0916	25:07 NCR
<u>Operational Aids</u>	13	NCAC 07F .0917	25:07 NCR
<u>Safety Devices</u>	13	NCAC 07F .0918	25:07 NCR
<u>Signals</u>	13	NCAC 07F .0919	25:07 NCR
<u>Hoisting Personnel</u>	13	NCAC 07F .0920	25:07 NCR
<u>Tower Cranes</u>	13	NCAC 07F .0921	25:07 NCR
<u>Derricks</u>	13	NCAC 07F .0922	25:07 NCR
<u>Floating Cranes/Derricks and Land Cranes/Derricks on Barges</u>	13	NCAC 07F .0923	25:07 NCR
<u>Overhead and Gantry Cranes</u>	13	NCAC 07F .0924	25:07 NCR
<u>Dedicated Pile Drivers</u>	13	NCAC 07F .0925	25:07 NCR
<u>Sideboom Cranes</u>	13	NCAC 07F .0926	25:07 NCR
<u>Operator Certification - Written Examination - Technical ...</u>	13	NCAC 07F .0927	25:07 NCR

MARINE FISHERIES COMMISSION

<u>Scope of Management</u>	15A	NCAC 03H .0102	25:04 NCR
<u>Proclamation Authority of Fisheries Director</u>	15A	NCAC 03H .0103	25:04 NCR
<u>Maps and Marking</u>	15A	NCAC 03H .0104	25:04 NCR
<u>Definitions</u>	15A	NCAC 03I .0101*	25:04 NCR
<u>Coral and Live Rock</u>	15A	NCAC 03I .0116*	25:04 NCR
<u>Maps and Marking</u>	15A	NCAC 03I .0121*	25:04 NCR
<u>Recreational Use of Pots</u>	15A	NCAC 03J .0302	25:04 NCR
<u>Horseshoe Crabs</u>	15A	NCAC 03L .0207*	25:04 NCR
<u>Mutilated Finfish</u>	15A	NCAC 03M .0101	25:04 NCR
<u>Tuna</u>	15A	NCAC 03M .0520	25:04 NCR
<u>Ocean Fishing Pier Blanket Coastal Recreational Fishing L...</u>	15A	NCAC 03O .0113	25:04 NCR
<u>Shellfish Bottom and Water Column Lease Applications</u>	15A	NCAC 03O .0202*	25:04 NCR
<u>Transfer of Interest</u>	15A	NCAC 03O .0209*	25:04 NCR
<u>Procedures and Requirements to Obtain Permits</u>	15A	NCAC 03O .0501*	25:04 NCR
<u>Primary Nursery Areas</u>	15A	NCAC 03R .0103*	25:04 NCR
<u>Permanent Secondary Nursery Areas</u>	15A	NCAC 03R .0104*	25:04 NCR
<u>Special Secondary Nursery Areas</u>	15A	NCAC 03R .0105*	25:04 NCR
<u>Attended Gill Net Areas</u>	15A	NCAC 03R .0112	25:04 NCR
<u>Oyster Sanctuaries</u>	15A	NCAC 03R .0117	25:04 NCR

COASTAL RESOURCES COMMISSION

<u>General Definitions</u>	15A	NCAC 07H .0106*	25:03 NCR
<u>Use Standards</u>	15A	NCAC 07H .0208*	25:03 NCR
<u>Declaration of General Policy</u>	15A	NCAC 07M .0401*	25:03 NCR

APPROVED RULES

Policy Statements 15A NCAC 07M .0403* 25:03 NCR

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

X-Ray Fee Amounts 15A NCAC 11 .1105* 25:06 NCR

Radioactive Materials and Accelerator Fee Amounts 15A NCAC 11 .1106* 25:05 NCR

Fees and Payment 15A NCAC 11 .1423* 25:05 NCR

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

Time and Place of CPA Examinations 21 NCAC 08F .0101* 25:04 NCR

Filing of Examination Applications and Fees 21 NCAC 08F .0103* 25:04 NCR

Conditioning Requirements 21 NCAC 08F .0105* 25:04 NCR

Compliance with CPA Firm Registration 21 NCAC 08J .0111* 25:04 NCR

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Criteria for Continuing Education Courses 21 NCAC 14R .0103* 25:05 NCR

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School Catalog 21 NCAC 30 .0630* 25:04 NCR

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Definitions 21 NCAC 39 .0101* 25:02 NCR

Types of Certification 21 NCAC 39 .0102* 25:02 NCR

Application Requirements for Certification 21 NCAC 39 .0201* 25:02 NCR

Schedule of Certification Fees 21 NCAC 39 .0301* 25:02 NCR

Onsite Wastewater Contractor or Inspector Examinations 21 NCAC 39 .0401* 25:02 NCR

Time and Place of Examination 21 NCAC 39 .0402* 25:02 NCR

Conducting and Grading Examinations 21 NCAC 39 .0403* 25:02 NCR

Issuance of Certificates 21 NCAC 39 .0404* 25:02 NCR

Conditions and Limitations for Renewal of Certification 21 NCAC 39 .0501* 25:02 NCR

Requirements 21 NCAC 39 .0601* 25:02 NCR

Approval of Continuing Education Courses 21 NCAC 39 .0602* 25:02 NCR

Determination of Credit 21 NCAC 39 .0603* 25:02 NCR

Recordkeeping 21 NCAC 39 .0604* 25:02 NCR

Special Provisions for Continuing Education 21 NCAC 39 .0605* 25:02 NCR

Revocation, or Suspension of Certification 21 NCAC 39 .0701* 25:02 NCR

Certification Following Revocation or Voluntary Surrender... 21 NCAC 39 .0702* 25:02 NCR

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APPRAISAL BOARD

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21 NCAC 57D .0303* 25:06 NCR

STATE PERSONNEL COMMISSION

Policy

25 NCAC 01E .1302 25:06 NCR

Donor Guidelines

25 NCAC 01E .1305* 25:06 NCR

Transfer

25 NCAC 01E .1808* 25:02 NCR

Use of Leave

25 NCAC 01E .1809* 25:02 NCR

Appeals

25 NCAC 01J .0603 25:06 NCR

Procedural Requirements

25 NCAC 01J .0613* 25:06 NCR

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

02 NCAC 34 .0102 DEFINITIONS

In addition to the definitions contained in the Act, the following definitions apply:

- (1) "Act or law" means the Structural Pest Control Act of North Carolina of 1955.
- (2) "Active infestation of a specific organism" means evidence of present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (3) "Active ingredient" means an ingredient which will or is intended to prevent, destroy, repel, or mitigate any pest.
- (4) "Acutely toxic rodenticidal baits" means all baits that, as formulated, are classified as Toxicity Category I or II (Signal Word "Danger" or "Warning") under 40 CFR Part 156.10.
- (5) "Board of Agriculture" or Board means the Board of Agriculture of the State of North Carolina.
- (6) "Commercial certified applicator" shall mean any certified applicator employed by a licensed individual.
- (7) "Commercial structure" means any structure which is not a residential structure, including but not limited to shopping centers, offices, nursing homes, and similar structures.
- (8) "Complete surface residual spray" means the over-all application of any pesticide by spray or otherwise, to any surface areas within, on, under, or adjacent to, any structure in such a manner that the pesticide will adhere to surfaces and remain toxic to household pests and rodents or other pests for an extended period of time.
- (9) "Continuing education units" or "CEU" means units of noncredit education awarded by the Division of Continuing Studies, North Carolina State University or comparable educational institution, for satisfactorily completing course work.

- (10) "Continuing certification unit" or "CCU" means a unit of credit awarded by the Division upon satisfactory completion of one clock hour of classroom training approved as set out in these Rules.
- (11) "Crack and crevice application" means an application of pesticide made directly into a crack or void area with equipment capable of delivering the pesticide to the target area.
- (12) "Deficient soil sample" shall mean any soil sample which, when analyzed, is found to contain less than 25 percent, expressed in parts per million (ppm), of the termiticide applied by a licensee which would be found if the termiticide had been applied at the lowest concentration and dosage recommended by the labeling.
- (13) "Department" means the Department of Agriculture and Consumer Services of the State of North Carolina.
- (14) "Disciplinary action" means any action taken by the Committee as provided under the provisions of G.S. 106-65.28.
- (15) "Division" means the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (16) "Enclosed space" means any structure by whatever name known, including household structures; commercial buildings; warehouses; docks; vacant structures; places where people congregate such as hospitals, schools and churches; railroad cars; trucks; ships; aircraft; and common carriers. It shall also mean vaults, tanks, chambers, and special rooms designed for use, being used, or intended to be used for fumigation operations.
- (17) "EPA" means the Environmental Protection Agency of the United States Government.
- (18) "EPA registration number" means the number assigned to a pesticide label by EPA.
- (19) "Flammable pesticidal fog" means the fog dispelled into space and produced:
 - (a) from oil solutions of pesticides finely atomized by a blast of heated air or

- exhaust gases from a gasoline engine;
or
 - (b) from mixtures of water and pesticidal oil solutions passed through a combustion chamber, the water being converted to steam, which exerts a shearing action, breaking up the pesticidal oil into small droplets (thermal fog); or
 - (c) from oil solutions of pesticides which are forced through very narrow space by centrifugal force and atomized as they are thrown off into the air (mechanical or cold fogs).
- (20) "Fog or fogging" means micron sized particles of pesticide(s) dispersed by means of a thermal or centrifugal fogger or a pressurized aerosol pesticide.
- (21) "Fumigation" means the use of fumigants within an enclosed space, or in or under a structure, in concentrations which may be hazardous to man.
- (22) "Fumigation crew" or "crew" means personnel performing the fumigation operation.
- (23) "Fumigation operation" means all details prior to application of fumigant(s), the application of fumigant(s), fumigation period, and post fumigation details as outlined in these Rules.
- (24) "Fumigation period" means the period of time from application of fumigant(s) until ventilation of the fumigated structure(s) is completed and the structure or structures are declared safe for occupancy for human beings or domestic animals.
- (25) "Fumigator" means a person licensed under the provisions of G.S. 106-65.25(a)(3) or certified under the provisions of G.S. 106-65.26 to engage in or supervise fumigation operations.
- (26) "Gas-retaining cover" means a cover which will confine fumigant(s) to the space(s) intended to be fumigated.
- (27) "General fumigation" means the application of fumigant(s) to one or more rooms and their contents in a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.
- (28) "Household" means any structure and its contents which are used for man.
- (29) "Household pest" means any vertebrate or invertebrate organism occurring in a structure or the surrounding areas thereof, including but not limited to insects and other arthropods, commensal rodents, and birds which have been declared pests under G.S. 143-444. "Household pest" does not include wood-destroying organisms: except that subterranean termite alates swarming in or around a structure may be considered household pests.
- (30) "Household pest control" means that phase of structural pest control other than the control of wood-destroying organisms and fumigation and shall include the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradicating, and repelling household pests: except that contact spray application of pesticide to control subterranean termite alates shall be permitted under the "P" phase license.
- (31) "Inactive license" shall mean any structural pest control license held by an individual who has no employees and is not engaged in any structural pest control work except as a certified applicator or registered technician.
- (32) "Infestation of a specific organism" means evidence of past or present activity by that organism, visible in, on, or under a structure, or in or on debris under the structure.
- (33) "Inspection for a specific wood-destroying organism" means the visual examination of all accessible areas of a building and the probing of accessible structural members adjacent to slab areas, chimneys, and other areas particularly susceptible to attack by wood-destroying organisms to determine the presence of and the damage by that specific wood-destroying organism.
- (34) "Inspector" means any employee of the Structural Pest Control Division of the Department of Agriculture and Consumer Services of the State of North Carolina.
- (35) "Licensed structural pest control operation," or "pest control operation," or "operator," or "licensed operator" means any person licensed under the provisions of G.S. 106-65.25(a) or unlicensed who, for direct or indirect hire or compensation is engaged in the business of structural pest control work, as defined in G.S. 106-65.24(23).
- (36) "Liquefied gas aerosol" means the spray produced by the volatilization of a compressed and liquefied gas, to which has been added a nonvolatile oil solution containing a pesticide.
- (37) "Noncommercial certified applicator" shall mean any certified applicator not employed by a licensed individual.
- (38) "Open porch" means any porch without fill in which the distance from the bottom of the slab to the top of the soil beneath the slab is greater than 12 inches.
- (39) "Physical barrier" as used in 02 NCAC 34 .0500, means a barrier, which, by its physical properties and proper installation, is capable of preventing the passage of subterranean termites into a structure to be protected from subterranean termites.
- (40) "Residential structure" means any structure used, or suitable for use, as a dwelling such as

- a single- or multi-family home, house trailer, motor home, mobile home, a condominium or townhouse, or an apartment or any other structure, or portion thereof.
- (41) "Secretary" means the Secretary to the North Carolina Structural Pest Control Committee.
- (42) "Service vehicle" means any vehicle used regularly to transport the licensee or certified applicator or registered technician or other employee or any equipment or pesticides used in providing structural pest control services.
- (43) "Slab-on-ground" means a concrete slab in which all or part of that concrete slab is resting on or is in direct contact with the ground immediately beneath the slab.
- (44) "Solid masonry cap" means a continuous concrete or masonry barrier covering the entire top, width and length, of any wall, or any part of a wall, that provides support for the exterior or structural parts of a building.
- (45) "Space spray" means any pesticide, regardless of its particle size, which is applied to the atmosphere within an enclosed space in such a manner that dispersal of the pesticide particles is uncontrolled. Pesticidal fogs or aerosols, including those produced by centrifugal or thermal fogging equipment or pressurized aerosol pesticides, shall be considered space sprays.
- (46) "Spot fumigation" means the application of a fumigant to a localized space or harborage within, on, under, outside of, or adjacent to, a structure for local household pest or rodent control.
- (47) "Spot surface residual spray" means the application of pesticidal spray directly to a surface and only in specific areas where necessary and in such a manner that the pesticidal material will largely adhere to the surface where applied and will remain toxic to household pests or rodents or other pests for which applied for an extended period of time.
- (48) "Structure" means all parts of a building, whether vacant or occupied, in all stages of construction.
- (49) "Structural pests" means all pests that occur in any type of structure of man and all pests associated with the immediate environs of such structures.
- (50) "Sub-slab fumigation" means the application of a fumigant below or underneath a concrete slab and is considered spot fumigation.
- (51) "Supervision," as used in 02 NCAC 34 .0325, shall mean the oversight by the licensee of the structural pest control activities performed under that license. Such oversight may be in person by the licensee or through instructions, verbal, written or otherwise, to persons performing such activities. Instructions may be disseminated to such persons either in person or through persons employed by the licensee for that purpose.
- (52) "Termiticide(s)" (as used in these Rules) means those pesticides specified in 02 NCAC 34 .0502, Pesticides for Subterranean Termite Prevention and/or Control.
- (53) "Termiticide barrier" shall mean an area of soil treated with an approved termiticide, which, when sampled, is not deficient in termiticide.
- (54) "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling. Provided that, the term shall not include:
- (a) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency;
 - (b) applying a pesticide against any target pest not specified on the labeling if the application is to the site specified on the labeling, unless the EPA has required that the labeling specifically state that the pesticide may be used only for the pests specified on the labeling; or
 - (c) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified by the labeling.
- (55) "Type of treatment" means the method used to apply a pesticide formulation to a specific location, including but not limited to: space spray, crack and crevice, complete surface residual, spot surface residual, bait placement, or fog.
- (56) "Unauthorized personnel" means any individual or individuals not given specific authorization by the licensee or certified applicator to enter areas to which access is restricted by these Rules.
- (57) "Waiver" means a form provided by the Committee pursuant to 02 NCAC 34 .0603 which will, when completed correctly, permit the licensee to deviate from or omit one or more of the minimum treatment methods and procedures for structural pests which are set forth in the Committee rules, definitions, and requirements.
- (58) "Wood-decaying fungi" means any of the brown or white rot fungi in the Class Hymenomycetes that are capable of digesting or consuming the structural elements of wood after installation and causing a decline in strength or failure of wooden structural members.

- (59) "Wood-destroying insect report" means any written statement or certificate issued by an operator or his authorized agent, regarding the presence or absence of wood-destroying insects or their damage in a structure.
- (60) "Wood-destroying organism" is an organism such as a termite, beetle, other insect, or fungus which may devour or destroy wood or wood products and other cellulose material in, on, under, in contact with, and around structures.
- (61) "Wood-destroying organism report" means any written statement or certificate issued by an operator or his authorized agent, regarding the presence or absence of wood-destroying organisms or their damage in a structure.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. February 1, 2011; July 1, 2004; August 1, 2002; July 1, 2000; July 1, 1998; August 3, 1992; January 1, 1991; January 1, 1989.

02 NCAC 34 .1103 RE-INSPECTIONS

(a) If a primary deviation, as defined by the committee, is found by the Division, the licensee or certified applicator responsible for said deviation shall be notified, in writing, as specified in Rule .1102(b) of this Section of the deviation. At the end of 30 days from the date of notification a reinspection shall be made by the Division to determine if the deviation has been corrected. The licensee or certified applicator responsible for the deviation shall be charged a fee of twenty-five dollars (\$25.00) for the reinspection. The disclosure of a primary deviation by the Division requires a reinspection and correction of the primary deviation before the date of reinspection does not relieve the licensee or certified applicator of the responsibility to pay the reinspection fee as heretofore set forth. If the primary deviation is not corrected on the first reinspection date, the licensee or certified applicator shall be notified, in writing, and a second reinspection shall be made at the end of 30 days from the date of notification. A fee of fifty dollars (\$50.00) shall be charged the licensee or certified applicator for the second reinspection. If the primary deviation is not corrected on the second reinspection date, the licensee or certified applicator shall be notified, in writing, and a third reinspection shall be made at the end of 30 days from the date of notification. A fee of one hundred dollars (\$100.00) shall be charged the licensee or certified applicator for the third reinspection. This reinspection procedure shall be repeated at 30-day intervals thereafter until all primary deviations have been corrected. A fee of one hundred dollars (\$100.00) shall be charged the licensee or certified applicator for each reinspection made after the date of the third reinspection. If more than one primary deviation is found on a job at any time by the Division or committee, the licensee or certified applicator shall be charged only one reinspection fee for each reinspection of the job. All such reinspection fees, as set forth herein, shall be paid within 30 days of written notice from the Division or the committee. Failure of the licensee or certified applicator to pay

all such fees, within the time specified herein, is a ground for disciplinary action by the committee.

(b) If a secondary deviation, as defined by the committee, is found by the Division, the licensee or certified applicator responsible for said deviation shall be notified, in writing, as specified in Rule .1102(b) of this Section, of the deviation. At the end of 30 days from the date of notification, a reinspection shall be made by the Division to determine if the deviation has been corrected. If all secondary deviations are not corrected on the first reinspection date, the deviations shall become primary deviations and handled thereafter as specified in Paragraph (a) of this Rule.

(c) If the validity of the results of tests, conducted by the committee or its authorized representatives, on soil samples taken from jobs treated by the licensee or certified applicator are questioned by the licensee or certified applicator, analyses of the soil samples shall be made by a chemist agreeable to the licensee or certified applicator and the committee. The chemists' analyses shall be accepted as the basis for disposition of the case. The cost of the analyses by the chemist shall be borne by the certified applicator or licensee if the results of the analyses verify the committee's prior analyses or, by the committee if the results do not verify the committee's prior analyses.

History Note: Authority G.S. 106-65.29;

Eff. July 1, 1976;

Readopted Eff. November 22, 1977;

Amended Eff. February 1, 2011; January 1, 1991; January 1, 1989; August 1, 1980;

Paragraphs (d) and (e) were recodified to Rule .1102(c) and (d) effective February 1, 2011.

02 NCAC 48A .0246 THE TRANSPORTATION OF BEES

The transportation or importation into North Carolina from any other state or country of bees of the superfamily Apoidea in any stage of development, the causal agents of their diseases or disorders, their pests, their products, nests or hives, and associated equipment are prohibited except under the following conditions:

- (1) All bees of the superfamily Apoidea except *Apis mellifera* and cross bred strains of *Apis mellifera* with other species of *Apis* that are naturalized in the United States shall be allowed entry into North Carolina only by scientific permit. Procedures for obtaining a scientific permit are:
 - (a) An application for a permit to move regulated articles shall be obtained from:
 - State Apiarist
 - Plant Industry Division
 - North Carolina Department of Agriculture and Consumer Services
 - 1060 Mail Service Center
 - Raleigh, NC 27699-1060

- This application shall be returned to the State Apiarist for processing;
- (b) Decisions of acceptance or rejection of applications for movement of regulated articles for scientific purposes shall be based on the following criteria:
- (i) pest disease risk hazard;
 - (ii) safeguards against spread which can be applied;
 - (iii) amount of material involved;
 - (iv) biological conditions in the area in which the regulated article is to be moved;
 - (v) method of packaging and method of shipment to be employed; and
 - (vi) use for which the regulated articles are to be applied.
- (2) Bees of the species, *Apis mellifera* cross bred with other species of *Apis* that are naturalized in the United States and their equipment and products are allowed entry into North Carolina under the following conditions:
- (a) Live adult bees in cages, without combs or foundation provisioned with "candy" or "syrup" made from sugar and boiled honey possessing a valid certificate of inspection shall be admitted when not from an area under quarantine;
 - (b) Bees on combs or foundation, nuclei, used hives, used combs and other used apiary equipment of any kind are allowed when issued a permit according to the provisions of the rules in this section;
 - (c) New or unused apiary equipment and products packed for nonbee consumption may be transported into North Carolina without restriction;
 - (d) Pollen shipped for bee food may be transported into North Carolina when an individual authorized by the law of the state of origin to inspect and certify pollen as free of bee disease has made such a determination;
 - (e) Nuclei of commercial beekeepers or a beekeeper who is not in the business of raising queens, package bees or nuclei for sale are allowed when issued a permit according to the provisions of the rules in this Section;
 - (f) Nuclei of queen breeders, package bee producers or nuclei producers must be accompanied by a valid certificate of apiary inspection issued by an official of the state of origin and marked with the North Carolina compliance agreement number. A compliance agreement may be made between the State Apiarist and those rearing bees in other states for sale as nuclei providing the shipper agrees to the conditions in the compliance agreement; and
 - (g) The transportation into North Carolina from any other state or country of bees on combs, used hive bodies, frames, combs and other apiary equipment is allowed into North Carolina when each shipment is accompanied by a valid permit issued by the State Apiarist.
- (3) Bees may be transported through North Carolina in interstate commerce to a destination outside North Carolina only under the following conditions:
- (a) Hives must be securely covered at all times;
 - (b) Transporting vehicles must keep the bees enclosed in a refrigerated containment vehicle that maintains the bees at a constant temperature below 45 degrees Fahrenheit;
 - (c) Transporting vehicles must travel on and remain within one mile of an interstate highway; and
 - (d) The vehicle operator or other responsible person must report to the North Carolina Department of Agriculture and Consumer Services any accidental or intentional release of bees.
- (4) Bees may be transported freely within North Carolina except as restricted by quarantine, clean-up areas, or other rules in this Section.
- (5) Any colony or colonies of bees or used apiary equipment of any kind found to be moving or to have been moved into North Carolina in violation of the requirements of this Section is subject to confiscation destruction or such other disposition as shall be determined by the State Apiarist, or other authorized inspector.

History Note: Authority G.S. 106-638; Eff. February 1, 2011.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 03M .0602 SELLER DISCOUNTS FOR USE OF AFFILIATED MORTGAGE LENDER OR BROKER

- (a) A mortgage lender or mortgage broker shall not originate a mortgage loan if the use of that mortgage lender or mortgage broker is a condition for the borrower to receive a discount or

thing of value from a seller affiliated with the mortgage lender or mortgage broker, unless:

- (1) the discount conditioned on the use of the mortgage lender or mortgage broker is disclosed separately from any other discount provided by the seller in a written document that informs the borrower that the choice of a lender not affiliated with the seller will not affect any other concessions or discounts separately offered to the borrower for the purchase of the home, other than the incentive offered for the use of the affiliated lender;
- (2) the discount conditioned on the use of the mortgage lender or mortgage broker may be used to pay only the following:
 - (A) bona fide and reasonable closing costs associated with the loan as permitted under G.S. 24-8(d); and
 - (B) bona fide discount points, which are knowingly paid by the borrower for the purpose of reducing the interest rate below the market rate for that loan product and which in fact reduces the interest rate below the market rate for that loan product; and
- (3) the discount does not exceed three percent of the final sales price.

(b) For any discount used as described in Part (a)(2)(B) of this Rule, the following documents must be maintained in the individual loan file:

- (1) the disclosure required under Subparagraph (a)(1) of this Rule;
- (2) the rate sheet used by the mortgage lender or mortgage broker to inform the borrower of the available interest rate of the loan; and
- (3) the signed lock-in agreement that demonstrates the below-market rate chosen by the borrower.

(c) For any discount used as described in Part (a)(2)(B) of this Rule, the mortgage lender must maintain written policies and procedures related to the charging of discount points, which include the method of informing borrowers of the benefits and costs of discount points and a commercially-reasonable method for determining the amount by which the interest rate will be reduced for the payment of a discount point.

(d) The discount provided for in Paragraph (a) of this Rule shall not be applied in a manner that would exceed amounts which may be directly imposed under North Carolina or Federal law, regardless of whether a party affiliated with lender directly or indirectly pays for any portion of such charges.

History Note: Authority G.S. 53-244.111(1); 53-244.111(8), 53-244.118(a);
Eff. April 1, 2011.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .1302 CONTINUING EDUCATION REQUIRED FOR RENEWAL OF ACTIVE LICENSE

(a) In order to renew an active home inspector or associate home inspector license for license renewal periods beginning on or after October 1, 2011, the licensee shall have completed, during the license renewal period, 16 credit hours, except as described in Paragraph (b) of this Rule.

(b) In order to renew an active home inspector license for license renewal periods beginning on or after October 1, 2011, who have not completed the pre-licensing education program established pursuant to G.S. 143-151.51(1)(5)(a), or its equivalent pursuant to 11 NCAC 08 .1004(c), must complete 20 hours of continuing education per year for the first three years of licensure that include the following:

- (1) Four hours of a Board approved mandatory course;
- (2) Four hours of the update course component described in 11 NCAC 08 .1309; and
- (3) 12 hours of Board approved elective courses.

(c) A licensee who is newly licensed on or after June 1 is exempt from this Section for the initial license period.

History Note: Authority G.S. 143-151.49; 143-151.51; 143-151.55; 143-151.64;
Eff. August 1, 1998;
Amended Eff. February 1, 2011; July 18, 2002.

11 NCAC 08 .1318 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a licensee shall complete 12 classroom hours of instruction in three or more Board approved elective courses within one year preceding license expiration in addition to satisfying the continuing education mandatory update course requirement described in Rule .1309 of this Section.

(b) Approval of an elective course requires approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Board to satisfy the instructor requirements set forth in Rule .1322 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period. However, the sponsor may not conduct any session of an approved course for home inspector continuing education purposes between September 10 and September 30, inclusive, of any approval period.

History Note: Authority G.S. 143-151.49(13); 143-151.64;
Eff. July 18, 2002;
Amended Eff. October 1, 2011.

11 NCAC 08 .1319 APPLICATION FOR ORIGINAL APPROVAL OF AN ELECTIVE COURSE

A person seeking original approval of a proposed elective course shall make application on a form provided by the Board. The course shall be submitted to the Board for approval no less than 45 days before the course presentation date. The Board shall not accept an application for original approval between July 1 and

September 30. This restriction shall not apply when an applicant is seeking approval to conduct a course for which another sponsor has obtained approval. The applicant shall submit a nonrefundable fee of one hundred fifty dollars (\$150.00) per course paid to the Home Inspector Licensure Board. The application shall be accompanied by a copy of the course plan or instructor's guide for the course and a copy of materials that will be provided to students. An applicant that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 18, 2002; Amended Eff. February 1, 2011; January 1, 2008.

11 NCAC 08 .1332 PER STUDENT FEE

Following completion of any approved continuing education update or elective course, the course sponsor shall submit to the Board, along with the roster and the items required to be submitted by Rule .1331 of this Section, a fee in the amount of five dollars (\$5.00) per credit hour for each licensee who completes the course according to the criteria in Rule .1305 of this Section. Fees shall be paid to the Home Inspector Licensure Board. The sponsor shall make a separate fee payment for each separate class session.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. December 4, 2002; Amended Eff. February 1, 2011; October 1, 2010.

11 NCAC 08 .1336 RENEWAL OF COURSE AND SPONSOR APPROVAL

(a) Board approval of all continuing education elective courses and of update course sponsors expires on the next September 30 following the date of issuance. In order to assure continuous approval, renewal applications shall be accompanied by the renewal fee and filed on a form provided by the Board on or before July 31 of each year. Any incomplete renewal application received on or before July 30 that is not completed within 10 days after notice of the deficiency, as well as any renewal application received after July 31, shall not be accepted; and the sponsor shall file an application for original approval on or after October 1 in order to be reapproved. Applicants for renewal of approval shall satisfy the criteria for original approval. When the Board issues original course or sponsor approval with an effective date between July 1 and September 10, the deadline for submittal of renewal applications shall be September 10 of the year in which the original approval is issued.

(b) The fee for renewal of Board approval shall be seventy-five dollars (\$75.00) for each elective course. Fees shall be paid to the Home Inspector Licensure Board and are nonrefundable.

History Note: Authority G.S. 143-151.49(13); 143-151.64; Eff. July 18, 2002; Amended Eff. February 1, 2011.

11 NCAC 12 .1030 LONG-TERM CARE PARTNERSHIP STANDARDS

(a) As used in this Rule:

- (1) "Consumer Price Index" means the measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services as determined by the Bureau of Labor Statistics of the U. S. Department of Labor.
- (2) "Qualified Policy" has the same meaning as in G.S. 58-55-55(6) and includes a certificate issued under a group policy as specified in G.S. 58-55-60.

(b) Inflation protections:

- (1) A qualified policy that is sold to an individual who has not attained the age of 61 as of the date of purchase shall provide compound annual inflation benefit increase equal to:
 - (A) at least three percent; or
 - (B) the changes in the Consumer Price Index.
- (2) A qualified policy that is sold to an individual who has attained the age of 61 but has not attained the age of 76 as of the date of purchase shall provide a level of inflation protection that:
 - (A) shall be disclosed to the applicant or enrollee at the time of application or enrollment; and
 - (B) meets the requirements of 58-55-60(5)(b).

(c) The disclosures required by G.S. 58-55-60 and G.S. 58-55-70 shall be provided by the insurer to the insured or applicant and to the additional person designated pursuant to 11 NCAC 12 .1022 at the last known address on record with the insurer within 30 calendar days of the day the insurer receives notification of the requested change from the insured that results in the status of a qualified policy changing to unqualified policy status.

History Note: Authority G.S. 58-2-40; 58-51-5; 58-51-95; 58-55-30; 58-55-55; 58-55-60; 58-55-65; 58-55-70; Eff. February 1, 2011.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school director 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 shall 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 certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302(1) of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level, or the equivalent. A nationally standardized test is a test that:

- (1) reports scores as national percentiles, stanines or grade equivalents; and
- (2) compares student test results to a national norm.

(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, 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 shall 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 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:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) 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;

(4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction;

(5) 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;

(6) 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 does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice 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 includes all criminal offenses except minor traffic offenses and specifically includes 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 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 are 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).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 620 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- | | | |
|-----|---|-----------|
| (1) | LEGAL UNIT | |
| | (A) Motor Vehicle Laws | 20 Hours |
| | (B) Preparing for Court and Testifying in Court | 12 Hours |
| | (C) Elements of Criminal Law | 24 Hours |
| | (D) Juvenile Laws and Procedures | 10 Hours |
| | (E) Arrest, Search and Seizure/Constitutional Law | 28 Hours |
| | (F) ABC Laws and Procedures | 4 Hours |
| | UNIT TOTAL | 98 Hours |
| (2) | PATROL DUTIES UNIT | |
| | (A) Techniques of Traffic Law Enforcement | 24 Hours |
| | (B) Explosives and Hazardous Materials Emergencies | 12 Hours |
| | (C) Traffic Crash Investigation | 20 Hours |
| | (D) In-Custody Transportation | 8 Hours |
| | (E) Crowd Management | 12 Hours |
| | (F) Patrol Techniques | 26 Hours |
| | (G) Law Enforcement Communication and Information Systems | 8 Hours |
| | (H) Anti-Terrorism | 4 Hours |
| | (I) Rapid Deployment | 8 Hours |
| | UNIT TOTAL | 122 Hours |
| (3) | LAW ENFORCEMENT COMMUNICATION UNIT | |
| | (A) Dealing with Victims and the Public | 10 Hours |
| | (B) Domestic Violence Response | 12 Hours |

- | | | |
|-----|--|-----------|
| | (C) Ethics for Professional Law Enforcement | 4 Hours |
| | (D) Individuals with Mental Illness and Mental Retardation | 8 Hours |
| | (E) Crime Prevention Techniques | 6 Hours |
| | (F) Communication Skills for Law Enforcement Officers | 8 Hours |
| | UNIT TOTAL | 48 Hours |
| (4) | INVESTIGATION UNIT | |
| | (A) Fingerprinting and Photographing Arrestee | 6 Hours |
| | (B) Field Note-taking and Report Writing | 12 Hours |
| | (C) Criminal Investigation | 34 Hours |
| | (D) Interviews: Field and In-Custody | 16 Hours |
| | (E) Controlled Substances | 12 Hours |
| | (F) Human Trafficking | 2 Hours |
| | UNIT TOTAL | 82 Hours |
| (5) | PRACTICAL APPLICATION UNIT | |
| | (A) First Responder | 32 Hours |
| | (B) Firearms | 48 Hours |
| | (C) Law Enforcement Driver Training | 40 Hours |
| | (D) Physical Fitness (classroom instruction) | 8 Hours |
| | (E) Fitness Assessment and Testing | 12 Hours |
| | (F) Physical Exercise 1 hour daily, 3 days a week | 34 Hours |
| | (G) Subject Control Arrest Techniques | 40 Hours |
| | UNIT TOTAL | 214 Hours |
| (6) | SHERIFF-SPECIFIC UNIT | |
| | (A) Civil Process | 24 Hours |
| | (B) Sheriffs' Responsibilities: Detention Duties | 4 Hours |
| | (C) Sheriffs' Responsibilities: Court Duties | 6 Hours |
| | UNIT TOTAL | 34 Hours |
| | (7) COURSE ORIENTATION | 2 Hours |
| | (8) TESTING | 20 Hours |
| | TOTAL COURSE HOURS | 620 Hours |

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this basic training course for law enforcement officers 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 from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy shall be used by school directors in planning, implementing and delivering basic training courses. Each school director shall be issued a copy of the guide at the time of certification at no cost to the certified school. The public may obtain copies of this guide from the Justice Academy.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. July 1, 2011; July 1, 2009; January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- (1) Firearms Training and Qualification (4);
- (2) Legal Update (4);
- (3) Career Survival: Leadership and Mentoring (4);
- (4) Juvenile Minority Sensitivity Training: Interactions, Communications and Understanding (2);
- (5) Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships (2); and
- (6) Department Topics of Choice (8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; Temporary Amendment Eff. January 1, 2005; Amended Eff. February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms:
 - (A) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials;
 - (B) Safety:

- (i) range rules and regulations;
 - (ii) handling of a firearm; and
 - (iii) malfunctions;
- (C) Review of Basic Marksmanship Fundamentals:
 - (i) grip, stance, breath control and trigger squeeze;
 - (ii) sight and alignment/sight picture; and
 - (iii) nomenclature; and
- (2) Legal Update (4);
- (3) Career Survival: Leadership and Mentoring (4);
- (4) Juvenile Minority Sensitivity Training: Interactions, Communications and Understanding (2);
- (5) Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships (2); and
- (6) Department Topics of Choice (8).

(b) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. 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

(c) The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. 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 Drawer 99
Salemberg, North Carolina 28385

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005; Amended Eff. February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07F .0901 SCOPE

*History Note: Authority G.S. 95-131;
Temporary Adoption Eff. October 1, 2009;
Eff. September 1, 2010;
Temporary Repeal Eff. November 8, 2010;
Repealed Eff. February 1, 2011.*

13 NCAC 07F .0902 INCORPORATION BY REFERENCE

13 NCAC 07F .0903 DEFINITIONS

13 NCAC 07F .0904 OPERATOR QUALIFICATION AND CERTIFICATION

13 NCAC 07F .0905 SIGNAL PERSON QUALIFICATION

13 NCAC 07F .0906 MAINTENANCE AND REPAIR EMPLOYEE QUALIFICATION

13 NCAC 07F .0907 TRAINING

13 NCAC 07F .0908 FALL PROTECTION

13 NCAC 07F .0909 DESIGN, CONSTRUCTION AND TESTING

13 NCAC 07F .0910 EQUIPMENT WITH A RATED HOISTING/LIFTING CAPACITY OF 2,000 POUNDS OR LESS

13 NCAC 07F .0911 EQUIPMENT MODIFICATIONS

13 NCAC 07F .0912 ASSEMBLY AND DISASSEMBLY OF EQUIPMENT

13 NCAC 07F .0913 POWER LINE SAFETY

13 NCAC 07F .0914 WIRE ROPE

13 NCAC 07F .0915 INSPECTIONS

13 NCAC 07F .0916 OPERATION OF EQUIPMENT

13 NCAC 07F .0917 OPERATIONAL AIDS

13 NCAC 07F .0918 SAFETY DEVICES

13 NCAC 07F .0919 SIGNALS

13 NCAC 07F .0920 HOISTING PERSONNEL

13 NCAC 07F .0921 TOWER CRANES

13 NCAC 07F .0922 DERRICKS

13 NCAC 07F .0923 FLOATING CRANES/DERRICKS AND LAND CRANES/DERRICKS ON BARGES

13 NCAC 07F .0924 OVERHEAD & GANTRY CRANES

13 NCAC 07F .0925 DEDICATED PILE DRIVERS

13 NCAC 07F .0926 SIDEBOOM CRANES

13 NCAC 07F .0927 OPERATOR CERTIFICATION – WRITTEN EXAMINATION – TECHNICAL KNOWLEDGE CRITERIA

*History Note: Authority G.S. 95-13;
Eff. October 1, 2009;
Temporary Repeal Eff. November 8, 2010;
Repealed Eff. February 1, 2011.*

15A NCAC 03H .0102 SCOPE OF MANAGEMENT

The rules in this Chapter apply to the conservation and protection of marine and estuarine resources occurring in all coastal fishing waters of North Carolina, including joint fishing waters, and in the Atlantic Ocean.

*History Note: Authority G.S. 113-129; 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2011.*

15A NCAC 03H .0103 PROCLAMATION AUTHORITY OF FISHERIES DIRECTOR

(a) It is unlawful to violate the provisions of any proclamation issued by the authority of Marine Fisheries Commission Rule.

(b) Unless specific variable conditions are set forth in a rule granting proclamation authority to the Fisheries Director, variable conditions triggering the use of the Fisheries Director's proclamation authority may include any of the following:

- (1) compliance with changes mandated by the Fisheries Reform Act and its amendments;
- (2) biological impacts;
- (3) environmental conditions;
- (4) compliance with Fishery Management Plans;
- (5) user conflicts;
- (6) bycatch issues; and
- (7) variable spatial distributions.

*History Note: Authority G.S. 113-134; 113-135; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1994; September 1, 1991;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. April 1, 2011; August 1, 2000.*

15A NCAC 03H .0104 MAPS AND MARKING

*History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. August 1, 2004;
Repealed Eff. April 1, 2011.*

15A NCAC 03I .0101 DEFINITIONS

All definitions set out in G.S. 113, Subchapter IV and the following additional terms apply to this Chapter:

- (1) Enforcement and management terms:
 - (a) Commercial Quota. Total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education.
 - (c) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
 - (d) Length of finfish.

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- (i) Curved fork length. A length determined by measuring along a line, tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
- (ii) Fork length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (iii) Pectoral fin curved fork length. A length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.
- (iv) Total length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) Recreational Possession Limit. Restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (f) Recreational Quota. Total quantity of fish allocated for harvest for a recreational purpose.
- (g) Regular Closed Oyster Season. March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (h) Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.
- (2) Fishing Activities:
 - (a) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from permitted sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
 - (i) food,
 - (ii) predator protection,
 - (iii) salinity,
 - (iv) temperature controls, or
 - (v) water circulation,
 utilizing technology not found in the natural environment.
 - (b) Attended. Being in a vessel, in the water or on the shore and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
 - (c) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
 - (i) food,
 - (ii) predator protection,
 - (iii) salinity,
 - (iv) temperature controls, or
 - (v) water circulation,
 utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
 - (d) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
 - (e) Long Haul Operations. Fishing a seine towed between two boats.
 - (f) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
 - (g) Possess. Any actual or constructive holding whether under claim of ownership or not.

- (h) Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
- (i) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (j) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (k) Shellfish production on leases and franchises:
 - (i) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) The transplanting (relay) of oysters, clams, scallops and mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (l) Swipe Net Operations. Fishing a seine towed by one boat.
- (m) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (n) Use. Employ, set, operate, or permit to be operated or employed.
- (3) Gear:
 - (a) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
 - (b) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
 - (c) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 - (i) Cast nets;
 - (ii) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
- (iii) Dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
- (iv) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand;
- (v) Hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
- (vi) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
- (vii) Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
- (viii) Minnow traps when no more than two are in use;
- (ix) Seines less than 30 feet in length;
- (x) Spears, Hawaiian slings or similar devices, which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means.
- (d) Corkline. The support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
- (e) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (f) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (g) Fyke Net. An entrapment net supported by a series of internal or

- external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (h) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
 - (i) Headrope. The support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
 - (j) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
 - (k) Lead. A mesh or webbing structure consisting of nylon, monofilament, plastic, wire or similar material set vertically in the water, held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
 - (l) Mechanical methods for clamming. Dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
 - (m) Mechanical methods for oystering. Dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
 - (n) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
 - (o) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
 - (p) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 - (q) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (4) Fish habitat areas. The estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all coastal fishing waters, as determined through marine and estuarine survey sampling, include:
- (a) Anadromous fish nursery areas. Those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (b) Anadromous fish spawning areas. Those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (c) Coral:
 - (i) Fire corals and hydrocorals (Class Hydrozoa);
 - (ii) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia),

- which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.). (d) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (e) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
 - (iv) Sponges (Phylum Porifera);
 - (v) Hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, *Solenastrea* (Class Anthozoa);
 - (vi) Bryozoans (Phylum Bryozoa);
 - (vii) Tube worms (Phylum Annelida), fan worms (*Sabellidae*); feather duster and Christmas treeworms (*Serpulidae*), and sand castle worms (*Sabellaridae*);
 - (viii) Mussel banks (Phylum Mollusca: Gastropoda); and
 - (ix) Acorn barnacles (Arthropoda: Crustacea: *Semibalanus* sp.).
- (f) Nursery areas. Those areas in which for reasons such as food, cover, bottom type, salinity, temperature and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place.
- These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size which have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) Shellfish producing habitats. Those areas in which shellfish, such as clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (h) Strategic Habitat Areas. Locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) Submerged aquatic vegetation (SAV) habitat. Submerged lands that:
- (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*) and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground

- rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
 - (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.
- This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or rules 15A NCAC 03K .0304, .0404 and 03I .0101, to apply to or conflict with the non-development control activities authorized by that Act.
- (5) Licenses, permits, leases and franchises, and record keeping:
 - (a) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
 - (b) Designee. Any person who is under the direct control of the permittee or
 - who is employed by or under contract to the permittee for the purposes authorized by the permit.
 - (c) For Hire Vessel. As defined by G.S. 113-174 when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
 - (d) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
 - (e) Land:
 - (i) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
 - (iii) For recreational fishing operations, when fish are retained in possession by the fisherman.
 - (f) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - (g) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
 - (h) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
 - (i) North Carolina Trip Ticket. Paper forms provided by the Division, and electronic data files generated from software provided by the Division, for the reporting of fisheries statistics, which include quantity, method and location of harvest.
 - (j) Office of the Division. Physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Columbia, Roanoke Island and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue

Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.

- (k) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable statutes and rules.
- (l) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (m) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed.
- (n) Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

History Note: Authority G.S. 113-134; 113-174; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993;

Recodified from 15A NCAC 03I .0001 *Eff.* December 17, 1996;

Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;

Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. August 1, 2000;

Amended Eff. April 1, 2011; April 1, 2009; October 1, 2008; December 1, 2007; December 1, 2006; September 1, 2005; April 1, 2003; April 1, 2001.

15A NCAC 03I .0116 CORAL AND LIVE ROCK

(a) It is unlawful to harvest or possess aboard a vessel coral or live rock as defined in 15A NCAC 03I .0101.

(b) Live rock and coral shall be returned to the waters where taken.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. March 1, 1995;

Recodified from 15A NCAC 3I .0016 *Eff.* December 17, 1996;

Amended Eff. April 1, 2011; May 1, 1997.

15A NCAC 03I .0121 MAPS AND MARKING

(a) Maps or charts showing the boundaries of areas identified in this Chapter and in proclamations issued by the Fisheries Director 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 this Chapter and in proclamations issued by the Fisheries Director 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 markers or signs, and boundaries described in this Chapter and in proclamations issued by the Fisheries Director, boundary descriptions shall prevail.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;

Eff. April 1, 2011.

15A NCAC 03J .0302 RECREATIONAL USE OF POTS

(a) It is unlawful for a Recreational Commercial Gear License holder to use pots authorized by 15A NCAC 03O .0302 unless each pot is marked by attaching 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 using engraved buoys or by attaching engraved metal or plastic tags to the buoy. Such identification shall include the 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.

(b) It is unlawful for a person to use more than one crab pot attached to the shore along privately owned land or to a privately owned pier without possessing a valid Recreational Commercial Gear License.

History Note: Authority G.S. 113-134; 113-173; 113-182; 143B-289.52;

Eff. January 1, 1991;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. April 1, 2011; August 1, 2000.

15A NCAC 03L .0207 HORSESHOE CRABS

(a) The annual (January through December) commercial quota for North Carolina for horseshoe crabs is established by the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab.

(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of horseshoe crabs to maintain compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab:

(1) Specify season;

(2) Specify areas;

(3) Specify quantity;

- (4) Specify means and methods; and
- (5) Specify size.

(c) Horseshoe crabs taken for biomedical use under a Horseshoe Crab Biomedical Use Permit are subject to this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;

Temporary Adoption Eff. August 1, 2000;

Codifier determined that findings did not meet criteria for temporary rule on October 31, 2000;

Temporary Adoption Eff. December 6, 2000;

Eff. August 1, 2002;

Amended Eff. April 1, 2011.

15A NCAC 03M .0101 MUTILATED FINFISH

It is unlawful to possess aboard a vessel or while engaged in fishing from the shore or a pier any species of finfish that is subject to a size or harvest restriction without having head and tail attached, except:

- (1) mullet when used for bait;
- (2) blueback herring, hickory shad and alewife when used for bait provided that not more than two fish per boat or fishing operation may be cut for bait at any one time; and
- (3) tuna possessed in a commercial fishing operation as provided in 15A NCAC 03M .0520.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. January 1, 1991;

Temporary Amendment Eff. May 1, 2001;

Amended Eff. April 1, 2011; July 1, 2006; August 1, 2002.

15A NCAC 03M .0520 TUNA

(a) It is unlawful to possess in a commercial fishing operation:

- (1) Yellowfin tuna less than 27 inches curved fork length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna.
- (2) Bigeye tuna less than 27 inches curved fork length or 27 inches from the fork of the tail to the forward edge of the cut of beheaded tuna.
- (3) Bluefin tuna less than 73 inches curved fork length or 54 inches pectoral fin curved fork length.

(b) It is unlawful to possess in a commercial fishing operation tunas subject to a size or harvest restriction without having tails attached.

(c) It is unlawful to possess for recreational purposes:

- (1) Yellowfin tuna less than 27 inches curved fork length.
- (2) Bigeye tuna less than 27 inches curved fork length.
- (3) More than three yellowfin tuna per person per day.

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;

Eff. October 1, 2008;

Amended Eff. April 1, 2011.

15A NCAC 03O .0113 OCEAN FISHING PIER BLANKET COASTAL RECREATIONAL FISHING LICENSE

(a) The length of the pier used to determine the license fee for an Ocean Fishing Pier Blanket Coastal Recreational Fishing License shall be obtained from the Ocean Fishing Pier License.

(b) It is unlawful for the responsible party of the Ocean Fishing Pier Blanket Coastal Recreational Fishing License to fail to provide to the Division by the 10th of each month a daily count of anglers fishing from the licensed pier from the previous month, including a daily count of zero for days when anglers did not fish. The information shall be submitted on a paper form provided by the Division or via electronic mail.

History Note: Authority G.S. 113-134; 113-169.4; 113-174.1; 113-174.4; 143B-289.52;

Eff. April 1, 2011.

15A NCAC 03O .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

(a) Application forms are available from the Division's office headquarters at 3441 Arendell Street, Morehead City, NC 28557 for persons desiring to apply for shellfish bottom and water column leases. Each application shall be accompanied by a map or diagram prepared at the applicant's expense including an inset vicinity map showing the location of the proposed lease with detail sufficient to permit on-site identification and must meet the information requirements pursuant to G.S. 113-202(d).

(b) As a part of the application, the applicant shall submit a management plan for the area to be leased on a form provided by the Division which meets the following standards:

- (1) States the methods through which the applicant will cultivate and produce shellfish consistent with the minimum requirements set forth in 15A NCAC 03O .0201;
- (2) States the time intervals during which various phases of the cultivation and production plan will be achieved;
- (3) States the materials and techniques that will be utilized in management of the lease;
- (4) Forecasts the results expected to be achieved by the management activities; and

(5) Describes the productivity of any other leases or franchises held by the applicant.

(c) The completed application, map or diagram, and management plan for the requested lease shall be accompanied by the non-refundable filing fee set forth in G.S. 113-202(d1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Applicants and transferees not currently holding a shellfish cultivation lease, and applicants and transferees holding one or more shellfish cultivation leases which are not meeting production requirements, shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of

Marine Fisheries. The examination shall demonstrate the applicant's knowledge of:

- (1) the shellfish lease application process;
- (2) shellfish lease planting and production requirements;
- (3) lease marking requirements;
- (4) lease fees;
- (5) shellfish harvest area closures due to pollution;
- (6) safe handling practices;
- (7) lease contracts and renewals;
- (8) lease termination criteria; and
- (9) shellfish cultivation techniques.

(e) After an application is deemed to have met all requirements and is accepted by the Division, the applicant shall identify the area for which a lease is requested with stakes at each corner in accordance with 15A NCAC 03O .0204(a)(1)(A). The applicant shall attach to each stake a sign, provided by the Division containing the name of the applicant, the date the application was filed, and the estimated acres.

History Note: Authority G.S. 113-134; 113-201; 113-202; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. April 1, 2011; September 1, 2005; May 1, 1997; September 1, 1991.

15A NCAC 03O .0209 TRANSFER OF INTEREST

(a) Within 30 days after transfer of ownership of all or any portion of interest in a shellfish lease or franchise, the new owner shall notify the Division, and provide the number of the lease or franchise and the county in which it is located. Such notification shall be accompanied by a management plan prepared by the new owner in accordance with 15A NCAC 03O .0202(b).

(b) If the new owner obtains a portion of an existing shellfish bottom lease or franchise, it shall not contain less than one-half acre and the required notification to the Division shall be accompanied by a survey prepared in accordance with the standards in 15A NCAC 03O .0203(d).

(c) Within six months after transfer of ownership, the new owner shall complete shellfish cultivation lease training as specified in 15A NCAC 03O .0202(d).

(d) Water column leases are not transferrable except when the Secretary approves such transfer in accordance with G.S. 113-202.1(f) and G.S. 113-202.2(f).

(e) In the event the transferee involved in a lease is a nonresident, the Secretary must initiate termination proceedings.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-202; 113-202.1; 113-202.2; 113-205; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. April 1, 2011; March 1, 1994; September 1, 1991.

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
 - (2) Unexpired picture identification of applicant, responsible party and, when applicable, person holding a power of attorney. Acceptable forms of picture identification are driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
 - (3) Full names and dates of birth of designees of the applicant who will be acting under the requested permit where that type permit requires listing of designees;
 - (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
 - (5) For permit applications from business entities:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable; and
 - (6) Additional information as required for specific permits.
- (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
 - (3) Atlantic Ocean Striped Bass Commercial Gear Permit.

(c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:

- (1) Permit to Transplant Prohibited (Polluted) Shellfish;
- (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
- (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
- (5) Depuration Permit.

(d) A permittee shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(f) Atlantic Ocean Striped Bass Commercial Gear Permit:

- (1) Application for an Atlantic Ocean Striped Bass Commercial Gear Permit must be made prior to November 1 of each year. A person shall declare one of the following gears for an initial Atlantic Ocean Striped Bass Commercial Gear Permit and at intervals of three consecutive license years thereafter:
 - (A) gill net;
 - (B) trawl; or
 - (C) beach seine.

For the purpose of this Rule, a beach seine is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place. Gear declarations are binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

- (2) A person is not eligible for more than one Atlantic Ocean Striped Bass Commercial Gear Permit regardless of the number of Standard Commercial Fishing Licenses, Retired Standard Commercial Fishing Licenses or assignments held by the person.

- (3) The annual, nonrefundable permit fee is ten dollars (\$10.00).

(g) For Hire Fishing Permit:

- (1) The permittee shall hold a valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers;
- (2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

(h) Applications submitted without complete and required information shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(i) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under 15A NCAC 03J .0501, 03J .0505, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.

(j) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

(k) The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

(l) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

(m) For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.

(n) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

- (o) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
- (p) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- (q) Permit applications are available at all Division Offices.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52;
Temporary Adoption Eff. September 1, 2000; May 1, 2000;
Eff. April 1, 2001;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. April 1, 2011; April 1, 2009; July 1, 2008;
December 1, 2007; September 1, 2005; April 1, 2003; August 1, 2002.

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; running northeasterly to the east shore to a point 35° 54.4615' N - 75° 40.1598' W; and west of a line that crosses a canal on the east side of Dough Creek beginning on the north shore at a point 35° 54.7103' N - 75° 40.0951' W; running southerly to the south shore to a point 35° 54.6847' N - 75° 40.0882' W; and
 - (ii) Scarborough Creek - south of a line beginning on the west shore at a point 35° 53.9801' N - 75° 39.5985' W; running northeasterly to the east shore to a point 35° 54.0372' N - 75° 39.5558' W; and
 - (b) Broad Creek - all waters north of a line beginning on the west shore at a point 35° 51.9287' N - 75° 38.3377' W; running northeasterly to the east shore to a point 35° 52.0115' N - 75° 38.1792' W; and west and south of a line beginning on the north shore at a point 35° 53.3655' N - 75° 38.0254' W; running southeasterly to the south shore to a point 35° 53.3474' N - 75° 37.9430' W;
- (2) In the Northern Pamlico Sound Area:

- (a) Long Shoal River:
 - (i) Long Shoal River - northwest of a line beginning on the north shore at a point 35° 38.0175' N - 75° 52.9270' W; running southwesterly to the south shore to a point 35° 37.8369' N - 75° 53.1060' W;
 - (ii) Deep Creek - southeast of a line beginning on the north shore at a point 35° 37.7346' N - 75° 52.1383' W; running southwesterly to the south shore to a point 35° 37.6673' N - 75° 52.2997' W;
 - (iii) Broad Creek - west of a line beginning on the north shore at a point 35° 35.9820' N - 75° 53.6789' W; running southerly to the south shore to a point 35° 35.7093' N - 75° 53.7335' W;
 - (iv) Muddy Creek - east of a line beginning on the north shore at a point 35° 36.4566' N - 75° 52.1460' W; running southerly to the south shore to a point 35° 36.2828' N - 75° 52.1640' W;
 - (v) Pains Bay - north of a line beginning on the west shore at a point 35° 35.4517' N - 75° 49.1414' W; running easterly to the east shore to a point 35° 35.4261' N - 75° 48.8029' W;
 - (vi) Otter Creek - southwest of a line beginning on the west shore at a point 35° 33.2597' N - 75° 55.2129' W; running easterly to the east shore to a point 35° 33.1995' N - 75° 54.8949' W; and
 - (vii) Clark Creek - northeast of a line beginning on the north shore at a point 35° 35.7776' N - 75° 51.4652' W; running southeasterly to the south shore to a point 35° 35.7128' N - 75° 51.4188' W;
- (b) Far Creek - west of a line beginning on the north shore at a point 35° 30.9782' N - 75° 57.7611' W; running southerly to Gibbs Point to a point 35° 30.1375' N - 75° 57.8108' W;
- (c) Middletown Creek - west of a line beginning on the north shore at a point 35° 28.4868' N - 75° 59.8186'

- W; running southwesterly to the south shore to a point 35° 28.1919' N - 76° 00.0216' W;
- (d) Wysocking Bay:
- (i) Lone Tree Creek - east of a line beginning on the north shore at a point 35° 25.6048' N - 76° 02.3577' W; running southeasterly to the south shore to a point 35° 25.1189' N - 76° 02.0499' W;
- (ii) Wysocking Bay - north of a line beginning on the west shore at a point 35° 25.7793' N - 76° 03.5773' W; running northeasterly to the east shore to a point 35° 25.9585' N - 76° 02.9055' W;
- (iii) Douglas Bay - northwest of a line beginning on Mackey Point at a point 35° 25.2627' N - 76° 03.1702' W; running southwesterly to the south shore to a point 35° 24.8225' N - 76° 03.6353' W; and
- (iv) Tributaries west of Brown Island - west of a line beginning on Brown Island 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; and
- (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; and
- (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;

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| (i) | Rose Bay: | (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; and | (vi) | Deep Bay: | | 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; |
| | | (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; | | (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; and | |
| (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) | | (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; and |
| | | (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; | | | | 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; |
| (i) | Rose 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; | (j) | Spencer 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; | | (i) | Germantown Bay: | |
| (i) | Rose Bay: | (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 | (viii) | | (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; |
| | | | | | | (B) | Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.9348' W; |

- N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W;
- (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; and
- (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;
- (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; and
- (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; and
- (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

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| | point 35° 26.3215' N - 76° 31.4522' W; | | southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' 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; | (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) | 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; | (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) | 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; | (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) | 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; | (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) | 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; and | (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) | 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; | (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; |
| (b) | Slade Creek: | (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; and |
| (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; | (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 |
| (ii) | Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running | | |

- 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; and
- (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; and
- (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; and
- (iv) Little Ease 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; and
- (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 - east of a line beginning on the north shore at a point 35° 17.7423' N - 76° 36.5164' W; running southeasterly to the south shore to a point 35° 17.5444' N - 76° 36.3963' 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; and

- (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; and
- (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; and
 - (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; and
 - (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; and
- (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; and
 - (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; and
 - (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; and

- (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; and
 - (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' W; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W; and
 - (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) Long Creek Gut - north of a line beginning on the west shore at a point 35° 09.1993' N - 76° 34.8517' W; running easterly to the east shore to a point 35° 09.1987' N - 76° 34.5373' W;
 - (v) 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;
 - (vi) 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; and
 - (vii) 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; and
 - (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; and
 - (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; and
- (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; and
 - (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' N - 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; and
- (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' W; 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°

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| | 36.7869' W, running
northeasterly to a point 35°
05.4664' N - 76° 36.7540'
W; | | 76° 35.6556' W; running
southeasterly to the east
shore to a point 35° 05.2867'
N - 76° 35.5348' 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; | (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) | 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; | (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' N - 76°
39.9901' 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; | (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; |
| (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; | (f) | Oriental: |
| (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; | (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; |
| (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; | (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; |
| (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; and | (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
southeasterly to the east
shore to a point 35° 01.4040'
N - 76° 42.7320' W; |
| (xii) | Cedar Creek - south of a line
beginning on the west shore
at a point 35° 05.3711' N - | (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; |
| | | (v) | Greens Creek - west of a line
beginning on the north shore |

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| | 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; | | 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; |
| (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; and | (b) | Adams Creek: |
| (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; | (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; |
| (g) | Dawson Creek: | (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; |
| (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; and | (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; |
| (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; and | (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; |
| (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; | (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; |
| (8) | In the Neuse River Area South Shore: | (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; |
| (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; | (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; |
| (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; and | | |
| (ii) | Gulden Creek - east of a line beginning on the north shore | | |

- (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; and
- (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; and
 - (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; and
- (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; and
- (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; and
 - (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; and
- (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; and
- (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; and
- (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; and
 - (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) Dicks Creek - north of a line beginning on the west shore at a point 34° 43.3858' N - 76° 32.9125' W; running southeasterly to the east shore to a point 34° 43.3912' N - 76° 32.8605' W; and
 - (iii) 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; and
 - (B) South 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° 45.5720' N - 76° 34.6236' W; and
 - (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; and
- (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° 58.1434' 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; and
 - (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; and
 - (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; and
 - (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;
- (c) 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; and
- (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; and
 - (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; and
- (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; and
 - (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° 28.0820' 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; and
- (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 34° 24.0167' N - 77° 36.7333' W near Beacon "93"; running southwesterly to a point 34° 23.8167' N - 77° 36.9667' W; running southwesterly along the marsh line to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W near Beacon "96"; 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; 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 demarcation 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; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W; and
- (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; and
- (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; and
- (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; and
- (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; and
- (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; and
- (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; and
- (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"; and
- (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; and

- (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; and
- (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.
- (b) Pains Bay - east of a line beginning on Pains Point at a point 35° 35.0666' N - 75° 51.2000' W; running southerly to Rawls Island to a point 35° 34.4666' N - 75° 50.9666' W; running easterly to the east shore to a point 35° 34.2309' N - 75° 50.2695' W;
- (c) Wysocking Bay - northwest of a line beginning at Benson Point at a point 35° 22.9684' N - 76° 03.7129' W; running northeasterly to Long Point to a point 35° 24.6895' N - 76° 01.3155' W;
- (d) Juniper Bay-Cunning Harbor - north of a line beginning on the west shore of Juniper Bay at a point 35° 20.6217' N - 76° 15.5447' W; running easterly to a point 35° 20.4372' N - 76° 13.2697' W; running easterly to the east shore of Cunning Harbor to a point 35° 20.3413' N - 76° 12.3378' W;
- (e) Swanquarter Bay - north of a line beginning at The Narrows at a point 35° 20.9500' N - 76° 20.6409' W; running easterly to the east shore to a point 35° 21.5959' N - 76° 18.3580' W;
- (f) Deep Cove - The Narrows - north and east of a line beginning on the west shore at a point 35° 20.9790' N - 76° 23.8577' W; running southeasterly to Swanquarter Island to a point 35° 20.5321' N - 76° 22.7869' W; and west of a line at The Narrows beginning on the north shore to a point 35° 20.9500' N - 76° 20.6409' W; running southerly to Swanquarter Island to a point 35° 20.7025' N - 76° 20.5620' W;
- (g) Rose Bay - north of a line beginning on Long Point at a point 35° 23.3404' N - 76° 26.2491' W; running southeasterly to Drum Point to a point 35° 22.4891' N - 76° 25.2012' W;
- (h) Spencer Bay - northwest of a line beginning on Roos Point at a point 35° 22.3866' N - 76° 27.9225' W; running northeasterly to Long Point to a point 35° 23.3404' N - 76° 26.2491' W;
- (i) Abel Bay - northeast of a line beginning on the west shore at a point 35° 23.6463' N - 76° 31.0003' W; running southeasterly to the east shore to a point 35° 22.9353' N - 76° 29.7215' W;

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15A NCAC 03R .0104 PERMANENT SECONDARY NURSERY AREAS

The permanent secondary nursery areas referenced in 15A NCAC 03N .0105(a) are delineated in the following coastal water areas:

- (1) Roanoke Sound:
Inner Shallowbag Bay - west of a line beginning on the northeast shore at a point 35° 54.6729' N - 75° 39.8099' W; running southerly to the southeast shore to a point 35° 54.1722' N - 75° 39.6806' W;
- (2) In the Pamlico Long Sound Area:
(a) Long Shoal River - north of a line beginning at the 5th Avenue Canal at a point 35° 35.2120' N - 75° 53.2232' W; running easterly to the east shore on Pains Point to a point 35° 35.0666' N - 75° 51.2000' W;

- (j) Mouse Harbor - west of a line beginning on Persimmon Tree Point at a point 35° 18.3915' N - 76° 29.0454' W; running southerly to Yaupon Hammock Point to a point 35° 17.1825' N - 76° 28.8713' W;
 - (k) Big Porpoise Bay - northwest of a line beginning on Big Porpoise Point at a point 35° 15.6993' N - 76° 28.2041' W; running southwesterly to Middle Bay Point to a point 35° 14.9276' N - 76° 28.8658' W;
 - (l) Middle Bay - west of a line beginning on Deep Point at a point 35° 14.8003' N - 76° 29.1923' W; running southerly to Little Fishing Point to a point 35° 13.5419' N - 76° 29.6123' W;
 - (m) Jones Bay - west of a line beginning on Mink Trap Point at a point 35° 13.4968' N - 76° 31.1040' W; running southerly to Boar Point to a point 35° 12.3253' N - 76° 31.2767' W; and
 - (n) In the Bay River Area:
 - (i) Bonner Bay - southeast of a line beginning on the west shore at a point 35° 09.6281' N - 76° 36.2185' W; running northeasterly to Davis Island Point to a point 35° 10.0888' N - 76° 35.2587' W; and
 - (ii) Gales Creek-Bear Creek - north and west of a line beginning on Sanders Point at a point 35° 11.2833' N - 76° 35.9000' W; running northeasterly to the east shore to a point 35° 11.9000' N - 76° 34.2833' W;
- (3) In the Pamlico and Pungo Rivers Area:
- (a) Pungo River - north of a line beginning on the west shore at a point 35° 32.2000' N - 76° 29.2500' W; running east near Beacon "21" to the east shore to a point 35° 32.0833' N - 76° 28.1500' W;
 - (b) Fortescue Creek - east of a line beginning on Pasture Point at a point 35° 25.9213' N - 76° 31.9135' W; running southerly to the Lupton Point shore to a point 35° 25.6012' N - 76° 31.9641' W;
 - (c) Pamlico River - west of a line beginning on Ragged Point at a point 35° 27.5768' N - 76° 54.3612' W; running southwesterly to Mauls Point to a point 35° 26.9176' N - 76° 55.5253' W;
- (d) North Creek - north of a line beginning on the west shore at a point 35° 25.3988' N - 76° 40.0455' W; running southeasterly to the east shore to a point 35° 25.1384' N - 76° 39.6712' W;
 - (e) In the Goose Creek Area, Campbell Creek - west of a line beginning on the north shore at a point 35° 17.3600' N - 76° 37.1096' W; running southerly to the south shore to a point 35° 16.9876' N - 76° 37.0965' W; and
 - (f) Oyster Creek-Middle Prong - southwest of a line beginning on Pine Hammock at a point 35° 19.5586' N - 76° 32.8830' W; running easterly to Cedar Island to a point 35° 19.5490' N - 76° 32.7365' W; and southwest of a line beginning on Cedar Island at a point 35° 19.4921' N - 76° 32.2590' W; running southeasterly to Beard Island Point to a point 35° 19.1265' N - 76° 31.7226' W;
- (4) In the Neuse River Area:
- (a) Lower Broad Creek - west of a line beginning on the north shore at a point 35° 05.8314' N - 76° 35.3845' W; running southwesterly to the south shore to a point 35° 05.5505' N - 76° 35.7249' W;
 - (b) Greens Creek - north of a line beginning on the west shore of Greens Creek at a point 35° 01.3476' N - 76° 42.1740' W; running northeasterly to the east shore to a point 35° 01.4899' N - 76° 41.9961' W;
 - (c) Dawson Creek - north of a line beginning on the west shore at a point 34° 59.5920' N - 76° 45.4620' W; running southeasterly to the east shore to a point 34° 59.5800' N - 76° 45.4140' W;
 - (d) Goose Creek - north and east of a line beginning at a point on the west shore at a point 35° 02.6642' N - 76° 56.4710' W; running southeasterly to a point on Cooper Point 35° 02.0908' N - 76° 56.0092' W;
 - (e) Upper Broad Creek - northeast of a line beginning at a point on Rowland Point on the north shore at a point 35° 02.6166' N - 76° 56.4500' W; running southeasterly to the south shore to a point 35° 02.8960' N - 76° 56.7865' W;
 - (f) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 54.5424' N - 76° 45.7252' W;

- running easterly to the east shore to a point 34° 54.4853' N - 76° 45.4022' W; and
- (g) In the Adams Creek Area, Cedar Creek - east of a line beginning on the north shore at a point 34° 56.1203' N - 76° 38.7988' W; running southerly to the south shore to a point 34° 55.8745' N - 76° 38.8153' W;
- (5) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
- (6) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
- (7) Mill Creek - all waters west of a line beginning on the north shore at a point 34° 20.6420' N - 77° 42.1220' W; running southwesterly to the south shore to a point 34° 20.3360' N - 77° 42.2400' W;
- (8) Pages Creek - all waters west of a line beginning on the north shore at a point 34° 16.1610' N - 77° 45.9930' W; running southwesterly to the south shore to a point 34° 15.9430' N - 77° 46.1670' W;
- (9) Bradley Creek - all waters west of a line beginning on the north shore at a point 34° 12.7030' N - 77° 49.1230' W; running southerly near the dredged channel to a point 34° 12.4130' N - 77° 49.2110' W; and
- (10) Davis Creek - all waters east of a line beginning on Horse Island at a point 33° 55.0160' N - 78° 12.7380' W; running southerly to Oak Island to a point 33° 54.9190' N - 78° 12.7170' W; continuing upstream to the primary nursery line and Davis Canal, all waters southeast of a line beginning on Pinner Point at a point 33° 55.2930' N - 78° 11.6390' W; running southwesterly across the mouth of Davis Canal to the spoil island at the southwest intersection of the IWW and Davis Canal to a point 33° 55.2690' N - 78° 11.6550' W.
- (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

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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

- 35° 21.7385' N - 76° 41.5907' W;
running southerly to Fork Point to a
point 35° 20.7534' N - 76° 41.7870'
W; and
- (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; and
- (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; and
- (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; and
- (b) 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) Chadwick Bay - all waters west of a line
beginning on the northeast side of Chadwick
Bay at a point 34° 32.5630' N - 77° 21.6280'
W; running southeasterly to a point near
Marker "6" at 34° 32.4180' N - 77° 21.6080'
W; running westerly to Roses Point at a point
34° 32.2240' N - 77° 22.2880' W; following
the shoreline in Fullard Creek to a point 34°
32.0340' N - 77° 22.7160' W; running
northwesterly to a point 34° 32.2210' N - 77°
22.8080' W; following the shoreline to the
west point of Bump's Creek 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; following the
shoreline of Chadwick Bay back to the point
of origin;
- (9) 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;
- (10) 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;
- (11) 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; and
- (12) 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.

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15A NCAC 03R .0112 ATTENDED GILL NET AREAS

(a) The attended gill net areas referenced in 15A NCAC 03J .0103(g) are delineated in the following areas:

- (1) Pamlico River, west of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Mauls Point;
- (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Mauls Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (3) Pungo River, east of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point;
- (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76°

35.1594' W on Durants Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;

- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries; and
- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of the Highway 17 highrise bridge and south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N - 76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southerly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the attendance boundary.

(b) The attended gill net areas referenced in 15A NCAC 03J .0103(h) are delineated in the following coastal and joint waters of the state south of a line beginning on Roanoke Marshes Point at a point 35° 48.3693' N - 75° 43.7232' W; running southeasterly to a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay to the South Carolina State line:

- (1) All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no-trawl areas described in 15A NCAC 03R .0106(2), (4), (5), (7), (8), (10), (11), and (12);
- (2) In the area along the Outer Banks, beginning at a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay; running northwesterly to a point 35° 45.1833' N - 75° 34.1000' W west of Pea Island; running southerly to a point 35° 40.0000' N - 75° 32.8666' W west of Beach Slough; running southeasterly and passing near Beacon "2" in Chicamomico Channel to a point 35° 35.0000' N - 75° 29.8833' W west of the Rodanthe Pier; running southwesterly to a point 35° 28.4500' N - 75° 31.3500' W on Gull Island; running southerly to a point 35° 22.3000' N - 75° 33.2000' W near Beacon "2" in Avon Channel; running southwesterly to a point 35° 19.0333' N - 75° 36.3166' W near Beacon "2" in Cape Channel; running southwesterly to a point 35° 15.5000' N - 75° 43.4000' W near Beacon "36" in Rollinson Channel; running southeasterly to a point 35° 14.9386' N - 75° 42.9968' W near Beacon "35" in Rollinson Channel; running southwesterly to a point 35° 14.0377' N - 75° 45.9644' W near a "Danger" Beacon northwest of Austin

- Reef; running southwesterly to a point 35° 11.4833' N - 75° 51.0833' W on Legged Lump; running southeasterly to a point 35° 10.9666' N - 75° 49.7166' W south of Legged Lump; running southwesterly to a point 35° 09.3000' N - 75° 54.8166' W near the west end of Clarks Reef; running westerly to a point 35° 08.4333' N - 76° 02.5000' W near Nine Foot Shoal Channel; running southerly to a point 35° 06.4000' N - 76° 04.3333' W near North Rock; running southwesterly to a point 35° 01.5833' N - 76° 11.4500' W near Beacon "HL"; running southerly to a point 35° 00.2666' N - 76° 12.2000' W; running southerly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the Colregs Demarcation line to the point of beginning;
- (3) In Core and Back sounds, beginning at a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northwesterly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running southerly to a point 34° 58.8000' N - 76° 12.5166' W; running southeasterly to a point 34° 58.1833' N - 76° 12.3000' W; running southwesterly to a point 34° 56.4833' N - 76° 13.2833' W; running westerly to a point 34° 56.5500' N - 76° 13.6166' W; running southwesterly to a point 34° 53.5500' N - 76° 16.4166' W; running northwesterly to a point 34° 53.9166' N - 76° 17.1166' W; running southerly to a point 34° 53.4166' N - 76° 17.3500' W; running southwesterly to a point 34° 51.0617' N - 76° 21.0449' W; running southwesterly to a point 34° 48.3137' N - 76° 24.3717' W; running southwesterly to a point 34° 46.3739' N - 76° 26.1526' W; running southwesterly to a point 34° 44.5795' N - 76° 27.5136' W; running southwesterly to a point 34° 43.4895' N - 76° 28.9411' W near Beacon "37A"; running southwesterly to a point 34° 40.4500' N - 76° 30.6833' W; running westerly to a point 34° 40.7061' N - 76° 31.5893' W near Beacon "35" in Back Sound; running westerly to a point 34° 41.3178' N - 76° 33.8092' W near Buoy "3"; running southwesterly to a point 34° 39.6601' N - 76° 34.4078' W on Shackleford Banks; running easterly and northeasterly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;
- (4) Within 200 yards of any shoreline in the area upstream of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River; and
- (5) Within 50 yards of any shoreline east of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River, except from October 1 through November 30, south and east of Highway 12 in Carteret County and south of a line from a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line.
- History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52; Eff. August 1, 2004; Amended Eff. April 1, 2011; April 1, 2009.*

15A NCAC 03R .0117 OYSTER SANCTUARIES

The Oyster Sanctuaries referenced in 15A NCAC 03K .0209 are delineated in the following coastal water areas:

- (1) Croatan Sound area: within the area described by a line beginning at a point 35° 48.2842' N - 75° 38.3360' W; running southerly to a point 35° 48.1918' N - 75° 38.3360' W; running westerly to a point 35° 48.1918' N - 75° 38.4575' W; running northerly to a point 35° 48.2842' N - 75° 38.4575' W; running easterly to the point of beginning.
- (2) Pamlico Sound area:
- (a) Crab Hole: within the area described by a line beginning at a point 35° 43.6833' N - 75° 40.5083' W; running southerly to a point 35° 43.5000' N - 75° 40.5083' W; running westerly to a point 35° 43.5000' N - 75° 40.7500' W; running northerly to a point 35° 43.6833' N - 75° 40.7500' W; running easterly to the point of beginning.
- (b) Gibbs Shoal: within the area described by a line beginning at a point 35° 27.3220' N - 75° 55.9590' W; running southerly to a point 35° 27.1340' N - 75° 55.9590' W; running westerly to a point 35° 27.1340' N - 75° 56.1900' W; running northerly to a point 35° 27.3220' N - 75° 56.1900' W; running easterly to the point of beginning.
- (c) Deep Bay: within the area described by a line beginning at a point 35°

- 22.9126' N - 76° 22.1612' W; running southerly to a point 35° 22.7717' N - 76° 22.1612' W; running westerly to a point 35° 22.7717' N - 76° 22.3377' W; running northerly to a point 35° 22.9126' N - 76° 22.3377' W; running easterly to the point of beginning.
- (d) West Bluff: within the area described by a line beginning at a point 35° 18.3000' N - 76° 10.0890' W; running southerly to a point 35° 18.1460' N - 76° 10.0890' W; running westerly to a point 35° 18.1460' N - 76° 10.2760' W; running northerly to a point 35° 18.3000' N - 76° 10.2760' W; running easterly to the point of beginning.
- (e) Clam Shoal: within the area described by a line beginning at a point 35° 17.4800' N - 75° 37.1800' W; running southerly to a point 35° 17.1873' N - 75° 37.1800' W; running westerly to a point 35° 17.1873' N - 75° 37.4680' W; running northerly to a point 35° 17.4800' N - 75° 37.4680' W; running easterly to the point of beginning.
- (f) Middle Bay: within the area described by a line beginning at a point 35° 14.1580' N - 76° 30.1780' W; running southerly to a point 35° 14.1150' N - 76° 30.1780' W; running westerly to a point 35° 14.1150' N - 76° 30.3320' W; running northerly to a point 35° 14.1580' N - 76° 30.3320' W; running easterly to the point of beginning.
- (g) Ocracoke area: within the area described by a line beginning at a point 35° 10.8150' N - 75° 59.6320' W; running southerly to a point 35° 10.6320' N - 75° 59.6320' W; running westerly to a point 35° 10.6320' N - 75° 59.8530' W; running northerly to a point 35° 10.8150' N - 75° 59.8530' W; running easterly to the point of beginning.
- (h) West Bay: within the area described by a line beginning at a point 34° 58.8517' N - 76° 21.3632' W; running southerly to a point 34° 58.7661' N - 76° 21.3632' W; running westerly to a point 34° 58.7661' N - 76° 21.4735' W; running northerly to a point 34° 58.8517' N - 76° 21.4735' W; running easterly to the point of beginning.
- (3) Neuse River: within the area described by a line beginning at a point 35° 00.4742' N - 76° 31.9550' W; running southerly to a point 35° 00.3920' N - 76° 31.9550' W; running westerly to a point 35° 00.3920' N - 76° 32.0550' W; running northerly to a point 35° 00.4742' N - 76° 32.0550' W; running easterly to the point of beginning.
- History Note: Authority G.S. 113-134; 113-182; 113-201; 113-204; 143B-289.52; Eff. October 1, 2008; Amended Eff. April 1, 2011.*
- *****
- 15A NCAC 07H .0106 GENERAL DEFINITIONS**
- The following definitions apply whenever these terms are used in this Chapter:
- (1) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence and location of vegetation which has its distribution influenced by tidal action, and the location of the apparent high tide line.
 - (2) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during periods of little or no wind. It can be determined by the presence of such physical and biological indicators as erosion escarpments, trash lines, water lines, marsh grasses and barnacles.
 - (3) Unless specifically limited, the term structures includes, but is not limited to, buildings, bridges, roads, piers wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring pilings and buoys, pile clusters (dolphins), navigational aids and elevated boat ramps.
 - (4) "Mining" is defined as:
 - (a) The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of mineral, ores, or other solid matter.
 - (b) Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location.
 - (c) The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.
- This definition applies regardless of whether the mining activity is for a commercial or noncommercial purpose, and regardless of the size of the affected area. Activities such as vibracoring, box coring, surface grab sampling, and other drilling and sampling for geotechnical testing, mineral resource

investigations, or geological research are not considered mining. Excavation of mineral resources associated with the construction or maintenance of an approved navigation project in accordance with 15A NCAC 07B .0200 of this Chapter is not considered mining.

- (5) "Wind Energy Facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy.

History Note: Authority G.S. 113A-102; 113A-107; Eff. June 1, 1995; Amended Eff. February 1, 2011; August 1, 1998; October 1, 1996.

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
- (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this Subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
- (B) Development shall comply with state and federal water and air quality;
- (C) Development shall not cause irreversible damage to documented archaeological or historic resources as

identified by the N.C. Department of Cultural resources;

- (D) Development shall not increase siltation;
- (E) Development shall not create stagnant water bodies;
- (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
- (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal

wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and

- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

- (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
- (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
- (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
- (D) Widths of excavated canals and channels shall be the minimum

required to meet the applicant's needs but not impair water circulation;

- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
- (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
- (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
- (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
- (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
- (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
- (iv) The original depth and width of a human-made or natural

channel shall not be increased to allow a new or expanded use of the channel. This Part does not affect restrictions placed on permits issued after March 1, 1991.

(2) Hydraulic Dredging

- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
- (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the rules in this Subchapter except as provided in Part (G) of this Subparagraph;
- (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
- (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;
- (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;
- (F) A water control structure shall be installed at the intake end of the effluent pipe.
- (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and
- (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

- (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant

shows that larger ditches are necessary;

- (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites;
- (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and
- (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;
- (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth; and
- (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.

- (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all

development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;

- (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible;
- (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;
- (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state;
- (G) Marina basins shall be designed to promote flushing through the following design criteria:

- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;
 - (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;
 - (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;
 - (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality;
 - (K) Marinas which require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site;
 - (L) Marina design shall comply with all applicable EMC requirements for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
 - (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;
 - (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;
 - (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;
 - (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and
 - (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
 - (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
 - (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
 - (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the

- height of the walls and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas;
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
- (G) Pier and docking facility length shall be limited by:
- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to

- meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources;
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
- (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
- (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and
- (v) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
- (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;
- (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;
- (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;
- (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;
- (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review; and
- (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
- (B) Placing unconfined sand material in the water and along the shoreline

- shall not be allowed as a method of shoreline erosion control;
 - (C) Material from dredging projects may be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule;
 - (ii) it is allowed to dry prior to being placed on the beach; and
 - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
 - (D) Beach construction shall comply with state and federal water quality standards;
 - (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and
 - (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.
- (9) Groins
 - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;
 - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;
 - (C) Groins shall pose no threat to navigation;
 - (D) The height of groins shall not exceed one foot above normal high water or normal water level;
 - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization;
 - (F) "L" and "T" sections shall not be allowed at the end of groins; and
 - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
 - (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse);
 - (B) Freestanding moorings shall be permitted only:
 - (i) to riparian property owners within their riparian corridors; or
 - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
 - (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking;
 - (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established

- that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state;
 - (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;
 - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;
 - (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;
 - (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;
 - (J) Freestanding moorings associated with commercial shipping, public service or temporary construction/salvage operations may be permitted without a public sponsor;
 - (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;
 - (L) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;
 - (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and
 - (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and

- values provided with the state approval request or permit application;
 - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
 - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
- (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to insure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:
- (i) Monitoring shall be required of the applicant to ensure compliance with all applicable development standards; and
 - (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;
- (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and
- (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.
- (13) "Wind Energy Facilities"
- (A) An applicant for the development and operation of a wind energy facility shall provide:
- (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
 - (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;

- (iii) an evaluation of avian and bat impacts of the proposed facility;
 - (iv) an evaluation of viewshed impacts of the proposed facility;
 - (v) an evaluation of potential user conflicts associated with development in the proposed project area; and
 - (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.
- (B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:
- (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;
 - (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
 - (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.
- (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to insure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and
- (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992; RRC Objection due to ambiguity Eff. March 21, 1996; Amended Eff. February 1, 2011; August 1, 2010; June 1, 2010; August 1, 1998; May 1, 1996.

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the state and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized

and equally important public interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits of necessary energy development with the need to:

- (1) protect valuable coastal resources; and
- (2) preserve access to and utilization of public trust resources, the planning of future uses affecting both land and public trust resources,

the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon vital coastal resources or uses, public trust areas and public access rights.

(b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions of this Subchapter as well as any other applicable federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other relevant energy facilities shall contain sufficient information to allow analysis of the consistency of all proposed activities with these Rules.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;

Eff. March 1, 1979;

Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;

Temporary Amendment Eff. July 8, 1999; December 22, 1998;

Amended Eff. February 1, 2011; August 1, 2000.

15A NCAC 07M .0403 POLICY STATEMENTS

(a) The placement and operations of major energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resources of North Carolina shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and state guidelines in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and with use standards for development within AECs, as set forth in 15A NCAC 07H.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the

applicant. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, aerial extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resource shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (2) For petroleum facilities, necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best

- available technology to be followed in the event of a release or spill. The information must demonstrate that the potential for petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring an Oil Spill Response Plan, this information shall be included in such a plan;
- (3) Dredging, spoil disposal and construction of related structures that are likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine environment;
 - (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or interference is likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
 - (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources;
 - (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that significant adverse impacts on the use of public trust waters, adjacent lands and coastal resources shall be avoided;
 - (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
 - (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
 - (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing inlets;
 - (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
 - (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
 - (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
 - (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
 - (D) anchorage areas and port areas;
 - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
 - (F) dump sites;
 - (G) primary dunes and frontal dunes;
 - (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges and other areas used in a like manner;
 - (I) military air space, training or target area and transit lanes;
 - (J) cultural or historic sites of more than local significance; and
 - (K) segments of Wild and Scenic River System.
 - (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided; and
 - (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
 Eff. March 1, 1979;
 Amended Eff. April 1, 1992;

Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
 Temporary Amendment Eff. July 8, 1999; December 22, 1998;
 Amended Eff. February 1, 2011; August 1, 2000.

15A NCAC 11 .1105 X-RAY FEE AMOUNTS

(a) Annual fees for persons registered pursuant to provisions of Section .0200 of this Chapter are as listed in the following table:

Type of Registered Facility	Letters Appearing in Registration Number	Facility Plus First X-ray Tube	Each Additional X-ray Tube
Chiropractors	C	\$ 180.00	\$ 24.00
Dentists	D	\$ 180.00	\$ 24.00
Educational	E	\$ 130.00	\$ 22.00
Government	G	\$ 130.00	\$ 22.00
Podiatrists	H	\$ 180.00	\$ 24.00
Industrial	I	\$ 180.00	\$ 24.00
Industrial Medical	IM	\$ 260.00	\$ 33.00
Health Departments	L	\$ 260.00	\$ 33.00
Hospitals	M	\$ 390.00	\$ 44.00
Physicians	P	\$ 180.00	\$ 24.00
Industrial Radiography	R	\$ 380.00	\$ 44.00
Services	S	\$ 260.00	\$ 0.00
Therapy	T	\$ 400.00	\$ 50.00
Veterinarians	V	\$ 130.00	\$ 22.00
Other	Z	\$ 180.00	\$ 24.00

(b) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rule .0211 of this Chapter are the same as that provided for in the applicable category specified in Paragraph (a) of this Rule.

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a);
 Eff. July 1, 1982;
 Amended Eff. July 1, 2011; August 1, 2007; August 1, 2002; July 1, 1989.

15A NCAC 11 .1106 RADIOACTIVE MATERIALS AND ACCELERATOR FEE AMOUNTS

(a) Annual fees for persons licensed pursuant to provisions of Section .0300 of this Chapter are as listed in the following table:

Type of Radioactive Material License	Annual Fee
Specific license of broad scope	
-Medical Broad	\$ 5,250.00
-Academic Broad	\$ 3,500.00
-Research and Development Broad	\$ 3,000.00
Specific license	
-industrial radiography (with temporary subsites)	\$ 3,500.00
-industrial radiography (in plant only)	\$ 2,600.00
-medical institution other than teletherapy	\$ 2,900.00
-medical private practice	\$ 950.00
-mobile medical practice (home office including 1 client site)	\$ 1,600.00
-mobile medical practice (per additional client location)	\$ 350.00
-medical teletherapy	\$ 2,100.00
-fixed industrial gauges	\$ 550.00
-portable gauges	\$ 425.00
-gas chromatographs	\$ 375.00

-manufacture or distribute	\$ 2,250.00
-irradiator >100,000Ci	\$ 8,500.00
-irradiator ≤100,000Ci	\$ 4,500.00
-educational institutions	\$ 1,900.00
-water remediation activities (home office including 1 client site)	\$ 1,350.00
-water remediation activities (per additional client location)	\$ 280.00
-services/consultants	\$ 400.00
-other	\$ 500.00

General licenses

-licenses subject to annual registration requirements	\$ 325.00
-licenses not subject to annual registration requirements	\$ 200.00

(b) Annual fees for persons licensed pursuant to provisions of Section .0900 of this Chapter are as listed in the following table:

Type of Accelerator License	Annual Fee
-Medical (home office including 1 unit)	\$ 2,000.00
-Medical (per additional unit)	\$ 200.00
-Industrial/Manufacturing (home office including 1 unit)	\$ 2,000.00
-Industrial/Manufacturing (per additional unit)	\$ 200.00
-Sales, Service, Refurbishment, Manufacture	\$ 2,000.00

(c) Annual fees for out-of-state persons granted permission to use sources of radiation in this state pursuant to provisions of Rule .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a) and (b) of this Rule. Such fees are due when application for reciprocal recognition of out-of-state license or registration is made in the same manner as for a new license or registration as specified in Rule .1102.

*History Note: Authority G.S. 104E-9(a)(8); 104E-19(a);
Eff. August 1, 2007;
Amended Eff. July 1, 2011.*

15A NCAC 11 .1423 FEES AND PAYMENT

(a) This Rule establishes fees for persons registered pursuant to the provisions of this Section to cover the anticipated costs of tanning equipment inspection and enforcement activities of the agency.

(b) Annual fees established in this Rule are due on the first day of July of each year.

(c) Notwithstanding Paragraph (b) of this Rule, when a new registration is issued by the agency after the first day of July of any year, the initial fee is due on the date of issuance of the registration.

(d) The initial fee in Paragraph (c) of this Rule shall be computed as follows:

- (1) When any new registration is issued before the first day of January of any year, the initial fee is the full amount specified in this Rule; and
- (2) When any new registration is issued on or after the first day of January of any year, the initial fee is one-half of the amount specified in this Rule.

(e) All fees received by the agency pursuant to provisions of this Rule are nonrefundable.

(f) Each registrant may pay all fees by cash, check or money order provided:

- (1) Checks or money orders shall be made payable to "Radiation Protection Section", and mailed

to 1645 Mail Service Center, Raleigh, NC 27699-1645 or delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221; and

- (2) Cash payments shall be made only by appointment by calling the agency at 919/571-4141 and delivered to the agency office at 3825 Barrett Drive, Raleigh, NC 27609-7221.

(g) Within five days after the due dates established in Paragraphs (b) and (c) of this Rule, the agency shall mail to each registrant, who has not already submitted payment, a notice which indicates the due date, the amount of fees due, and the delinquent date.

(h) Payment of fees established in this Rule is delinquent, if not received by the agency within 60 days after the due date specified in Paragraphs (b) and (c) of this Rule.

(i) If a registrant remits a fee in the form of a check or other instrument which is uncollectible from the paying institution, the agency shall notify the registrant by certified mail and allow the registrant 15 days to correct the matter, which includes payment of any fee charged to the agency by a banking institution.

(j) If payment of fees is uncollectible from the paying institution or not submitted to the agency by the delinquent date, the agency may institute legal action to collect.

(k) Annual fees for persons registered pursuant to provisions of this Section are as listed in the following table:

Type of registered facility	Letters appearing in registration number	Facility plus first piece of tanning equipment	Each additional piece of tanning equipment
Tanning Facility	B	\$200.00	\$30.00
Tanning Equipment Services	F	\$200.00	NA

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a); Eff. July 1, 1994; Amended Eff. July 1, 2011; August 1, 2007; August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08F .0101 TIME AND PLACE OF CPA EXAMINATIONS

- (a) The Board shall offer the CPA examination through the examination vendors(s), who have contracted with NASBA, at least eight months in a calendar year.
- (b) The months the CPA Examination is administered are determined by the examination vendor(s).
- (c) The examination vendor(s) shall provide examination applicants with computer access to the testing centers for the CPA examination.

History Note: Authority G.S. 93-12(3); 93-12(4); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. February 1, 2011; January 1, 2004; May 1, 1989.

21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES

- (a) All applications for CPA examinations shall be filed with the Board, accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board to recover its actual costs of examination services. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned.
- (b) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, such as:
 - (1) minimum legal age;
 - (2) education;
 - (3) experience, if required in order to qualify for the examination; and
 - (4) good moral character.
- (c) Any person born outside the United States shall furnish to the Board office evidence of citizenship; evidence of resident alien status; or
 - (1) other bona fide evidence that the applicant is legally allowed to remain in the United States for the purposes of becoming a U.S. citizen; or
 - (2) a notarized affidavit of intention to become a U.S. citizen; or

- (3) evidence that the applicant is a citizen of a foreign jurisdiction which extends to citizens of this state like or similar privileges to be examined.

(d) Official transcripts (originals – not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. However, no examination grades shall be released until an official transcript is filed confirming the information supplied in the college registrar's letter.

(e) In order to document good moral character as required by G.S. 93-12(5), three certificates of good moral character signed by persons not related by blood or marriage to the applicant shall accompany the application.

(f) No additional statements or affidavits regarding education are required for applications for re-examination.

(g) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy final disposition if the applicant has been arrested, charged, convicted or found guilty of, received a prayer for judgment continued or pleaded *nolo contendere* to any criminal offense.

(h) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(i) Two identical photographs shall accompany the application for the CPA examination and the application for the CPA certificate. These photographs shall be of the applicant alone, 2x2 inches in size, front view, full face, taken in normal street attire without a hat or dark glasses, printed on thin paper with a plain light background and taken within the last six months. Photographs may be in black and white or in color. Photographs retouched so that the applicant's appearance is changed are unacceptable. Applicants shall write their names on the back of their photos.

(j) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

(k) Candidates shall file initial and re-exam applications to sit for the CPA Examination on forms provided by the Board.

(l) Examination fees are valid for a six-month period from the date of the applicant's notice to schedule for the examination from the examination vendor.

History Note: Authority G.S. 93-12(3); 93-12(4); 93-12(5); 93-12(7);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. February 1, 2011; January 1, 2006; January 1, 2004; August 1, 1998; February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989.

21 NCAC 08F .0105 CONDITIONING REQUIREMENTS

(a) Passing Grades. A candidate must pass all sections of the examination with a grade of 75 or higher on each section.

(b) Military Service. A candidate who is on active military service shall not have the time on active military service counted against Subparagraph (c)(1) of this Rule unless the candidate applies to take the examination during the active military service in which case each month a candidate sits shall be counted toward Subparagraph (c)(1) of this Rule.

(c) A candidate is subject to the following conditioning requirements:

- (1) A candidate shall obtain a passing grade on all sections of the examination within an 18-month period;
- (2) A candidate may sit for any section of the examination individually;
- (3) A candidate may sit for each section of the examination up to four times during a one-year period but not more than one time in a three-month testing window as defined by the examination vendors(s);
- (4) Credit awarded by the Board for passage of a section of the examination is valid for an 18-month period beginning on the date the section is taken.

History Note: Authority G.S. 93-12(3); 93-12(5);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. February 1, 2011; January 1, 2006; January 1, 2004; August 1, 1998; April 1, 1994; April 1, 1991; March 1, 1990.

21 NCAC 08J .0111 COMPLIANCE WITH CPA FIRM REGISTRATION

If a CPA firm fails to comply with any part of 21 NCAC 08J .0108 or 08J .0110, and continues to offer or render services, the Board may take disciplinary action against the CPA firm's members. Such discipline may include:

- (1) one hundred dollars (\$100.00) civil penalty for non-compliance of less than 60 days;
- (2) two hundred dollars (\$200.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;

- (3) five hundred dollars (\$500.00) civil penalty for each member for non-compliance in excess of 120 days.

History Note: Authority G.S. 55B-12; 57-2-01; 59-84.2; 93-12(8c); 93-12(9);

Eff. April 1, 1994;

Amended Eff. February 1, 2011; January 1, 2004; April 1, 1999.

21 NCAC 08K .0105 SUPPLEMENTAL REPORTS

Professional corporations or professional limited liability companies registered with the Board pursuant to G.S. 55B and 57C shall file a certified copy of all amendments to the articles of incorporation or articles of organization prior to the effective date of each amendment.

History Note: Authority G.S. 55B-10; 57C-2-01; 93-8; 93-12(8a);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. February 1, 2011; April 1, 1999; April 1, 1994; April 1, 1991; May 1, 1989.

21 NCAC 08M .0106 COMPLIANCE

(a) A CPA firm registered for peer review shall provide to the Board the following:

- (1) Peer review due date;
- (2) Year end date;
- (3) Final Letter of Acceptance from peer review program within 60 days of the date of the letter; and
- (4) A package to include the Peer Review Report, Letter of Response and Final Letter of Acceptance for all failed and second passed with deficiencies reports issued by a peer review program within 60 days of the date of the Final Letter of Acceptance.

(b) A peer review is not complete until the Final Letter of Acceptance is issued by the peer review program with the new due date.

(c) If a CPA firm fails to comply with 21 NCAC 08M .0105(c), (d), or (g), and continues to offer or render services, the Board may take disciplinary action against the CPA firm's members which may include:

- (1) one hundred dollar (\$100.00) civil penalty for non-compliance of less than 60 days;
- (2) two hundred fifty dollar (\$250.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days; and
- (3) a suspension of each member's CPA certificate for a period of not less than 30 days and a civil penalty of five hundred dollars (\$500.00) for non-compliance in excess of 120 days.

History Note: Authority G.S. 93-12(7b); 93-12(8c);

Eff. January 1, 2004;

Amended Eff. February 1, 2011; January 1, 2006.

21 NCAC 08N .0206 COOPERATION WITH BOARD INQUIRY

A CPA shall fully cooperate with the Board in connection with any inquiry it shall make. Full cooperation includes responding within 21 days to all inquiries of the Board or representatives of the Board and claiming Board correspondence from the U.S. Postal Service, private delivery service or personal delivery.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994;

Amended Eff. February 1, 2011.

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:

- (1) Submitting the form to the Board's office at least 90 days prior to the proposed initial date of the course offering.
- (2) Proposing a course offering that includes:
 - (A) 50 percent of subject matter in the cosmetic arts or cosmetic art teacher training techniques, 25 percent business ethics and management and 25 percent subject matter related to cosmetic art; or
 - (B) 50 percent of subject matter in the cosmetic arts or cosmetic art teacher training techniques and 50 percent of subject matter must be related to cosmetic art.
- (3) Providing a resume for all course each instructor for the classroom course.
- (4) Providing a timed outline for the proposed course with timed increments for each segment.
- (5) Submitting the lesson plan with course proposal information for all demonstrations, hands-on or lecture materials.
- (6) Providing course materials that are typed and legible.
- (7) Providing a floor plan with the dimensions for attendance greater than 50.
- (8) Teaching current Board sanitation (21 NCAC 14H) regulations.

(b) The following offerings shall not be approved by the Board for continuing education credit:

- (1) That portion of any offering devoted to any breaks including breakfast, lunch and dinner or other refreshments.
- (2) Any application that fails to meet the standards of Rule.0103 of this Subchapter.
- (3) Any curriculum for a classroom course in which the course subject matter deals only

with sanitation requirements unless the course is administered by the Board.

- (4) Any curriculum that contains diagnosis or medical treatment.
- (5) Any curriculum that repeats information in another course sponsored by that provider that has been approved by the Board.

(c) An internet course shall have an examination or methodology built into the course to verify the course material has been completed. All courses shall have a timing element to prevent advancement within each section or page of the course until all material has been reviewed.

(d) A provider shall disable any timing or verification element when an Internet course is being reviewed for approval by the Board.

(e) A correspondence course shall have an examination or methodology built into the course to verify the course material has been completed and all material shall be mailed through the postal service or comparable mail services.

(f) The Board shall approve or deny an application within 45 days of receiving the request.

(g) A unique continuing education number shall be assigned to each approved course.

(h) The continuing education program approval shall be for two years from the date of approval.

(i) Approved courses may be conducted as often as desired during the approved period. The provider must send a list of scheduled course dates to the Board.

History Note: Authority G.S. 88-B 4; 88B-21(e); Eff. May 1, 2004;

Amended Eff. February 1, 2011; July 1, 2010; December 1, 2008; May 1, 2007.

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

(a) Programs shall not be approved by the Board in segments of less than two hours.

(b) Course monitors are required at the rate of one monitor per 20 students with a maximum of 10 monitors for a seminar course and one monitor per 10 students for a hands-on course. Instructors may serve as the course monitor with fewer than 20 students.

(c) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name, signature and license number to verify attendance. If a course monitor was required the individual's name and signature must be listed on the sign-in sheet indicating participation as a class monitor. Forms may be copied.

(d) No provider shall certify the attendance of a person who was not physically present during at least ninety percent of the course time.

(e) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description;
- (4) Hours of attendance;

- (5) Date of course;
- (6) Name and original signature of instructor/monitor in employ of provider;
- (7) Provider name; and
- (8) A copy of course certificate.

(f) The provider must give a certificate noting items listed in Paragraph (e) of this Rule to the attendee upon completion of the course.

(g) Course attendance may be restricted to licensees due to course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and disclosed during the application process.

(h) The minimum attendance of a course for credit purposes is four licensees attendees. The maximum attendance of a class for credit purposes is 200 licensed attendees.

(i) Each provider shall notify the Board at least five days in advance of any additional course dates or any changes including locations, times, floor plan and changes of course instructors. The Board must be notified at least 48 hours in advance of a cancellation.

(j) The Board shall approve credit for courses only in increments of an hour and not in portions of an hour. The Board shall not approve a course less than two hours, nor shall it approve more than eight hours of credit in one day.

(k) Classroom courses may be no less than two hours or more than eight hours per day.

(l) Internet and correspondence courses may be no less than two hours or more than 12 hours.

(m) Each provider must enter into the Board's database within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:

- (1) Course title;
- (2) Date conducted;
- (3) Address location where the course was conducted;
- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number; and
- (7) Continuing education hours earned.

(n) The use of both the electronic attendance form and the on-site sign-in sheet with original attendee signatures is mandatory. These forms are used to verify attendance. Each provider shall submit to the Board, within 10 days after completion of each course, the course sign-in sheets with the licensee names and signatures of all licensed attendees that completed the course.

(o) The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

(p) Audits of CE course providers may be conducted and upon the Board's request each CE course provider shall provide completed records complete records must be provided to the Board upon request.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. May 1, 2004; Amended Eff. February 1, 2011; July 1, 2010; December 1, 2008; January 1, 2006.

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .0630 SCHOOL CATALOG

An approved school shall publish a catalog or bulletin that is certified by an official of the school as being current, true, and correct in content and policy. The catalog shall include the following information:

- (1) School name, location address, and phone number;
- (2) Volume number and date of publication;
- (3) Ownership structure, including type of legal entity and names of owners, Board of Directors members, or academic officers at public institutions;
- (4) Names and titles of all instructional and key administrative staff;
- (5) Statement of school mission, philosophy, and educational program objectives;
- (6) School history and identification of all licenses, approvals or accreditations that the school maintains;
- (7) Definition of measurement of program, whether in clock hours or credit hours;
- (8) Course descriptions, including number of hours for each course;
- (9) Graduation requirements, including type of credential issued upon graduation;
- (10) Requirements for licensure, certification or registration of therapists in the state, province, or country in which the school operates;
- (11) Standards for admission, description of the school's admissions process, and requirement of a signed Student Enrollment Agreement;
- (12) School calendar, including beginning and ending dates of all programs, all holidays and days off;
- (13) Length of time required for completion of the program;
- (14) Program tuition and all associated costs, including textbooks, supplies, and other expenses;
- (15) Refund policy;
- (16) Description of facilities and learning resources;
- (17) Student services;
- (18) Policy regarding prohibition of compensation to student for performing massage and bodywork therapy;
- (19) Academic policies, including the following:
 - (a) Grading system;
 - (b) Standards of satisfactory academic progress;
 - (c) Description of disciplinary procedures, including conditions for probation, suspension, dismissal or expulsion, conditions of reentrance

- for students dismissed for unsatisfactory academic progress;
- (d) Transfer of credit from other institutions;
- (e) Attendance requirements, make-up work, tardiness, leave of absence;
- (f) Standards of conduct, including a sexual harassment policy; and
- (g) Complaint policy, process for complaint resolution, name and address of the school regulatory agency for filing complaints when institutional process does not bring resolution; and
- (20) Statement pursuant to G.S. 90-629.1, that the North Carolina Board of Massage and Bodywork Therapy may deny a license to practice massage and bodywork therapy if an applicant has a criminal record or there is other evidence that indicates the applicant lacks good moral character.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007; Amended Eff. February 1, 2011.

CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

21 NCAC 39 .0101 DEFINITIONS

- (a) "Inspection" means an inspection as defined in G.S. 90A-71(5a).
- (b) "Repair" means repair construction activity or alteration to an existing onsite wastewater system that is necessary to comply with a Construction Authorization for a repair permit issued by the Local Health Department.
- (c) "Wastewater Treatment Facility" means a wastewater treatment facility as defined in G.S. 90A-71(8).
- (d) "College course" means a semester unit or quarter based unit of instruction given at a college or university, which is relevant to on-site wastewater contractor or inspector activities and pre-approved by the board.
- (e) "Course/activity" means any course of activity with a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of on-site wastewater contractor or inspector activities and pre-approved by the board.
- (f) "Personally supervise" means the direction and control of all on-site wastewater contractor or inspector activities during the time those activities are being conducted.
- (g) "Professional development hour" or "PDH" means a nominal contact hour of instruction or presentation that is the basic unit of credit for all courses or activities related to satisfying continuing education requirements.
- (h) "Employee" means a person who receives an Internal Revenue Service W2 form for record of compensation.

History Note: Authority G.S. 90A-71; 90A-72; 90A-74; Eff. February 1, 2011.

21 NCAC 39 .0102 TYPES OF CERTIFICATION

- (a) The following levels of certification for certified on-site wastewater contractors are:

Level	Description of Activities
I	Single Septic Tank, Conventional (Gravel) Gravity System
II	Grade I, plus: Multiple tanks, Grease Traps, Single Pump or Single Siphon, Fill Systems, Sand Lined Trench, and any approved gravity or single pump dispersal system not specified in Grade Level III or Grade Level IV
III	Grade II, plus: Dual pumps or Dual Siphons, Systems of >1500 gpd to <3000 gpd, Low-Pressure Dispersal, Flow Equalization, and any system requiring ground water lowering with a pump
IV	Grade III, plus: Systems >3000 gpd, Multiple Off-Site Systems, Industrial Process Wastewater, Residential Wastewater Treatment Systems(RWTS), TS-I and TS-II System, Drip Dispersal Systems, and Wastewater Reuse Systems or any Pretreatment Component.

- (b) Inspectors shall be certified to inspect all grade levels of on-site wastewater systems referenced in Paragraph (a).

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; Eff. February 1, 2011.

21 NCAC 39 .0201 APPLICATION REQUIREMENTS FOR CERTIFICATION

(a) Applications for certification or renewal of certification shall be submitted annually on forms provided by the Board. Applications shall include:

- (1) Applicant's name;
- (2) Business address;
- (3) Phone number;
- (4) Date of birth;
- (5) Email address, if available;
- (6) Business or employer name and address;
- (7) Business phone number;
- (8) County where company is located;
- (9) If the certification is for contractor or inspector;
- (10) The contractor certification level requested;
- (11) Certification number, if renewal;
- (12) Required annual fee for level of certification;
- (13) Dates, locations, hours, and providers of required education and training; and
- (14) Applicant signature.

(b) The Board shall determine whether an application is complete. Incomplete applications and applications not accompanied by an appropriate fee shall not be processed and shall be returned to the applicant.

(c) The Board shall not schedule an applicant to take the required examination until their application has been reviewed and approved and the applicant has met all other conditions for certification, which, for new applicants includes an 18 hour new installer course.

(d) The Board may request verification of education and training.

(e) All certified contractors or inspectors shall submit a renewal application by November 15 of each year. If a renewal applicant's renewal application is not received by the Board until after December 31 of that calendar year, the renewal applicant shall pay a late fee of twenty-five dollars (\$25.00) in accordance with G.S. 90A-78(b). If a renewal application is received by the Board after December 31, it will not be processed until the late fee is received.

(f) If the renewal application is postmarked more than 90 days after December 31, the person must meet the requirements for re-certification.

(g) Applications for new certifications requiring testing must be received by the Board at least 15 days prior to the scheduled date of the examination.

(h) Applications for certification level upgrades must be received at least 24 hours prior to the scheduled date of the examination.

(i) In cases where the applicant is ineligible for examination, the applicant shall be notified by letter and advised of the reason for ineligibility.

(j) Applicants who have supplied false information must wait 12 months before resubmitting an application for certification or renewal and must forfeit all fees paid.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; Eff. February 1, 2011.

21 NCAC 39 .0301 SCHEDULE OF CERTIFICATION FEES

(a) Application fees are:

Grade Level	Initial Fee	Renewal Fee
I	\$150.00	\$75.00
II	\$200.00	\$75.00
III	\$250.00	\$75.00
IV	\$300.00	\$75.00
Inspector	\$200.00	\$75.00
Combination Level IV/Inspector	\$500.00	\$125.00

(b) Application fees shall not be pro-rated.

(c) The fee for a contractor grade level upgrade is fifty dollars (\$50.00) per level.

(d) The fee for re-instatement of a revoked or suspended certification is five hundred dollars (\$500.00).

(e) The fee for certificate replacement or duplication is twenty-five dollars (\$25.00).

(f) The fee for late renewal is twenty-five dollars (\$25.00). This fee is charged if the renewal request is received after December 31.

(g) The fee for each returned check is twenty-five dollars (\$25.00).

(h) All fees are non-refundable.

History Note: Authority G.S. 90A-72; 90A-74; 90A-75; Eff. February 1, 2011.

21 NCAC 39 .0401 ON-SITE WASTEWATER CONTRACTOR OR INSPECTOR EXAMINATIONS

(a) On-site wastewater contractor or inspector examinations shall be comprehensive examinations that are standardized statewide.

(b) A grade on the examination of 70 percent or more shall be passing. Results of the examination shall be reported as either passing or failing.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; Eff. February 1, 2011.

21 NCAC 39 .0402 TIME AND PLACE OF EXAMINATION

(a) The Board may schedule on-site wastewater contractor or inspector examinations in addition to the statutorily required examinations given at least three times a year, at least once in the Eastern, Central, and Western regions of the state. Additional examinations may be scheduled by the Board if the Board determines that the three scheduled examinations are insufficient due to the number of applicants for examination or the time between examinations. Information regarding the date, time, and place shall be made available on the Board's web site or upon request.

(b) The Board shall notify each applicant filing for examination in writing of the date, time and place of the examination.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77;

Eff. February 1, 2011.

21 NCAC 39 .0403 CONDUCTING AND GRADING EXAMINATIONS

- (a) Examinations shall be conducted and graded under the supervision of a representative of the Board.
- (b) Applicants shall identify themselves by way of a driver's license or other form of photographic identification issued by a state or federal government agency and the identification number shall be recorded on the face of the examination paper.
- (c) Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose other than with an examination supervisor during an examination. Applicants shall not deliberately disrupt the quiet and orderly administration of an examination in any manner. Violation of this Paragraph is cause for dismissal from the examination, invalidation of examinations scores, denial of certification and revocation of certification if the person is certified.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-81;
Eff. February 1, 2011.*

21 NCAC 39 .0404 ISSUANCE OF CERTIFICATES

- (a) After an examination grading, the applicant shall be informed in writing by the Board or its authorized representatives as to the results of their examination. The Board shall not respond to oral or other requests for exam results.
- (b) Upon successful completion of the examination and all requirements for certification the applicant shall be issued a certification card.
- (c) Questions by the applicant concerning the examination must be made in writing to the Board within six months of the notification date.
- (d) An applicant who fails to pass an examination shall be entitled to and notified of the privilege to review his examination in the presence of one or more Board members or its authorized representative at a location approved by the Board.
- (e) Each certified on-site wastewater contractor or inspector shall be assigned a unique certification number. Certification numbers are not transferable and shall not be used by another onsite wastewater contractor or inspector.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77;
Eff. February 1, 2011.*

21 NCAC 39 .0501 CONDITIONS AND LIMITATIONS FOR RENEWAL OF CERTIFICATIONS

- (a) Certifications shall expire on December 31 of each year.
- (b) A renewal shall not be granted if the applicant's certification is suspended or revoked until the period for such suspension or revocation has expired.
- (c) Certified individuals under this program shall notify the Board within 30 days in writing of any changes to their name, company name, company address, phone number, or email address.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77;
Eff. February 1, 2011.*

21 NCAC 39 .0601 REQUIREMENTS

- (a) Every certified on-site wastewater contractor or inspector is required to obtain Professional Development Hours (PDH) units during the renewal period as described in the following Table:

Level	Annual PDH Units Required
I	3
II	6
III	9
IV	12
Inspector	12
Inspector/Grade IV Combo	12

- (b) If a registrant exceeds the annual requirement in any renewal period, a maximum of six PDH units may be carried forward into the subsequent renewal period.
- (c) Selection of courses and activities which meet the requirements of 21 NCAC 39 .0602 is the responsibility of the certified on-site wastewater contractor or inspector. Evaluation of courses pursuant to 21 NCAC 39 .0603 could result in non-acceptance of courses for the purpose of meeting the continuing education requirements.
- (d) Professional Development Hours (PDH) shall be accepted for approved courses pursuant to 21 NCAC 39 .0603. Hours for all other courses must be submitted to the board for approval. If not approved, no PDH shall be granted for the course.

*History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79;
Eff. February 1, 2011.*

21 NCAC 39 .0602 APPROVAL OF CONTINUING EDUCATION COURSES

- (a) All continuing education courses must be approved by the Board before PDH can be granted.
- (b) All continuing education courses must be approved on an annual basis.
- (c) The Board shall approve courses that instruct on on-site wastewater contractor or inspector activities and the use of on-site wastewater contractor or inspector equipment, products, and materials. The Board must determine that courses and activities contain a clear purpose and objective and result in the maintenance, improvement, or expansion of skills and knowledge related to the practice of on-site wastewater contractor or inspector activities. Requests for approval of courses or activities shall include the following information:
 - (1) Course content;
 - (2) Course schedule;
 - (3) Level of instruction provided (Level 1, 2, 3, 4, Inspector, or level 4/Inspector);
 - (4) Qualifications of instructors (including both education and experience); and

- (5) Materials provided, field experiences, and other activities available in connection with the course(s).

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79;
Eff. February 1, 2011.

21 NCAC 39 .0603 DETERMINATION OF CREDIT

The Board has final authority with respect to approval of courses credit, PDH values for courses, and other methods of earning credit. Courses or activities must maintain, improve or expand the skills and knowledge related to the practice of on-site wastewater contractor or inspector activities in order for an on-site wastewater contractor or inspector to receive credit. The Board shall award the stated hours of credit (PDH) for any acceptable and successfully completed activity in each of the following categories:

- (1) Credit for college or community college courses shall be a maximum of 12 PDH for receipt of a passing grade in the course;
- (2) Credit for continuing education correspondence courses provided through television, videotapes, audiotapes, or other short courses/tutorial materials that provide a completion certificate shall be one PDH unit for each hour of attendance or contact time, up to a maximum of 12 PDH; and
- (3) Credit for teaching or presenting in Item (2) of this Rule are double the stated credits. Credit for teaching or presenting is available only for the first time that an on-site wastewater contractor or inspector teaches such a course or makes such a presentation.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79;
Eff. February 1, 2011.

21 NCAC 39 .0604 RECORDKEEPING

The responsibility of maintaining records to be used to support credits claimed is the responsibility of the contractor. Records required include;

- (1) A log showing the type of activity claimed, sponsoring organization, location, duration, instructors or speakers name and PDH credits earned; or
- (2) Attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79;
Eff. February 1, 2011.

21 NCAC 39 .0605 SPECIAL PROVISIONS FOR CONTINUING EDUCATION

- (a) An on-site wastewater contractor or inspector serving on active duty in the uniformed services of the United States for a

period of time exceeding 180 consecutive days in a year shall be granted an extension of time in which to obtain the professional development hours required during that renewal period. The extension shall allow the requesting on-site wastewater contractor or inspector 12 months from the date the extension is granted to correct the deficiency in professional development hours (PDH) for the renewal period in issue.

- (b) If an on-site wastewater contractor or inspector experiences a long term disability or illness he may petition the board for an extension of time to obtain professional development hours required during that renewal period. The petition shall provide documentation including verification from a medical doctor of illness, with proof of disability. The extension of time shall not exceed 90 days into the following renewal year.

History Note: Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79; 93B-15;
Eff. February 1, 2011.

21 NCAC 39 .0701 REVOCATION, OR SUSPENSION OF CERTIFICATION

- (a) The Board may revoke or suspend the certification of an on-site wastewater contractor or inspector in accordance with the provisions of G.S. 90A-80, 90A-81 and Chapter 150B of the NC General Statutes.

(b) Certification may be relinquished by submission to the Board of the original certificate and a notarized statement of relinquishment.

- (c) The Board may issue a written reprimand to an on-site wastewater contractor or inspector. The reprimand shall be delivered in accordance with the provisions of service in G.S. 150B-42. A copy of the letter shall be kept in the on-site wastewater contractor or inspector's file. The on-site wastewater contractor or inspector shall be given the opportunity to put a letter of rebuttal into the file. The letter must be received by the Board within 30 days of receipt of reprimand.

History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81;
Eff. February 1, 2011.

21 NCAC 39 .0702 CERTIFICATION FOLLOWING REVOCATION OR VOLUNTARY SURRENDER OF CERTIFICATION

- (a) If a certification is revoked or voluntarily surrendered the person may not apply for a new certification for a period of at least 12 months.

(b) An individual whose certification was revoked or voluntarily surrendered may apply to the Board for reinstatement after the 12 month period has ended.

- (c) An individual approved by the Board to apply for reinstatement, must then meet all the requirements for a new applicant as specified in Article 5 of G.S. 90A and the rules adopted by the Board.

(d) Applicants denied reinstatement by the Board may appeal the decision pursuant to the procedures contained in G.S. 150B, Article 3A.

History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81;
Eff. February 1, 2011.

21 NCAC 39 .0703 PENALTIES

A person who violates any rule of this Section is subject to the penalties of G.S. 90A-81.

History Note: Authority G.S. 90A-72; 90A-74; 90A-80; 90A-81;
Eff. February 1, 2011.

CHAPTER 57 – APPRAISAL BOARD

21 NCAC 57D .0201 FITNESS FOR REGISTRATION

(a) The Appraisal Board shall consider the fitness for registration of each applicant. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her fitness for registration at a hearing before the Board.

(c) The inquiry into fitness for registration shall include consideration of whether the applicant has had any disciplinary action taken against any professional license in North Carolina or any other state, and whether the applicant has committed or done any act which would be grounds for disciplinary action including the suspension or revocation of registration, and whether the applicant has been convicted of or pleaded guilty to any criminal act, and whether any such actions or charges are pending.

(d) All applicants shall obtain a criminal records check pursuant to G.S. 93E-2-11. This records check must have been performed within 60 days of the date the completed application for registration is received by the Board. Applicants shall pay all required fees required to perform the check.

(e) Notice to the applicant that its competency or fitness for registration is in question shall be in writing, sent by certified mail, return receipt requested, to the address shown upon the application. The applicant has 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time constitutes a waiver of the applicant's right to a hearing on its application for registration, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration.

(f) For the purposes of this Section, "applicant" shall mean any person owning 10 percent or more of the appraisal management company.

History Note: Authority G.S. 93E-2-3; 93E-2-4; 93E-2-11;
Eff. February 1, 2011.

21 NCAC 57D .0303 COMPLIANCE MANAGER

(a) A compliance manager shall be designated with the Board for each appraisal management company. The compliance manager shall be a certified real estate appraiser certified under Article I of this Chapter or in another state.

(b) An appraisal management company shall file an application with the Board for approval of the designated compliance manager. This application shall provide the Board with information such as the compliance manager's name, mailing and physical address, and phone and email contact information, and shall be signed by the designated compliance manager.

(c) The designated compliance manager shall obtain a criminal records check pursuant to G.S. 93E-2-11. Applicants shall pay all required fees to perform the check. This records check must have been performed within 60 days of the date the completed application is received by the Board. The criminal records check results must be attached to the application for approval as a compliance manager.

(d) The designated compliance manager is responsible for:

- (1) the notification to the Board of any change of trade name or contact information of the appraisal management company and the registration of any assumed business name adopted by the appraisal management company for its use;
- (2) the retention and maintenance of records relating to appraisals conducted by or on behalf of the appraisal management company;
- (3) the maintenance of a record of all appraisers in North Carolina who perform appraisals for the appraisal management company, including a log of payments to appraisers; and
- (4) the conduct of advertising of appraisal management services by or in the name of the appraisal management company;

(e) If an appraisal management company intends to change its compliance manager, it must submit an application for approval of the new compliance manager at least 10 business days before the effective date of the change.

History Note: Authority G.S. 93E-2-3; 93E-2-4(b); 93E-2-5;
Eff. February 1, 2011.

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01E .1302 POLICY

(a) In cases of a prolonged medical condition an employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another employee, from the sick leave or vacation account of an immediate family member as defined in Rule .0317 of this Subchapter or from the sick leave account of a non-family member as provided in Rule .1305 of this Section. For purposes of this Rule, prolonged medical condition means medical condition that is likely to require an employee's absence from duty for a period of at least 20 consecutive workdays. If an employee has had previous random absences for the same condition that has caused

excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last 12 months, the agency may make an exception to the 20 day period.

(b) An employee who receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program. Shared leave, however, may be used during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

(c) Participation in this program shall be limited to 1,040 hours, (prorated for part-time employees), either continuously or, if for the same condition, on a recurring basis. However, management may grant employees continuation in the program, month by month, for a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

(d) An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate in this program. Use of donated leave under the workers' compensation program shall be limited to use with the supplemental leave schedule as described in 25 NCAC 01E .0707.

(e) The employee shall exhaust all available leave before using donated leave.

(f) Non-qualifying conditions: This leave does not apply to short-term or sporadic conditions or illnesses that are common, expected or anticipated. This includes such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term, recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to the intent of this Rule and must be applied consistently and equitably.

History Note: Authority G.S. 126-4;
Eff. May 1, 1990;
Amended Eff. February 1, 2011; October 1, 2004, July 1, 1995;
September 1, 1992.

25 NCAC 01E .1305 DONOR GUIDELINES

(a) An employee of any State agency, public school system or community college may donate vacation leave, bonus leave or sick leave to an immediate family member in any State agency, public school or community college. An employee may donate vacation or bonus leave to another employee in any State agency or to a coworker's immediate family member who is an employee in a public school or community college provided the employee and coworker are in the same agency. An employee may donate sick leave to another employee in any State agency in accordance with the provisions of Paragraph (b) of this Rule. Immediate family is defined in 25 NCAC 01E .0317 DEFINITIONS.

(b) An employee of a State agency may donate up to five days of sick leave to a nonfamily member employee of a State agency. The combined total of sick leave donated to a recipient from a nonfamily member donor shall not exceed 20 days per year. Donated sick leave shall not be used for retirement purposes. Employees who donate sick leave shall be notified in writing of the State retirement credit consequences of donating sick leave.

(c) The minimum amount of sick leave or vacation leave to be donated is four hours. An employee family member donating sick leave to a qualified family member under the Voluntary Shared Leave program may donate up to a maximum of 1040 hours but may not reduce the sick leave account below 40 hours.

(d) The maximum amount of vacation leave allowed to be donated by one individual is the amount of the individual's annual accrual rate. However, the amount donated shall not reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate. Bonus leave may be donated without regard to this limitation.

(e) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating may not receive remuneration for the leave donated.

History Note: Authority G.S. 126-4;
Eff. May 1, 1990;
Amended Eff. July 1, 1995; September 1, 1992; July 1, 1991;
Temporary Amendment Eff. June 26, 2003;
Amended Eff. January 1, 2004 (This amendment replaces permanent rule approved by RRC on February 20, 2003 to become effective August 1, 2004);
Amended Eff. February 1, 2011; December 1, 2007.

25 NCAC 01E .1808 TRANSFER

If the employee transfers to a State SPA or EPA position, unused incentive leave may be transferred subject to the receiving agency's approval. If incentive leave is not transferred, it shall not be paid out in a lump sum.

History Note: Authority G.S. 126-4;
Eff. February 1, 2011.

25 NCAC 01E .1809 USE OF LEAVE

Vacation leave shall be taken only upon authorization of the agency head or designee.

History Note: Authority G.S. 126-4;
Eff. February 1, 2011.

25 NCAC 01J .0603 APPEALS

(a) A career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his department/university grievance procedure. If an employee does not appeal his dismissal through the agency grievance procedure within 15 days, the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall become the agency's final agency decision. If an employee appeals his dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the

decision made at the conclusion of the employee's appeal through the agency grievance procedure. Grievances which do not allege discrimination, a violation of G.S. 126-7.1(a) or (c), a violation of G.S. 126-82, or that do not allege a denial of employment or promotion in violation of G.S. 126-14.2 must follow the department or university grievance procedure. An appeal to the State Personnel Commission of a final departmental or university decision must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department must be given 60 calendar days in which to take remedial action, if any, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in writing. An appeal to the State Personnel Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of notification of the remedial action, if any, taken by the agency.

(b) Grievances which allege discrimination not including unlawful workplace harassment may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances which allege a violation of G.S. 126-14.2 must be filed with the Civil Rights Division of the OAH within 30 calendar days after the employee or applicant receives written notice that the position in question has been filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there has been a violation of G.S. 126-14.2.

(d) Grievances filed on an untimely basis (see G.S. 126-14.4, 126-35, 126-36 and 126-38) must be dismissed. Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.

History Note: Authority G.S. 126-1A; 126-35; 126-36; 126-38; 150B, Article 3; 150B-23;

Eff. February 1, 1976;

Amended Eff. March 1, 1994; April 1, 1989; December 1, 1984; October 1, 1984;

Temporary Amendment Eff. February 18, 1999;

Amended Eff. February 1, 2011; July 18, 2002.

25 NCAC 01J .0613 REQUIREMENTS

PROCEDURAL

The following procedural requirements shall be followed to issue disciplinary action under this Section:

- (1) WRITTEN WARNING - to issue a written warning to an employee, a supervisor shall issue the employee a written warning, detailing the matters referenced in Rule .0610(a)(1) - (5) of this Section and including any applicable appeal rights.
- (2) DISCIPLINARY SUSPENSION WITHOUT PAY - to place an employee on disciplinary suspension without pay, a supervisor shall comply with the following procedural requirements:
 - (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct there are no pre-conditions so an employee may be suspended without pay for a current incident of grossly inefficient performance or unacceptable misconduct;
 - (b) Schedule and conduct a pre-suspension conference. Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;
 - (d) Advise the employee of any applicable appeal rights in the document effecting the suspension.
- (3) DEMOTION - to demote an employee, a supervisor shall comply with the following procedural requirements:
 - (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action;
 - (b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;

- (c) Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which discipline has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (d) An employee who is demoted shall receive written notice of the specific acts or omissions that are the reasons for the demotion;
 - (e) An employee shall be advised of how and to what extent the demotion will affect the employee's salary rate or pay grade; and
 - (f) The employee shall also be advised of any applicable appeal rights in the document effecting the demotion.
- (4) **DISMISSAL** - Before an employee may be dismissed, a supervisor shall comply with the following procedural requirements:
- (a) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a pre-dismissal conference with the employee. The person conducting the pre-dismissal conference shall have the authority to recommend or to decide what, if any disciplinary action shall be imposed on the employee;
 - (b) The Supervisor or designated management representative shall schedule a pre-dismissal conference with the employee;
 - (c) Advance written notice of the pre-dismissal conference shall be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
 - (d) The Supervisor or designated management representative shall conduct a pre-dismissal conference with the employee, limiting attendance to the employee and the person conducting the conference; a second management representative may be present at management's discretion. The purpose of the pre-dismissal conference shall be to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake. Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference;
 - (e) In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity shall not include the right to present witnesses;
 - (f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee in accordance with this Paragraph, prior to the beginning of the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the

- completion of the pre-dismissal conference;
- (g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A career employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal; and

- (h) If an employee is dismissed and appeals his dismissal through the agency grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee shall be informed in the final agency decision letter that the final agency decision letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

*History Note: Authority G.S. 126-4; 126-35;
Eff. October 1, 1995;
Temporary Amendment Eff. February 12, 1996;
Amended Eff. August 1, 1996;
Temporary Amendment Expired November 26, 1996;
Amended Eff. February 1, 2011.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday March 17, 2011 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburk - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Ralph A. Walker
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Daniel F. McLawhorn
Curtis Venable
Ann Reed
George Lucier

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

March 17, 2011 April 21, 2011
May 19, 2011 June 16, 2011

AGENDA

RULES REVIEW COMMISSION

Thursday, March 17, 2011 9:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Department of Environment and Natural Resources – 15A NCAC 02H .0903, .0907, .0908, .0922 (DeLuca)
 - B. Medical Board – 21 NCAC 32F .0103 (Bryan)
 - C. Medical Board – 21 NCAC 32X .0104 (Bryan)
 - D. Board of Examiners in Optometry – 21 NCAC 42B .0302
 - E. Building Code Council – 2012 NC Energy Conservation Code 103.1, 105.1, 503.2.9 (Bryan)
 - F. Building Code Council – NC Residential Code R302.2, R313.1 (DeLuca)
 - G. Building Code Council – 2012 NC Residential Code – 2009 IRC with NC Amendments (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between January 21, 2011 and February 21, 2011
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
 - Next meeting: April 21, 2011

Commission Review
Log of Permanent Rule Filings
January 21, 2011 through February 21, 2011

* Approval Recommended, ** Objection Recommended, *** Other

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Chapter 2 are from the Alcoholic Beverage Control Commission.

The rules in Subchapter 2S concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

<u>Storage and Disposal of Spirituous Liquor Containers</u>	04	NCAC 02S .0512
Amend/*		
<u>Private Clubs: Financial Statements: Record Keeping</u>	04	NCAC 02S .0518
Amend/*		
<u>Restaurants: Income from Sales</u>	04	NCAC 02S .0519
Amend/*		
<u>Restaurants, Hotels, and Tour Boats: Record Keeping</u>	04	NCAC 02S .0520
Amend/*		
<u>Record Keeping</u>	04	NCAC 02S .0612
Amend/*		
<u>Sports Clubs: Record Keeping Requirements</u>	04	NCAC 02S .0616
Amend/*		
<u>Tastings Held by Industry Members for ABC Boards</u>	04	NCAC 02S .0904
Adopt/*		

The rules in Subchapter 2T concern industry members, retail/industry member relationships, ship chandlers, air carriers, and fuel alcohol including definitions and application procedures (.0100); product approvals, listing procedures and product lists (.0200); packaging and labeling of malt beverages and wine (.0300); standards of identity for wine containers (.0400); general provisions for industry members (.0500); sales and deliveries of malt beverages and wine (.0600); alcoholic beverages, retailer/industry member relationship and trade practices (.0700); ships chandler's permit (.0800); distillers and representatives (.0900); air carriers (.1000); fuel alcohol permits (.1100); and administrative action by commission (.1200).

<u>Definitions</u>	04	NCAC 02T .0101
Amend/*		
<u>Beer Franchise Law; "Brand" Defined</u>	04	NCAC 02T .0103
Amend/*		
<u>Wine Product Brand</u>	04	NCAC 02T .0104
Adopt/*		
<u>Malt Beverage Product Approval: Listing in State</u>	04	NCAC 02T .0201
Amend/*		
<u>Wine Approvals: Listing in State</u>	04	NCAC 02T .0202
Amend/*		
<u>New Filing Required Upon Transfer of Brand</u>	04	NCAC 02T .0206
Amend/*		
<u>Label Contents: Malt Beverages</u>	04	NCAC 02T .0303
Amend/*		
<u>Growlers</u>	04	NCAC 02T .0308
Adopt/*		
<u>Application of Standards</u>	04	NCAC 02T .0401

Amend/*	
<u>Record Keeping Requirements: Sales Tickets</u>	04 NCAC 02T .0502
Amend/*	
<u>Commercial Bribery</u>	04 NCAC 02T .0708
Amend/*	
<u>Consignment Sales: Conditional Sales: Returns</u>	04 NCAC 02T .0709
Amend/*	
<u>Prohibited Trade Practices</u>	04 NCAC 02T .0711
Amend/*	
<u>Accepted Trade Practices; Services</u>	04 NCAC 02T .0712
Amend/*	
<u>Accepted Trade Practices; Things of Value; Retail Permittees</u>	04 NCAC 02T .0713
Amend/*	
<u>Transactions with Government and Special One-Time Permittees</u>	04 NCAC 02T .0714
Amend/*	
<u>Consumer Contests; Sweepstakes</u>	04 NCAC 02T .0716
Amend/*	
<u>Conditions When Commission Approval Required for Promotions</u>	04 NCAC 02T .0717
Amend/*	
<u>Distiller Representatives: Prohibited Acts</u>	04 NCAC 02T .0901
Amend/*	
<u>Application for Permit</u>	04 NCAC 02T .1001
Amend/*	

CULTURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 2 are from the Division of State Library.

The rules in Subchapter 2A are divisional rules including rules of organization (.0100); and delegated authority (.0200).

<u>Division of State Library</u>	07 NCAC 02A .0101
Repeal/*	
<u>Library Services and Construction Act Advisory Council</u>	07 NCAC 02A .0102
Repeal/*	
<u>Purchase and Contract</u>	07 NCAC 02A .0201
Repeal/*	

The rules in Subchapter 2B concern technical services including state publications clearinghouse (.0100); and library services to state agencies (.0200).

<u>Services</u>	07 NCAC 02B .0101
Repeal/*	
<u>Documents Checklist</u>	07 NCAC 02B .0102
Repeal/*	
<u>Requests for Services</u>	07 NCAC 02B .0201
Repeal/*	
<u>Services</u>	07 NCAC 02B .0203
Repeal/*	

The rules in Subchapter 2C concern information services including circulation and reference (.0100); selection and acquisition of library materials (.0200); genealogical services (.0300); and interlibrary serices (.0500).

<u>Reading Room</u>	07 NCAC 02C .0101
Repeal/*	

<u>Circulation of Library Materials</u>	07	NCAC 02C .0102
Repeal/*		
<u>Photocopying</u>	07	NCAC 02C .0103
Repeal/*		
<u>Reference Services</u>	07	NCAC 02C .0104
Repeal/*		
<u>Bibliographies</u>	07	NCAC 02C .0105
Repeal/*		
<u>Selection Policy</u>	07	NCAC 02C .0201
Repeal/*		
<u>Recommendations</u>	07	NCAC 02C .0202
Repeal/*		
<u>Gifts</u>	07	NCAC 02C .0204
Repeal/*		
<u>Complaints Concerning a Title in the Collection</u>	07	NCAC 02C .0205
Repeal/*		
<u>The Collection</u>	07	NCAC 02C .0301
Repeal/*		
<u>Services to Individuals</u>	07	NCAC 02C .0302
Repeal/*		
<u>Interlibrary Loans</u>	07	NCAC 02C .0501
Repeal/*		
<u>In-Wats Services</u>	07	NCAC 02C .0502
Repeal/*		
<u>Eligibility for In-Wats</u>	07	NCAC 02C .0503
Repeal/*		
<u>In-Wats Procedure Manual</u>	07	NCAC 02C .0504
Repeal/*		

The rules in Subchapter 2D concern special services including the library for the blind and physically handicapped (.0100); and audiovisual services (.0300).

<u>Eligibility</u>	07	NCAC 02D .0101
Repeal/*		
<u>Application</u>	07	NCAC 02D .0102
Repeal/*		
<u>New Readers</u>	07	NCAC 02D .0103
Repeal/*		
<u>Selection</u>	07	NCAC 02D .0104
Repeal/*		
<u>Circulation of Materials</u>	07	NCAC 02D .0105
Repeal/*		
<u>Suspension of Services</u>	07	NCAC 02D .0106
Repeal/*		
<u>Brailist</u>	07	NCAC 02D .0107
Repeal/*		
<u>Taping Volunteers</u>	07	NCAC 02D .0108
Repeal/*		
<u>Copyright</u>	07	NCAC 02D .0109
Repeal/*		
<u>Request/Library Patrons/Reproduce Materials: Special Formats</u>	07	NCAC 02D .0110
Repeal/*		

<u>Small Collections</u>	07	NCAC 02D .0111
Repeal/*		
<u>Catalogs</u>	07	NCAC 02D .0112
Repeal/*		
<u>Scope of the Collection</u>	07	NCAC 02D .0113
Repeal/*		
<u>Materials Selection Policy</u>	07	NCAC 02D .0114
Repeal/*		
<u>Recommendations</u>	07	NCAC 02D .0115
Repeal/*		
<u>Loan of Materials</u>	07	NCAC 02D .0301
Repeal/*		
<u>Requests and Scheduling</u>	07	NCAC 02D .0302
Repeal/*		
<u>Return of Materials</u>	07	NCAC 02D .0303
Repeal/*		
<u>Late or Damaged Film</u>	07	NCAC 02D .0304
Repeal/*		
<u>Film Service Agreement</u>	07	NCAC 02D .0305
Repeal/*		
<u>Materials Selection Policy</u>	07	NCAC 02D .0306
Repeal/*		
<u>Recommendations</u>	07	NCAC 02D .0307
Repeal/*		

The rules in Subchapter 2E concern library development services including consulting and developmental services (.0100); organization of regional libraries (.0200); allocation of state aid to public library systems (.0300); and state institutions eligible for funds (.0400).

<u>Consultants</u>	07	NCAC 02E .0101
Repeal/*		
<u>Regional Libraries</u>	07	NCAC 02E .0201
Repeal/*		
<u>Board of Trustees</u>	07	NCAC 02E .0202
Repeal/*		
<u>Power of Board</u>	07	NCAC 02E .0203
Repeal/*		
<u>Director</u>	07	NCAC 02E .0204
Repeal/*		
<u>Termination</u>	07	NCAC 02E .0205
Repeal/*		
<u>Finance</u>	07	NCAC 02E .0206
Repeal/*		
<u>Property</u>	07	NCAC 02E .0207
Repeal/*		
<u>Other Provisions/Agreement Establishing/Regional Library</u>	07	NCAC 02E .0208
Repeal/*		
<u>Qualifications for Grant Eligibility</u>	07	NCAC 02E .0301
Repeal/*		
<u>State Aid Grants</u>	07	NCAC 02E .0302
Repeal/*		
<u>Limitations on Aid</u>	07	NCAC 02E .0304

Repeal/*	
<u>State Institution Defined</u>	07 NCAC 02E .0401
Repeal/*	
<u>Funds for Institutions</u>	07 NCAC 02E .0402
Repeal/*	
<u>Eligibility</u>	07 NCAC 02E .0403
Repeal/*	

The rules in Subchapter 2F concern the North Carolina Public Librarian Certification Commission.

<u>Purpose of the Commission</u>	07 NCAC 02F .0101
Repeal/*	
<u>Full Certification</u>	07 NCAC 02F .0102
Repeal/*	
<u>Application Procedure for Public Librarian Certification</u>	07 NCAC 02F .0103
Repeal/*	

The rules in Subchapter 2G concern the State Library of North Carolina.

<u>Scope of Rules</u>	07 NCAC 02G .0101
Adopt/*	
<u>Eligibility for State Library Services</u>	07 NCAC 02G .0102
Adopt/*	

The rules in Subchapter 2H concern library services including the government and heritage library (.0100); the state depository library system (.0200); and the library for the blind and physically handicapped (.0300).

<u>Scope of Rules Collections</u>	07 NCAC 02H .0101
Adopt/*	
<u>Library Collections</u>	07 NCAC 02H .0102
Adopt/*	
<u>Access and Circulation</u>	07 NCAC 02H .0103
Adopt/*	
<u>Reproduction Services</u>	07 NCAC 02H .0104
Adopt/*	
<u>Information, Reference and Research Services</u>	07 NCAC 02H .0105
Adopt/*	
<u>Services for State Agencies</u>	07 NCAC 02H .0106
Adopt/*	
<u>Scope of Rules</u>	07 NCAC 02H .0201
Adopt/*	
<u>Printed Document Formats Defined</u>	07 NCAC 02H .0202
Adopt/*	
<u>Depository Requirements for State Agencies</u>	07 NCAC 02H .0203
Adopt/*	
<u>Scope of Rules</u>	07 NCAC 02H .0301
Adopt/*	
<u>Eligibility</u>	07 NCAC 02H .0302
Adopt/*	
<u>Application</u>	07 NCAC 02H .0303
Adopt/*	
<u>Library Collections</u>	07 NCAC 02H .0304
Adopt/*	

<u>Circulation</u>	07	NCAC 02H .0305
Adopt/*		
<u>Reproduction Services</u>	07	NCAC 02H .0306
Adopt/*		
<u>Volunteers</u>	07	NCAC 02H .0307
Adopt/*		

The rules in Subchapter 2I concern library development including organizational rules (.0100); state aid to public libraries (.0200); and organization of regional libraries (.0300).

<u>Scope of Rules</u>	07	NCAC 02I .0101
Adopt/*		
<u>Qualifications for Grant Eligibility</u>	07	NCAC 02I .0201
Adopt/*		
<u>State Aid Grants</u>	07	NCAC 02I .0202
Adopt/*		
<u>Regional Libraries</u>	07	NCAC 02I .0301
Adopt/*		
<u>Regional Agreement</u>	07	NCAC 02I .0302
Adopt/*		
<u>Regional Library Board of Trustees</u>	07	NCAC 02I .0303
Adopt/*		
<u>Powers and Duties of the Regional Library Board</u>	07	NCAC 02I .0304
Adopt/*		
<u>Director</u>	07	NCAC 02I .0305
Adopt/*		
<u>Finance</u>	07	NCAC 02I .0306
Adopt/*		
<u>Establishment of a Regional Library</u>	07	NCAC 02I .0307
Adopt/*		
<u>Withdrawal from or Dissolution of a Regional Library</u>	07	NCAC 02I .0308
Adopt/*		

The rules in Subchapter 2J concern the North Carolina Public Library Certification Commission.

<u>Purpose of the Commission</u>	07	NCAC 02J .0101
Adopt/*		
<u>Full Certification</u>	07	NCAC 02J .0102
Adopt/*		
<u>Application Procedure for Public Librarian Certification</u>	07	NCAC 02J .0103
Adopt/*		

The rules in Chapter 4 are from the Division of Archives and History. The rules in Subchapter 4R concern the archaeology and historic preservation section including general provisions (.0100); environmental review (.0200); national register: plan (.0300); historic properties and historic districts commissions (.0500); designation of historic properties under the state building code (.0600); archaeological resources protection act (.0700); archaeology services (.0800); tax act certification review (.0900); exploration: recovery: and salvage (.1000); historic preservation and conservation agreements (.1400); and survey and planning services (.1500).

<u>Archaeological Review</u>	07	NCAC 04R .0203
Repeal/*		
<u>Underwater Archaeological Review</u>	07	NCAC 04R .0204
Repeal/*		

<u>Definitions</u>	07	NCAC 04R .0702
Repeal/*		
<u>Archaeological Investigations on State Lands</u>	07	NCAC 04R .0703
Repeal/*		
<u>Emergency Archaeological Investigation</u>	07	NCAC 04R .0704
Repeal/*		
<u>Application for Archaeological Permits</u>	07	NCAC 04R .0705
Repeal/*		
<u>Qualifications for Permits</u>	07	NCAC 04R .0706
Repeal/*		
<u>Issuance of Permits</u>	07	NCAC 04R .0707
Repeal/*		
<u>Time Limits of Permits</u>	07	NCAC 04R .0708
Repeal/*		
<u>Terms and Conditions of Permits</u>	07	NCAC 04R .0709
Repeal/*		
<u>Permit Denial: Suspension and Revocation</u>	07	NCAC 04R .0710
Repeal/*		
<u>Appeals Relating to Permits</u>	07	NCAC 04R .0711
Repeal/*		
<u>Reporting Requirements for Specific Permits</u>	07	NCAC 04R .0712
Repeal/*		
<u>Reporting Requirements for General Permits</u>	07	NCAC 04R .0713
Repeal/*		
<u>Report Review for Specific Permits</u>	07	NCAC 04R .0714
Repeal/*		
<u>Report Review for General Permits</u>	07	NCAC 04R .0715
Repeal/*		
<u>Custody of Resources Under the Terms of a Specific Permit</u>	07	NCAC 04R .0716
Repeal/*		
<u>Custody/Archaeological Resources Under/Terms: General</u>	07	NCAC 04R .0717
Repeal/*		
<u>Confidentiality</u>	07	NCAC 04R .0718
Repeal/*		
<u>Operating Hours</u>	07	NCAC 04R .0801
Repeal/*		
<u>Loan of Artifacts</u>	07	NCAC 04R .0802
Repeal/*		
<u>Curation of Archaeological Collections</u>	07	NCAC 04R .0803
Repeal/*		
<u>Deaccessions</u>	07	NCAC 04R .0804
Repeal/*		
<u>Access to Archaeological Collections</u>	07	NCAC 04R .0805
Repeal/*		
<u>Archaeological Site Files</u>	07	NCAC 04R .0806
Repeal/*		
<u>Public Access to Excavations</u>	07	NCAC 04R .0807
Repeal/*		
<u>Archaeological Survey and Evaluation Report Guidelines</u>	07	NCAC 04R .0808
Repeal/*		
<u>Definitions</u>	07	NCAC 04R .1002
Repeal/*		

<u>Department Authorized to Grant Permits and Licenses</u>	07	NCAC 04R .1003
Repeal/*		
<u>Exceptions</u>	07	NCAC 04R .1004
Repeal/*		
<u>Permit for Exploration: Recovery or Salvage</u>	07	NCAC 04R .1005
Repeal/*		
<u>Terms and Conditions of Permits</u>	07	NCAC 04R .1006
Repeal/*		
<u>Appeals Relating to Permits</u>	07	NCAC 04R .1007
Repeal/*		
<u>Ownership and Division of Recovered Items</u>	07	NCAC 04R .1008
Repeal/*		
<u>Protected Areas</u>	07	NCAC 04R .1009
Repeal/*		
<u>Special Areas for Sport and Hobby Operations</u>	07	NCAC 04R .1010
Repeal/*		
<u>Reporting Requirements</u>	07	NCAC 04R .1011
Repeal/*		
<u>Report Review</u>	07	NCAC 04R .1012
Repeal/*		
<u>Termination of Permit</u>	07	NCAC 04R .1013
Repeal/*		

The rules in Subchapter 4S concern the Tryon Palace.

<u>Admission Prices</u>	07	NCAC 04S .0103
Amend/*		

The rules in Chapter 13 are from the Office of State Archaeology including definitions (.0100); environmental review (.0200); archaeological resources protection act (.0300); and archaeology services (.0400).

<u>Definitions</u>	07	NCAC 13 .0101
Adopt/*		
<u>Archaeological Review</u>	07	NCAC 13 .0201
Adopt/*		
<u>Underwater Archaeological Review</u>	07	NCAC 13 .0202
Adopt/*		
<u>Definitions</u>	07	NCAC 13 .0301
Adopt/*		
<u>Archaeological Investigations on State Lands - Permits</u>	07	NCAC 13 .0302
Adopt/*		
<u>Application for Archaeological Permits</u>	07	NCAC 13 .0303
Adopt/*		
<u>Requirements for and Issuance of Permits</u>	07	NCAC 13 .0304
Adopt/*		
<u>Duration, Extension and Renewal of Permits</u>	07	NCAC 13 .0305
Adopt/*		
<u>Terms and Conditions of Permits</u>	07	NCAC 13 .0306
Adopt/*		
<u>Permit Denial, Suspension and Revocation</u>	07	NCAC 13 .0307
Adopt/*		
<u>Appeals Relating to Permits</u>	07	NCAC 13 .0308
Adopt/*		

<u>Emergency Archaeological Investigations</u> Adopt/*	07 NCAC 13 .0309
<u>Protected Areas</u> Adopt/*	07 NCAC 13 .0310
<u>Reporting Requirements for General Permits: Review</u> Adopt/*	07 NCAC 13 .0311
<u>Reporting Requirements for Specific Permits Review</u> Adopt/*	07 NCAC 13 .0312
<u>Custody of Resources Under Terms of Permits</u> Adopt/*	07 NCAC 13 .0313
<u>Disposition of Artifacts; Loans</u> Adopt/*	07 NCAC 13 .0401
<u>Curation of Archaeological Collections</u> Adopt/*	07 NCAC 13 .0402

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

<u>Reportable Diseases and Conditions</u> Amend/*	10A NCAC 41A .0101
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The rules in Chapter 13 concern Solid Waste Management.

The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer facilities (.0400); disposal sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); and requirements for beneficial use of coal combustion by-products (.1700).

<u>General Requirements for MSWLF Facilities</u> Amend/*	15A NCAC 13B .1604
<u>Operational Requirements for MSWLF Facilities</u> Amend/*	15A NCAC 13B .1626
<u>Ground-Water Sampling and Analysis Requirements</u> Amend/*	15A NCAC 13B .1632
<u>Detection Monitoring Program</u> Amend/*	15A NCAC 13B .1633
<u>Assessment Monitoring Program</u> Amend/*	15A NCAC 13B .1634
<u>Assessment of Corrective Measures</u> Amend/*	15A NCAC 13B .1635
<u>Implementation of the Corrective Action Program</u> Amend/*	15A NCAC 13B .1637

WELL CONTRACTORS CERTIFICATION COMMISSION

The rules in Chapter 27 concern well contractor certification including duties and definitions (.0100); well contractor fees (.0200); certification of well contractors (.0300); certification by examination (.0400); certification without examination (.0500); certification renewal (.0600); types of certification (.0700); continuing education (.0800); and procedures for disciplinary actions (.0900).

<u>Definitions</u>	15A NCAC 27 .0101
Amend/*	
<u>Types of Certification</u>	15A NCAC 27 .0110
Amend/*	
<u>Application for Certification</u>	15A NCAC 27 .0301
Amend/*	
<u>Submittal and Processing of Applications for Examinations</u>	15A NCAC 27 .0401
Amend/*	
<u>Well Contractor Examinations</u>	15A NCAC 27 .0410
Amend/*	
<u>Time and Place of Examinations</u>	15A NCAC 27 .0420
Amend/*	
<u>Conducting and Grading Examinations</u>	15A NCAC 27 .0430
Amend/*	
<u>Examination Results and Issuance of Certificates</u>	15A NCAC 27 .0440
Amend/*	
<u>Reciprocal Waiver of Examination for Certification</u>	15A NCAC 27 .0510
Amend/*	
<u>Conditions and Limitations for Renewal of Certification</u>	15A NCAC 27 .0601
Amend/*	
<u>Requirements of Certification</u>	15A NCAC 27 .0702
Amend/*	
<u>Level D Certification Without Examination</u>	15A NCAC 27 .0703
Repeal/*	
<u>Certification Without Examination in 2008</u>	15A NCAC 27 .0704
Repeal/*	
<u>Requirements</u>	15A NCAC 27 .0801
Amend/*	
<u>Approval of Continuing Education Courses</u>	15A NCAC 27 .0810
Amend/*	
<u>Determination of Credit</u>	15A NCAC 27 .0820
Amend/*	
<u>Recordkeeping</u>	15A NCAC 27 .0830
Amend/*	
<u>Special Provisions for Continuing Education</u>	15A NCAC 27 .0840
Amend/*	
<u>Revocation, Relinquishment or Expiration of Certification</u>	15A NCAC 27 .0901
Amend/*	
<u>Recertification Following Revocation or Relinquishment</u>	15A NCAC 27 .0910
Amend/*	

GENERAL CONTRACTORS, LICENSING BOARD FOR

The rules of the Licensing Board for General Contractors include the board's organization (.0100); licensing requirements (.0200); application procedures (.0300); examinations (.0400); licenses (.0500); disciplinary procedures (.0700); contested cases (.0800); and home-owners recovery fund (.0900).

<u>Classification</u>	21 NCAC 12 .0202
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Amend/*			
<u>Renewal of License</u>	21	NCAC 12	.0503
Adopt/*			
<u>Fund Suspension</u>	21	NCAC 12	.0507
Adopt/*			
<u>Improper Practice</u>	21	NCAC 12	.0701
Amend/*			
<u>Unlawful Practice</u>	21	NCAC 12	.0702
Amend/*			
<u>Request for Hearing</u>	21	NCAC 12	.0818
Amend/*			

COSMETIC ART EXAMINERS, BOARD OF

The rules in Chapter 14 are from the Cosmetic Art Examiners.

The rules in Subchapter 14F govern all aspects of licensing a beauty salon.

<u>Separation of Beauty Salon</u>	21	NCAC 14F	.0104
Amend/*			

The rules in Subchapter 14G give the requirements for the establishment of cosmetic art schools.

<u>Teacher/Student Ratio</u>	21	NCAC 14G	.0113
Amend/*			
<u>School Affiliation with Cosmetic Art Shops and Other Busi...</u>	21	NCAC 14G	.0114
Amend/*			
<u>School Curriculum Approval (A) No Cosmetic Art Shop or an...</u>	21	NCAC 14G	.0118
Adopt/*			

The rules in Subchapter 14H are sanitation rules for both operators and facilities.

<u>Cleanliness of Scissors, Shears, Razors and Other Equipment</u>	21	NCAC 14H	.0113
Amend/*			

The rules in Subchapter 14I govern the operation of cosmetic art schools including record keeping (.0100); the reception area (.0200); classrooms (.0300); and licensure of convicted felons (.0400).

<u>Permanent Files</u>	21	NCAC 14I	.0101
Amend/*			
<u>Summary of Cosmetic Art Education</u>	21	NCAC 14I	.0109
Amend/*			
<u>Uniform</u>	21	NCAC 14I	.0110
Adopt/*			

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

<u>Live Model/Mannequin Performance Requirements</u>	21	NCAC 14J	.0207
Amend/*			
<u>Approval of Credit for Cosmetology Instruction/Another State</u>	21	NCAC 14J	.0501
Amend/*			

The rules in Subchapter 14N deal with examinations including general provisions (.0100), cosmetologist exam (.0200), manicurist exam (.0300), cosmetologist teacher exam (.0400), and manicurist teach examination (.0500), esthetician examination (.0600), and esthetician teacher examination (.0700).

Re-examination 21 NCAC 14N .0113
Amend/*

The rules in Subchapter 14P are civil penalty rules.

Licenses Required 21 NCAC 14P .0106
Amend/*

The rules in Subchapter 14S concern natural hair care curriculum.

Performances 21 NCAC 14S .0107
Amend/*

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

The rules in Chapter 25 are from the Interpreter and Transliterato r Board including general provisions (.0100); licensing (.0200); moral fitness for licensure (.0300); reporting and disclosure requirements (.0400); continuing education (.0500); administrative procedure (.0600); and sanctions (.0700).

Application Fees 21 NCAC 25 .0203
Amend/*

Renewal of a Full License 21 NCAC 25 .0204
Amend/*

Renewal of a Provisional License 21 NCAC 25 .0205
Amend/*

Suspension of Authority to Expend Funds 21 NCAC 25 .0211
Adopt/*

Extension of Reporting Deadlines 21 NCAC 25 .0406
Adopt/*

Continuing Education Requirements 21 NCAC 25 .0501
Amend/*

MEDICAL BOARD

The rules in Subchapter 32M regulate the licensing and practice of nurse practitioners (.0100).

Prescribing Authority 21 NCAC 32M .0109
Amend/*

NURSING, BOARD OF

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

Prescribing Authority 21 NCAC 36 .0809
Adopt/*

OPTICIANS, STATE BOARD OF

The rules in Chapter 40 are from the Board of Opticians and concern location (.0100); conduct of registrants (.0200); qualifications, applications and licensing (.0300); and administrative hearings (.0400).

<u>Information and Application</u>	21	NCAC 40	.0104
Amend/*			
<u>Election of Members</u>	21	NCAC 40	.0109
Amend/*			
<u>Forms</u>	21	NCAC 40	.0112
Repeal/*			
<u>Professional Responsibility; Continuing Education</u>	21	NCAC 40	.0206
Amend/*			
<u>Location of Licensee, Intern or Apprentice</u>	21	NCAC 40	.0207
Amend/*			
<u>Display of Registration and License</u>	21	NCAC 40	.0209
Amend/*			
<u>Negligence in Dispensing Contact Lenses</u>	21	NCAC 40	.0213
Repeal/*			
<u>Complaints; Preliminary Determinations</u>	21	NCAC 40	.0214
Amend/*			
<u>Application Photograph Requirement</u>	21	NCAC 40	.0301
Amend/*			
<u>Licensure Examination Fees</u>	21	NCAC 40	.0302
Amend/*			
<u>Licensure Examination and Re-Examination</u>	21	NCAC 40	.0303
Amend/*			
<u>Time and Place of Examination</u>	21	NCAC 40	.0307
Repeal/*			
<u>Terms of Examination and Re-Examination</u>	21	NCAC 40	.0318
Repeal/*			
<u>Affidavit of Applicant</u>	21	NCAC 40	.0323
Amend/*			
<u>Motion for Continuance</u>	21	NCAC 40	.0422
Adopt/*			

APPRAISAL BOARD

The rules in Subchapter 57D concern appraisal management companies including application for appraisal management registration (.0100); appraisal management company registration (.0200); appraisal management company procedures (.0300); and appraisal management company general practices (.0400).

<u>Amount of Compensation</u>	21	NCAC 57D	.0402
Adopt/*			

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

The rules in Chapter 68 include general provisions (.0100); certification (.0200); clinical addictions specialist (.0300); education (.0400); ethical principles of conduct (.0500); grounds for discipline and disciplinary procedures (.0600); and appeals process (.0700).

<u>Definitions</u>	21	NCAC 68	.0101
Amend/*			
<u>Supervised Practicum for Certified Substance Abuse Counse...</u>	21	NCAC 68	.0204
Amend/*			
<u>Continuing Education Required for Counselor, Criminal Jus...</u>	21	NCAC 68	.0208

Amend/*			
<u>University Substance Abuse Specialty Curricula</u>	21	NCAC 68	.0214
Amend/*			
<u>Supervised Practicum for Criminal Justice Addictions Prof...</u>	21	NCAC 68	.0217
Amend/*			
<u>Suspension of Authority and Escrow of Funds</u>	21	NCAC 68	.0225
Adopt/*			
<u>Armed Services Credential</u>	21	NCAC 68	.0226
Adopt/*			
<u>Grounds for Professional Discipline</u>	21	NCAC 68	.0601
Amend/*			
<u>Complain Procedures</u>	21	NCAC 68	.0602
Amend/*			
<u>Investigation of Complaint</u>	21	NCAC 68	.0603
Amend/*			
<u>Hearing Before Board</u>	21	NCAC 68	.0604
Amend/*			
<u>Method of Discipline</u>	21	NCAC 68	.0605
Amend/*			
<u>Effect of Court or of Other Professional Groups</u>	21	NCAC 68	.0606
Amend/*			
<u>Awarding the Credential Following Denial</u>	21	NCAC 68	.0610
Amend/*			
<u>Proof of Rehabilitation</u>	21	NCAC 68	.0611
Amend/*			
<u>Informal Proceedings</u>	21	NCAC 68	.0615
Amend/*			
<u>Publication of Ethics Sanctions</u>	21	NCAC 68	.0620
Amend/*			

COMMUNITY COLLEGES, BOARD OF

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2C deal with the organization and operation of the colleges including trustees and colleges (.0100); personnel (.0200); students (.0300); libraries and learning resource centers (.0400); equipment (.0500); college evaluation (.0600); and civil rights (.0700).

<u>School Absence for Religious Observances</u>	23	NCAC 02C	.0213
Adopt/*			
<u>Admission to Colleges</u>	23	NCAC 02C	.0301
Amend/*			

The rules in Subchapter 2D cover the fiscal affairs of community colleges including salaries (.0100), student fees (.0200) and budgeting, accounting and fiscal management (.0300).

<u>Tuition and Fees for Curriculum Programs</u>	23	NCAC 02D	.0202
Amend/*			

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <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

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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ABC Commission v. Fusion Foods, Inc., T/A Coastal Blue	09 ABC 4672	Lassiter	11/08/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	May	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
ABC Commission v. Startown Lounge, Inc. T/A 5 O'clock Somewhere	10 ABC 0153	Gray	06/25/10	
ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6	10 ABC 0576	Webster	07/09/10	
ABC Commission v. Talmar Inc. D/B/A E-City Restaurant and Lounge, Mary Ann Davidson and Ratanya Walker				
ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman	10 ABC 2512	Gray	08/02/10	
Melvin Lewis, JA's Inc. T/A PAPA Ja's Fine Family Dining v. ABC Commission	10 ABC 2603	Gray	12/08/10	
ABC Commission v. Alpha 3 Enterprises LLC, T/A Liquid Room	10 ABC 2659	Lassiter	07/14/10	
ABC Commission v. Taqueria Guadalajara II, Inc, Jaime Fuentes Vice President	10 ABC 3107	Brooks	07/15/10	
ABC Commission v. Ab3 LLC T/A On the Roxx	10 ABC 4120	Brooks	10/08/10	
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ABC Commission v. Speed Dee Superette, Tonya Marchisella	10 ABC 4583	Brooks	11/04/10	
ABC Commission v. Ben Long Wang, T/A Sapporo Bistro	10 ABC 4843	May	10/15/10	
Bobby Larry Avery Jr. Larry's v. State of North Carolina ABC Commission	10 ABC 5360	Lassiter	12/14/10	
ABC Commission v. Lourdes, Inc, T/A, El Gavilan	10 ABC 6372	Brooks	01/13/11	
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<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>				
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Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	Gray	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
William G. Fisher v. Victims and Justice Services	09 CPS 4024	Brooks	11/15/10	
Terry L. SChermerhorn v. North Carolina State Highway Patrol	09 CPS 4547	Lassiter	10/21/10	
William Pickard Trucking, Inc., William Pickard v. Dept. of Crime Control and Public Safety, State Highway Patrol	09 CPS 4692	Brooks	06/09/10	
California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 5225	Overby	05/12/10	
Earl Stanley Peters III v. Victims Compensation Service Division	09 CPS 5444	Elkins	08/30/10	
John Rose (Flipstastic, Inc) v. Department of Crime Control and Public Safety	09 CPS 5985	Gray	08/25/10	25:11 NCR 1345
Lynch's Auto Sales Salvage & Wrecker Service, inc v. Crime Control and Public Safety, Division of State Highway Patrol	09 CPS 6158	Lassiter	09/10/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
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A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

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C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS	09 DHR 3377	Brooks	06/16/10	
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Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	Lassiter	06/29/10	
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Maureen Marie Schepis v. DHHS, J. Iverson Riddle Developmental Center, Emery Milliken, DHHS General Counsel	10 OSP 3346	Gray	08/30/10	
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Superintendent (Joseph Locklear) Board Attorney (David Phillips) Principal (Vanessa Alford)

Elizabeth Plummer v. Vance County, Department of Social Services, Kay Fields, Director	10 OSP 5695	Elkins	12/16/10	
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Seaton W. Howell v. Dept. of SOS	10 SOS 1350	Webster	11/08/10	
James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10	
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Elizabeth Danial Dominique v. NC Teaching Fellows Commission	09 TFC 6833	Webster	09/24/10	25:11 NCR 1366
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Filed

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

2010 DEC 30 PM 2:19

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

06 EHR 1400

09 EHR 6635

Office of
Administrative Hearings

BAKARI DELVACKIO JOHNSON,

Petitioner,

Vs.

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES, DIVISION OF ON-SITE
WASTEWATER; CARTERET COUNTY
HEALTH DEPARTMENT,
ENVIRONMENTAL HEALTH,

Respondent.

DECISION

BAKARI JOHNSON; LARRY PARMLEY,

Petitioners,

vs.

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES, DIVISION OF ON-SITE
WASTEWATER, CARTERET COUNTY
HEALTH DEPARTMENT,

Respondent.

A contested case hearing was conducted in these consolidated cases on August 31, 2010, at the Craven County Courthouse, Courtroom 2, New Bern, North Carolina before Beecher R. Gray, Administrative Law Judge. Petitioners, Bakari Johnson and Larry Parmley, were represented by Mario M. White, attorney at law. Respondent, Department of Environment and Natural Resources (hereinafter known as DENR), was represented by John P. Barkley, Assistant Attorney General. The parties stipulated to proper notice of the

hearing. After contested case 06 EHR 1400 previously was dismissed by the administrative law judge upon Respondent's Motion to Dismiss for Mootness, Petitioner filed a Petition for Judicial Review. Improvement permits had been issued for lots 2, 3, and 4 and lots 2, 3, and 4 were sold by Petitioners prior to the judicial review petition being heard. The parties agreed to the remand of the case to OAH solely on lots 6, 7, and 8. An Order was issued by the Superior Court Division remanding the case to OAH based upon the agreement of the parties contained in the Order. In November 2009, Petitioners made new applications for improvement permits for lots 6, 7, and 8. Respondent evaluated the lots, determined them to be unsuitable and issued denial letters to Petitioners, including Petitioners' appeal rights. Petitioners appealed the 2009 denials in case 09 EHR 6635. Upon the parties' joint request, Chief Administrative Law Judge Julian Mann, III consolidated the cases for hearing. Petitioner and Respondent filed proposed decisions on December 17, 2010.

ISSUE

Whether Respondent properly denied Petitioners' applications for improvement permits for lots 6, 7, and 8 in God's Property Subdivision in Carteret County, North Carolina and properly determine that Petitioners' monitoring well test data for lots 6, 7, and 8 could not be evaluated because of insufficient rainfall in accordance with State wastewater rules.

Based upon the evidence presented at the hearing, the exhibits admitted, and all other relevant material, the undersigned makes the following:

FINDINGS OF FACT

1. On June 22, 2000, Petitioner Bakari Johnson applied to the Carteret County Health Department (hereinafter CCHD) for improvement permits for on-site wastewater systems to serve three bedroom homes on Petitioner's property, lots 1-6, God's Property Subdivision (hereinafter "the sites"), located in Carteret County, North Carolina. The applications included individual site plans for each of the lots.

2. On August 22, 2000, Curtis Oden and Wendy Kelly (then Wendy King), Environmental Health Specialists with CCHD, conducted evaluations of the sites to determine the suitability of the sites for installation of wastewater systems in accordance with State wastewater laws and rules found in N.C.G.S. 130A-333, et seq. and 15A NCAC 18A Section .1900. Specialists Oden and Kelly made auger borings in separate areas across each of the sites and evaluated the soils from the borings to determine the suitability of each site for an on-site wastewater system.

3. In evaluating the auger borings, Specialists Oden and Kelly found soil colors of chroma two (2) or less on the Munsell color chart, indicating a soil wetness condition at less than 12 inches from the natural soil surface on each lot.

4. Specialists Oden and Kelly determined that each site was unsuitable because of the presence of a soil wetness condition at less than 12 inches from the natural soil

surface, a disqualifying condition under 15A NCAC 18A .1942.

5. Specialists Oden and Kelly determined that, because of the soil wetness condition at less than 12 inches from the natural soil surface on each site, fill material could not be added to the sites to bring the sites into compliance under 15A NCAC 18A.1957(b).

6. Specialists Oden and Kelly also determined that the sites had poor drainage because of soil groups III or IV soils, a disqualifying condition under 15A NCAC 18A .1956(2)a-f. Based on these findings, they determined that the sites were unsuitable.

7. Based on their evaluation, Specialists Oden and Kelly determined that the sites were classified as unsuitable under the state wastewater laws and rules.

8. Specialists Oden and Kelly could not identify any other modified or alternative system that could be used on the sites to upgrade the classification from unsuitable.

9. By letters dated August 25, 2000, Specialists Oden and Kelly notified Petitioners that lots 1-6 as identified on the map submitted to CCHD on June 22, 2000 had been determined to be unsuitable because of the soil wetness condition at less than 12 inches and because of poor drainage. A denial letter was sent for lots 1-6 collectively and a letter was sent for each lot individually, including lot 6. The letters also advised Petitioner of their right to informal review of this decision and of their formal appeal rights to the Office of Administrative Hearings (OAH). The formal appeal language included the statement that "a petition must be received by the Office of Administrative Hearings within thirty (30) days after the date of this notice which is 08/25/00." Petitioners did not file an appeal of the denial of lots 1-6 with OAH within 30 days of August 25, 2000 and CCHD's decisions that lots 1-6 were unsuitable for improvement permits became final agency decisions that no longer could be appealed.

10. Lot 6 as it appeared on the June 22, 2000 map is not the same lot 6 as it exists today. The lot lines for lots 1-6, and later lots 6, 7, and 8, were redrawn a number of times between 2000 and 2009. There was not a lot 7 or lot 8 at the time of the applications in June 2000 and lots 7 and 8 do not appear until 2004. The applications in 2000 for lots 1-6 were not applications for lots 6, 7, and 8 as presently configured. Applications for improvement permits are based on the property lines and site plans submitted with the applications. Changes to property lines or site plans, including the reconfiguration or renumbering of lots, require submission of new applications or amendments to existing applications showing the revised property lines, site plans, and lot numbers. See 15A NCAC 18A .1937. Changes in property lines and site plans could affect the suitability of a site because of setback requirements, soil conditions, landscape conditions, and other factors necessary to issuance of an improvement permit for a site.

11. The August 25, 2000 denial letters each contained possible options that Petitioners could pursue to attempt to gain approval for the sites as Suitable or Provisionally Suitable. An option included in the letter was to install water monitoring test wells to determine actual soil wetness conditions during the wet season. The options

included were examples of further steps Petitioner could take to attempt to have the site permitted, but did not alter the then existing determination of unsuitability.

12. A separate application was required to participate in test well monitoring. Petitioner submitted applications to CCHD to participate in test well monitoring only on lots 1 and 5 in 2001. The lots were monitored under the existing monitoring program in Carteret County for the 2001-2002 monitoring season. State wastewater rules specifically addressing new monitoring requirements were not adopted until 2002. The actual soil wetness for lots 1 and 5 was determined to be suitable or provisionally suitable under the 2001-2002 CCHD monitoring well program. Improvement permits were issued in 2002 for lots 1 and 5 based upon the 2001-2002 monitoring well program results.

13. In April of 2002, 15A NCAC 18A .1942 (Rule .1942) was amended after a determination by an administrative law judge, adopted by the final agency decisionmaker, that the existing rules for determining soil wetness conditions were insufficient. The Commission for Health Services (later changed to the Commission for Public Health) adopted amendments to Rule .1942 governing soil wetness that included very specific procedures for test well monitoring and alternative means for determining soil wetness.

14. Petitioners did not apply for test well monitoring of lots other than 1 and 5 in God's Property Subdivision until after the new amendments to Rule .1942 governing test well monitoring became effective in 2002. No applications were received for test well monitoring of lots 6 and 7 until 2004. Lots 6 and 7 later were reconfigured during 2004 and 2005. Applications for test well monitoring of the current lots 6, 7, and 8 were not received until January, 2005.

15. Specialists Troy Dees, Wendy Kelly and Curtis Oden testified that the department's interpretation of the wastewater rules required that the current rules at the time a site was monitored governed the test well monitoring requirements to be followed for the site. Specialists Dees and Oden did ask if this interpretation was correct for Petitioners' sites and the Division and the Attorney General's office responded that the current rules in effect at the time of the monitoring applied.

16. The rules governing the monitoring well requirements for lots 6, 7, and 8 were the 2002 and subsequent amendments of Rule .1942, not the earlier CCHD test well monitoring program used to monitor lots 1 and 5.

17. Petitioner participated in the 2004-2005 test well monitoring season for lots 6 and 7 under the provisions of the 2002 and later amendments to Rule .1942. As part of the monitoring requirements, Petitioner collected daily rainfall data. In order to have test well monitoring data reviewed, a site had to meet a minimum precipitation threshold determined by a formula contained in Rule .1942. CCHD and Respondent's Senior Engineer Steven Berkowitz reviewed Petitioner's rainfall data for the 2004-2005 monitoring season and determined that it did not meet the minimum threshold amount contained in the rule. Therefore, Petitioner's test well direct monitoring data for lots 6 and 7 could not be reviewed under Rule .1942.

18. By letters dated August 5, 2005, Petitioners were notified that there was insufficient precipitation on lots 6 and 7 and that the test well data could not be evaluated under Rule .1942. lot 8 later was created by separating lot 7 into two lots and was not evaluated as lot 8 during the 2004-05 test well monitoring season. An option available under Rule .1942 when there was insufficient rainfall on a site was to have a consultant perform DRAINMOD modeling of the site based on the monitoring well data collected for the site. Petitioner hired Larry Baldwin, Licensed Soil Scientist (LSS), to do DRAINMOD modeling under this provision for lots 2, 3, 4, 6, and 7 in 2005. LSS Baldwin did DRAINMOD modeling under .1942 and determined that the actual soil wetness condition for lots 2 and 4 could upgrade them to provisionally suitable. LSS Baldwin determined that "the remaining lots presently appear to be unsuitable because of the seasonal high water table within 12 inches of the surface for durations of +14 days, and for >30% of years evaluated". This included lots 6 and 7 as then configured (later lots 6, 7, and 8). Engineer Berkowitz later reviewed Soil Scientist Baldwin's data and agreed that the data showed that lots 2 and 4 were Provisionally Suitable for soil wetness and that lots 3, 6, and 7 were Unsuitable with less than 12 inches to soil wetness. (R Exhibit 16). lots 6, 7, and 8 were evaluated in the 2005-2006 monitoring season and again there was insufficient precipitation under Rule .1942 for review of the test well monitoring data for lots 6, 7, and 8. CCHD notified Petitioner of this determination by letters dated July 11, 2006. Petitioner did not have DRAINMOD analysis done of lots 6, 7, and 8 following the 2005-2006 monitoring season.

19. Petitioners submitted applications to CCHD for improvement permits for lots 6, 7, and 8 on November 2, 2009. The applications included site plans showing each lot as configured in 2009 and as shown in the last configurations submitted on maps in January 2005.

20. On November 10, 2009, Specialists Dees and Kelly visited lots 6, 7, and 8. Specialist Dees evaluated each site in accordance with the state wastewater laws and rules in effect on that date and Specialist Kelly recorded notes of the evaluations. Specialist Dees found that lots 6, 7, and 8 each had colors of chroma 2 or less at less than 12 inches from the natural soil surface, which was classified as an unsuitable soil wetness condition. He also found that a modified or alternative system under Rule .1956 or Rule .1957 could not be used because the soil wetness condition was less than 12 inches from the natural soil surface. He found that lots 7 and 8 relatively were flat lots, containing Group III soils that do not drain well and were classified as unsuitable because of poor drainage.

21. Specialist Dees was qualified as an expert in the evaluation of sites for on-site wastewater systems. In Specialist Dees expert opinion, lots 6, 7, and 8 were unsuitable under the .1900 rules because of the high water table, high soil wetness condition, and, for lots 7 and 8, poor drainage.

22. By letters dated November 13, 2009, CCHD informed Petitioners of its findings for each lot and that the applications for improvement permits were denied. The letters notified Petitioners that other site modifications and modified, innovative, or

alternative systems were considered but that they could not find such systems that could be used to overcome the site conditions. The letters each contained other options that could be pursued by Petitioners, including test well monitoring by Petitioners under the Alternative Procedures for Soil Wetness Determination in Rule .1942. The letters also contained Petitioners formal appeal rights to the Office of Administrative Hearings notifying them that if they wished to pursue a formal appeal Petitioners must file the petition form with OAH within 30 days of the date of the letter, which was November 13, 2009. Petitioners filed appeals from those notices in the second of these cases, 09 EHR 6635.

23. Under the rules in effect at the time of the 2004-2005 and 2005-2006 test well monitoring seasons, Petitioners did not have sufficient rainfall on the lots to meet the minimum percentage required in Rule .1942. Since they had insufficient rainfall, the sites were ineligible for evaluation of their direct well monitoring data. CCHD sent letters to Petitioners notifying them that the test well data could not be reviewed, notifying them of other options for determination of soil wetness under Rule .1942 and notifying Petitioners of their appeal rights. In 2004-2005, Petitioners did not appeal the decision that they had insufficient rainfall and were ineligible for review of monitoring well data. Petitioners had Soil Scientist Larry Baldwin evaluate the lots and perform a DRAINMOD analysis of their data for lots 2,3,4,6, and 7 (lot 7 later renumbered as lots 7 and 8) and determined that Lots 2 and 4 were provisionally suitable as to soil wetness but the remaining lots were unsuitable as to soil wetness with a soil wetness condition at less than 12 inches. Engineer Berkowitz reviewed Soil Scientist Baldwin's report and separately reviewed his DRAINMOD analysis and data. Engineer Berkowitz also concluded that the remaining lots other than 2 and 4 still had an unsuitable soil wetness condition at less than 12 inches from the natural soil surface. Lots 6, 7, and 8 were monitored in 2005-2006, but again rainfall was insufficient and the data could not be reviewed. Petitioners were notified of Respondent's findings, of Petitioners' alternatives, and appeal rights. Petitioners appealed the 2006 decision in case number 06 EHR 1400. Specialist Dees and Engineer Berkowitz testified to the review of Petitioners rainfall numbers by CCHD and DENR and that the Petitioners rainfall numbers were insufficient. Engineer Berkowitz personally reviewed the data and found that the rainfall numbers were insufficient under Rule .1942. Petitioners provided no evidence to contradict Respondent's evidence that the rainfall data was insufficient under Rule .1942.

24. At the close of Petitioners' evidence, Petitioners' exhibits 1 through 5 were admitted into evidence.

25. Lots 6, 7, and 8, as currently configured, did not exist in June 2000 and were not part of the applications for lots 1-6 in 2000. Applications are for specific sites, with specific property lines and lot numbers identified in site plans submitted with the applications. The original lots 1-6 were redrawn and renumbered numerous times after the June 2000 applications, and the property lines and site plans changed with the changing of the lot numbers. No new applications for improvement permits for lots 6, 7, and 8 were submitted until November 2009. The earliest application containing lots 6, 7, and 8 as they exist today, prior to the 2009 improvement permits applications, would be the applications for the test well monitoring program for the 2005-2006 season that were submitted in 2005

and whose governance falls under the provisions of Rule .1942 as amended in 2002 and 2004. Applications for test well monitoring are required for each lot separate and apart from the applications for improvement permits. Even if there had been an application for an improvement permit, a separate application was required for each lot to be monitored for a specific test well monitoring season.

26. Neither party identified any modified, alternative, experimental, or innovative system that would allow lots 6, 7, or 8 to be reclassified as provisionally suitable in accordance with 15A NCAC 18A .1956, .1957 or .1969. However, there was testimony that a pump drainage or other system may be possible with further investigation by a private consultant or modeling, at least for lot 6. This would require further action by Petitioners, however, before the determination of the unsuitability of lots 6, 7, and 8 could be changed.

27. At the close of Respondent's evidence, Respondent's exhibits 1 through 26 were admitted into evidence.

28. Petitioners submitted no evidence or testimony to refute Respondent's findings and testimony regarding an unsuitable soil wetness condition being less than 12 inches from the natural soil surface for lots 6, 7, and 8; that lots 7 and 8 had poor drainage; or that Petitioners had insufficient rainfall and their monitoring well data was ineligible for review under Rule .1942 in the 2004-2005 and 2005-2006 test well monitoring seasons.

29. 15A NCAC 18A .1947 states that "(a)ll of the criteria in rules .1940 through .1946 of this Section shall be determined to be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE, as indicated. If all criteria are classified the same, that classification shall prevail. Where there is a variation in classification of the several criteria, the most limiting uncorrectable characteristics shall be used to determine the overall site classification."

30. 15A NCAC 18A .1942, as amended in 2002 and 2004, is attached hereto as Attachment 1, and incorporated herein as part of this decision.

31. 15A NCAC 18A .1957(b)(1) states in part "Fill systems may be installed on sites where at least the first 18 inches below the naturally occurring soil surface consists of soil that is suitable or provisionally suitable with respect to soil structure and clay mineralogy, and where organic soils, restrictive horizons, saprolite or rock are not encountered. Further, no soil wetness condition shall exist within the first 12 inches below the naturally occurring soil surface and a groundwater lowering device shall not be used to meet this requirement."

CONCLUSIONS OF LAW

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.

2. Petitioners' original lots 1-6 properly were classified as UNSUITABLE because of chroma 2 or less soil colors at a depth of less than 12 inches from the naturally occurring soil surface and Respondent properly denied Petitioners' improvement permit applications. Petitioners properly were notified of their options, including the right to appeal the denials. Petitioners were required to file any appeal of the denial of lots 1-6 within 30 days of the denial letter which was issued on August 25, 2000. Petitioners did not appeal the denials of lots 1-6 and the denials became final agency decisions.

3. All applications for test well monitoring after the 2002 amendments to Rule .1942 were subject to the new, alternative methods of determining soil wetness conditions, including the new test well monitoring requirements. The evidence shows that Respondent correctly interpreted the new rules as applicable to lots for which test well monitoring was applied for after the 2002 amendments became effective. Under Respondent's interpretation of its rules on test well monitoring, for which appropriate deference is given, Petitioners were not entitled to relate back to the original improvement permit applications submitted in 2000 and could not use the CCHD test well monitoring program that was in place prior to the 2002 amendments to Rule .1942. Petitioners did not apply for test well monitoring of the remaining sites until 2004 and 2005 and were subject to the current, as amended, rules in effect at that time. Petitioners had no vested rights in actions by the Respondent because the Respondent never issued improvement permits for the lots, other than 1 and 5, upon which the Petitioners could rely. When applications were made for test well monitoring in 2004 and 2005, for lots other than 1 and 5, the wells were put in, the rainfall data reviewed in accordance with the rules, and the well data determined to be ineligible for review because of insufficient precipitation during the test period as specified in the rule. Respondent appropriately acted on all applications before it at the appropriate time, and Petitioners therefore cannot claim any vested rights based on Respondent's actions.

4. Under the requirements of Rule .1942, rainfall data submitted for test monitoring wells on lots 6, 7, and 8 in 2004-2005 and 2005-2006 showed insufficient rainfall under Rule .1942, and the Respondent properly determined that Petitioners' monitoring well data for those years could not be reviewed.

5. Lots 6, 7, and 8 properly were classified as unsuitable when evaluated in November 2009 because the soils were chroma 2 or less at a depth of less than 12 inches from the naturally occurring soil surface, indicating an unsuitable soil wetness condition on the sites, a disqualifying factor under 15A NCAC 18A .1942 and .1957(b).

6. DRAINMOD data from Soil Scientist Larry Baldwin showed that lots 6 and 7 (lots which later were renumbered as lots 6, 7, and 8) were unsuitable because of a soil wetness condition on each lot less than 12 inches from the natural soil surface. Lots 6, 7, and 8 properly were classified as unsuitable.

7. The decision before the court on the information available to it shows that lots 6, 7, and 8 properly were classified as unsuitable and that Petitioners' applications for improvement permits for lots 6, 7, and 8 properly were denied.

DECISION

Respondent properly determined that test well monitoring for lots other than 1 and 5 was required to be done under the 2002 and 2004 amendments to Rule .1942 governing alternative methods of determining soil wetness conditions and Petitioners cannot relate back test well monitoring of lots 6, 7, and 8 to the CCHD program in use prior to 2002. The Respondent properly determined that there was insufficient rainfall for review of its test well monitoring data in the 2004-2005 and 2005-2006 test well monitoring seasons and the sites remained classified as unsuitable. The Respondent's decisions to classify lots 6, 7, and 8 as unsuitable and deny issuance of improvement permits for lots 6, 7, and 8 are **AFFIRMED** as supported by the evidence.

ORDER

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

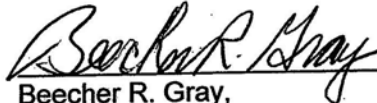
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C.G.S. 150B-36(a).

The agency is required by N.C.G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The person who has been delegated authority by the agency to make the final decision in this contested case is the State Health Director, Dr. Engel.

This the 30th day of December, 2010.



Beecher R. Gray,
Administrative Law Judge

A copy of the foregoing was mailed to:

Mario M. White
P.O. Box 957
Clinton, NC 28328
ATTORNEY FOR PETITIONERS

John P. Barkley
Assistant Attorney General
N. C. Department of Justice
Health and Public Assistance Section
P.O. Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the 3rd day of January, 2011.
~~December, 2010.~~


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone: (919) 431-3000
Fax: (919) 431-3100

Filed

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Curtis Alexander Williams,

Petitioner,

v.

North Carolina State Board of Education,
Department of Public Instruction
Respondent.

Office of
Administrative Hearings

IN THE OFFICE OF

ADMINISTRATIVE HEARINGS

NO. 09 EDC 6102

DECISION

This cause came on to be heard on September 9, 2010, before the Undersigned Administrative Law Judge. Having heard and considered all the evidence presented, the Undersigned makes the following Findings of Fact and Conclusions of Law:

Appearances

For the Petitioner: Curtis Williams, pro se
9801 Tallwood Drive
Indian Trail, NC 28070

For the Respondent: Laura E. Crumpler
Assistant Attorney General
NC Department of Justice
PO Box 629
Raleigh, NC 27602

ISSUE

Whether the Petitioner met his burden to show that the Respondent erroneously denied his request for a waiver of repayment of the NBPTS fee to the State.

EXHIBITS

Respondents: 1-16, including 3a

STATUTE TO BE CONSTRUED

N.C.G.S. §115C-296.2. National Board for Professional Teaching Standards Certification.

(a)State Policy. It is the goal of the State to provide opportunities and incentives for good teachers to become excellent teachers and to retain them in the teaching profession; to attain this goal, the State shall support the efforts of teachers to achieve national certification by providing approved paid leave time for teachers participating in the process, paying the participation fee, and paying a significant salary differential to teachers who attain national certification from the National Board for Professional Teaching Standards (NBPTS).

The National Board for Professional Teaching Standards (NBPTS) was established in 1987 as an independent, nonprofit organization to establish high standards for teachers' knowledge and performance and for development and operation of a national voluntary system to assess and certify teachers who meet those standards. Participation in the program gives teachers the time and the opportunity to analyze in a systematic way their professional development as teachers, successful teaching strategies, and the substantive areas in which they teach. Participation also gives teachers an opportunity to demonstrate superior ability and to be compensated as superior teachers. To receive NBPTS certification, a teacher must successfully (i) complete a process of developing a portfolio of student work and videotapes of teaching and learning activities and (ii) participate in NBPTS assessment center simulation exercises, including performance-based activities and a content knowledge examination.

(b) Definitions. As used in this subsection:

* * * *

(2) A "teacher" is a person who:

- a. Either:
 1. Is certified to teach in North Carolina; or
 2. Holds a certificate or license issued by the State Board of Education that meets the professional license requirement for NBPTS certification;
- b. Is a State-paid employee of a North Carolina public school;
- c. Is paid on the teacher salary schedule; and
- d. Spends at least seventy percent (70%) of his or her work time:

1. In classroom instruction, if the employee is employed as a teacher. Most of the teacher's remaining time shall be spent in one or more of the following: mentoring teachers, doing demonstration lessons for teachers, writing curricula, developing and leading staff development programs for teachers; or
2. In work within the employee's area of certification or licensure, if the employee is employed in an area of NBPTS certification other than direct classroom instruction.

(c) Payment of the NBPTS Participation Fee; Paid Leave. The State shall pay the NBPTS participation fee and shall provide up to three days of approved paid leave to all teachers participating in the NBPTS program who:

- (1) Have completed three full years of teaching in a North Carolina public school and;
- (2) Have (i) not previously received State funds for participating in any certification area in the NBPTS program, (ii) repaid any State funds previously received for the NBPTS certification process, or (iii) received a waiver of repayment from the State Board of Education.

Teachers participating in the program shall take paid leave only with the approval of their supervisors.

(d) Repayment by a Teacher Who Does Not Complete the Process. A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not complete the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(e) Repayment by a Teacher Who Does Not Teach for a Year After Completing the Process A teacher for whom the State pays the participation fee who does not teach for a year in a North Carolina public school after completing the process shall repay the certification fee to the State.

Repayment is not required if a teacher does not teach in a North Carolina public school for at least one year after completing the process due to the death or disability of the teacher. Upon the application of the teacher, the State Board of Education may extend the time before which a teacher must either teach for a year or repay the participation fee if the State Board finds that the teacher is unable to teach the next year due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances.

(f) Rules The State Board shall adopt policies and guidelines to implement this section.

FINDINGS OF FACT

1. Pursuant to G.S. 115C-295, all teachers employed in the public schools of North Carolina must be certified, or licensed, to teach. G.S. 115C-296 provides that the State Board of Education (hereinafter, the "SBE") "shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina"

G.S. 115-C-296(a)

2. The SBE has exercised its authority to control the licensing of teachers by the adoption of numerous policies governing licensure. See 16 N.C.A.C. 6C. 0101 et seq.

3. In addition to the system for mandatory licensing of teachers, there exists the opportunity to obtain national licensing through the National Board for Professional Teaching Standards (hereinafter "NBPTS"). National licensing is optional.

4. National licensing involves a strenuous and lengthy process that includes the development by the teacher of a comprehensive portfolio. The portfolio requires submission of at least two videotapes. In addition, the teacher must take and pass written assessments, administered at select locations and consisting of written questions.

5. The North Carolina legislature has for many years encouraged and assisted teachers in achieving this certification by:

- a. Paying a fee of \$2500 directly to the NBPTS to cover the cost of the process;
- b. Allowing a participating teacher three days of annual leave; and
- c. Awarding successful completers a 12% raise for achieving the certification.

These incentives are all codified in G.S. 115C-296.2.

6. Elizabeth Edwards testified regarding the role that the Department of Public Instruction plays in ensuring that the mandate of G.S. 115C-296.2 gets carried out. Ms. Edwards is employed by the North Carolina Department of Public Instruction as the National Board Coordinator.

7. Ms. Edwards duties are to work specifically with the NBPTS teacher certification program. Ms. Edwards receives the applications from teachers wishing to access State funds in order to pursue certification and then verifies the eligibility of those teachers to receive the State funding. Once she has verified eligibility, Ms. Edwards is responsible for requesting that appropriate checks be drawn and forwarded to NBPTS.

8. A teacher who wants to apply for National Board certification must first go to the NBPTS website and fill out the general application. After completing the general application, the teacher may access the specific North Carolina website in order to request State funding pursuant to G.S. 115C-296.2.

9. At the State funding website, the teacher must enter basic information that will permit his or her eligibility to be verified. The teacher must also agree to the terms of a promissory note. Specifically, the teacher applicant agrees, in consideration of the State's undertaking to pay the

\$2500 application fee, to complete the certification process in one year. The teacher also agrees that, if he/she fails to complete the process in one year, he/she will repay the \$2500 to the State.

10. The teacher must agree to the terms of the promissory note in order to proceed with on-line registration.

11. Once the teacher has entered the required information and has agreed to the necessary terms and conditions, teacher's eligibility for funding is verified. If the teacher is eligible, the Department of Public Instruction then forwards a check to NBPTS.

12. No money is transferred unless and until the teacher agrees to all the terms and conditions of the promissory note.

13. Other than providing financial incentives, the State of North Carolina plays no role in the administration, evaluation, assessment or grading of the certification materials or submissions. The teacher has a separate and independent relationship with NBPTS.

14. Shortly after the State has submitted payment to NBPTS, the teacher receives from NBPTS a box containing information, directions and forms necessary to complete the certification process.

15. In the event a teacher discovers a hardship or barrier to completion of the process, he or she may withdraw prior to the date the portfolio is due and prior to the assessment and will not be assessed the full repayment of the \$2500, but only \$500. The procedures for withdrawal are set forth on the website for both NBPTS and North Carolina. The teacher is responsible for submitting a timely withdrawal in accordance with those procedures.

16. Typically, the certification process takes several months culminating in the taking of assessments no later than June of the school year in which certification is sought.

17. Because of the time needed for scoring, NBPTS does not release the applicant's scores until November or December of the following school year.

18. At some point following the release of the scores in November, NBPTS notifies the Department of Public Instruction of the names of all applicants who did not complete the process, made no attempt to complete the process, or timely withdrew from the process. No one at the State Department has authority to override the determination by NBPTS that a teacher is a "non-completer".

19. Individuals designated by NBPTS as non-completers are then notified that they have not complied with the conditions of the promissory note requiring them to complete the process in one year, and if they have not properly and timely withdrawn, they must repay the State the \$2500 participation fee.

20. Pursuant to G.S. 115C-296.2(d), 'A teacher for whom the State pays the participation fee who does not complete the process shall repay the certification fee to the State.'

21. The statute goes on to provide that "[r]epayment is not required if a teacher does not complete the process due to the death or disability of the teacher." *Id*

22. In certain limited circumstances, the State Board "may waive the repayment requirement if the State Board finds that the teacher was unable to complete the process due to the illness of the teacher, the death or catastrophic illness of a member of the teacher's immediate family, parental leave to care for a newborn or newly adopted child, or other extraordinary circumstances."

G.S. 115C-296.2(d)

23. The Statute makes it clear that waivers are discretionary with the State Board and thus the burden is on the teacher to demonstrate that “extraordinary” circumstances existed and the teacher’s inability to complete the process was a result of those circumstances.

24. The letter that notifies non-completers and non-attempters also informs them that they may seek a waiver as provided by statute and sets out the process for requesting a waiver.

25. An Appeals Panel has been established by the Department of Public Instruction consisting of professional educators, many of whom are themselves nationally certified. Department of Public Instruction staff mails out in advance to Panel members all appeals materials and documentation submitted in support of the teachers’ appeals. Teachers are informed in advance that they must submit adequate documentation, including time lines and medical bills, to support their requests for waivers. Teachers are also informed that they may appear personally before the Panel to present their request.

26. The Panel then meets to consider each appeal. The Panel assesses the request and looks for truly extraordinary circumstances justifying the waiver request, including the nature and timing of the circumstances, and whether a teacher could have timely withdrawn. The Panel has no authority to overrule the determination by NBPTS that the teacher is a non-completer.

27. The Panel’s recommendations are then forwarded to the SBE for a final decision. Teachers are notified of the decision and also notified of the right to appeal the decision to the Office of Administrative Hearings.

28. In the case of Petitioner, the Panel and the State Board of Education denied the waiver request.

29. In Petitioner's case, the denial was based upon his failure to complete the certification process.

30. Mr. Williams did not request a waiver on grounds that some "extraordinary circumstance" prevented him from completing the process. Rather, he contends that he should be deemed to have "completed" the process since he, in fact, did submit all materials required to be submitted to the National Board. However, Mr. Williams admits that in one of his videos he was not viewable and that the National Board's guidelines require that the applicant be viewable in order for the entry to be scored. The inability to score an entry renders it incomplete by the National Board standards.

31. Respondents have no role in determining whether or not an applicant completes the process; that is a determination made solely by the National Board. Indeed, Respondents lack any authority to overrule the scoring performed by National Board officials. Respondents are authorized to waive the repayment if there exists some extraordinary reason the candidate was unable to complete, but Respondents are not authorized to redefine what "complete" means.

32. Since Petitioner does not dispute that he was not visible in his video, and does not dispute that being visible is a requirement for being scored, he cannot meet his burden here to show any error in the decision by Respondent to deny him the waiver.

CONCLUSIONS OF LAW

1. The burden is on Petitioner to demonstrate, by a preponderance of the evidence that the State Board of Education erred in denying his request for a waiver. Peace v. Employment Sec. Comm'n., 349 N.C. 315, 507 S.E.2d 272 (1988).

2. Petitioner has not met his burden of showing that the State Board of Education erred in denying his request for a waiver or that the State Board of Education:

- (1) Exceeded its authority;
- (2) Acted erroneously;
- (3) Failed to use proper procedure;
- (4) Acted arbitrarily or capriciously; or
- (5) Failed to act as required by law.

DECISION

The decision of the State Board of Education denying Petitioner's request for a waiver should be affirmed.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Board of Education.

This the 10th day of December, 2010




Administrative Law Judge

A copy of the foregoing was mailed to:

Curtis Alexander Williams
9801 Tallwood Drive
Indian Trail, NC 28070
PETITIONER

Laura E. Crumpler
Assistant Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 13th day of December, 2010.



Office of Administrative Hearings
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Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

SHAWN CARSON HOUSTON,

PETITIONER,

v.

NORTH CAROLINA CRIMINAL JUSTICE
EDUCATION AND TRAINING STANDARDS
COMMISSION,

RESPONDENT.

Filed
2010 DEC 13 PM 3:42
Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
10 DOJ 1394
10 DOJ 3945

PROPOSAL FOR DECISION

In accordance with North Carolina General Statute § 150B-40(e), Respondent requested the designation of an administrative law judge to preside at an Article 3A, North Carolina General Statute § 150B, contested case hearing of these matters. Based upon the Respondent's requests, Administrative Law Judge Donald W. Overby heard these contested cases in Newton, North Carolina on July 16, 2010.

APPEARANCES

Petitioner: J. Michael McGuinness
The McGuinness Law Firm
Attorney at Law
Post Office Box 952
Elizabethtown, North Carolina 28337

Respondent: E. Michael Heavner, Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27699-9001

ISSUES

Is Respondent's proposed suspension of Petitioner's law enforcement officer certification based upon Petitioner's conviction of a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B Misdemeanor supported by a preponderance of the evidence?

Is Respondent's proposed suspension of Petitioner's law enforcement officer certification based upon Petitioner's commission of a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B Misdemeanor supported by a preponderance of the evidence?

RULES AT ISSUE

12 NCAC 09A .0103
12 NCAC 09A .0204(b)(3)(A)
12 NCAC 09A .0205(b)(1)

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 Administrative Law Judge makes the following FINDINGS OF FACT.

In making the FINDINGS OF FACT, the undersigned Administrative Law Judge 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. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper.
2. On January 21, 2010, Petitioner received the Proposed Suspension of Law Enforcement Officer Certification letter mailed by Respondent on January 15, 2010. (Respondent's Exhibit 8) The basis of the proposed suspension was a conviction of a Class B Misdemeanor. The notification explained that the Director of the Criminal Justice Standards Division had found probable cause that on December 7, 2009, Petitioner had been found guilty of the Class B Misdemeanor of cruelty to animals in violation of N.C.G.S. § 14-360(a) in the District Court Division of the General Court of Justice of Alexander County (09 CR 51471) and that judgment was continued by the court.
3. On February 12, 2010, Respondent received a Statement of Appeal letter from Petitioner. (Respondent's Exhibit 9) Petitioner requested a hearing in this matter. The matter was scheduled for hearing. (10 DOJ 1394) In his Statement of Appeal letter, Petitioner also indicated that he was in the process of requesting the District Court Judge enter a judgment in his animal cruelty case so that he could appeal and have a trial *de novo* in Superior Court.

4. On June 30, 2010, Petitioner received a Proposed Suspension of Law Enforcement Officer Certification letter mailed by Respondent on June 24, 2010. (Respondent's Exhibit 10) The basis of the proposed suspension was the commission of a Class B Misdemeanor. The notification explained that on May 27, 2010, the Criminal Justice Education and Training Standards Commission's Probable Cause Committee had found probable cause that on October 4, 2009, Petitioner had committed the Class B Misdemeanor of cruelty to animals in violation of N.C.G.S. § 14-360(a).
5. On July 6, 2010, the Respondent received Petitioner's Request for Administrative Hearing and Request for Consolidation with Case 10 DOJ. 1394. (Respondent's Exhibit 11) Petitioner also filed a Motion to Consolidate the cases with the Office of Administrative Hearings. Respondent consented to the consolidation of the cases.
6. N.C.G.S. § 14-360, Cruelty to Animals, is classified as a Class B Misdemeanor in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice. (Respondent's Exhibit 6)
7. With the exception of Petitioner and Mr. Richard Squires, the witnesses were sequestered during the hearing of this matter until they were called to testify.
8. The Honorable Gregory R. Hayes, District Court Judge, testified as a character witness for Petitioner. Judge Hayes has served as a District Court Judge in the Twenty-Fifth Judicial District since 1994 and has been a lawyer in North Carolina since 1983. T12 He has known Petitioner since 2005. He first met Petitioner when Petitioner was serving as bailiff in Caldwell County. At the time, Judge Hayes presided over court in Caldwell County for approximately one week each month. Since Petitioner had become a Highway Patrolman, Judge Hayes has interacted with him a couple of times.
9. Judge Hayes' opinion of Petitioner Houston's reputation in the judicial and law enforcement community is that he is "polite, professional, very competent as a deputy sheriff and a bailiff." To Judge Hayes' knowledge Petitioner Houston's honesty and integrity were never questioned. Judge Hayes found Petitioner Houston to be dependable. In Judge Hayes' opinion Petitioner Houston is completely fit to serve as a law enforcement officer, and he fully trusts Petitioner Houston.
10. Neil Bowman testified as a character witness for Petitioner. Reverend Bowman is the pastor at the Christian Community Fellowship Church. He has served in the ministry since 1996. He has known Petitioner for approximately ten years. Petitioner has attended his church since August 4, 2009. Petitioner has a reputation in the community for being honest and friendly. Reverend Bowman has observed Petitioner to be honest and serious about his job. Reverend

Bowman provided a statement (Petitioner's Exhibit 6) to the Criminal Justice Training and Standards Commission on or about February 12, 2010.

11. Julia Bowman, Neil Bowman's wife, also testified as a character witness for Petitioner. She has known Petitioner for approximately two years. She believes he is professional, trustworthy, honest and respectful.
12. Jerry Carswell testified as a character witness for Petitioner. He is a retired North Carolina State Highway Patrolman. He has known Petitioner since the early 1980's. Mr. Carswell retired in 2005 and has not kept up with Petitioner since that time. From Mr. Carswell's experience, Petitioner is trustworthy and honest, and he has "very high morals and very good character." In Mr. Carswell's opinion, Petitioner Houston has "always been a dependable worker." He has not heard any negative comments in the community about Petitioner.
13. Christopher Willis testified as a character witness for Petitioner. He has known Petitioner for approximately three-and-a-half years. Petitioner's reputation in the community is that he is very active in the Bethlehem community, and he is professional in enforcing the law. Mr. Willis testified Petitioner has been honest with him and is an outstanding father, especially with his son who has cerebral palsy, by being involved in Special Olympics and other organizations.
14. Carla Lawing testified as a character witness for Petitioner. She has known him since August 2009. He goes to her church. She has never heard any negative comments about him and believes he is a good father and husband.
15. Carlos Steffey lives on property adjacent to Petitioner's property. Approximately eleven o'clock on a Sunday morning in October 2009, Mr. Steffey went to Petitioner's house. No one was home. While there, Mr. Steffey noticed a cat in a live trap in Petitioner's backyard. The trap was approximately two-and-a-half feet long by a foot high and a foot deep. The trap was located approximately twenty feet away from Petitioner's chicken coop.
16. Petitioner had previously told Mr. Steffey that some animal was killing Petitioner's children's chickens. Mr. Steffey did not think a cat was killing the chickens. Steffey speculated it was a raccoon or fox that was killing the chickens.
17. Mr. Steffey thought the cat in the trap was a stray cat. The cat was full grown and had foam on its mouth. He was certain that it was not a kitten. According to Mr. Steffey, the cat weighed between eighteen and twenty pounds, was black and yellow in color, and it did not have a collar or any form of identification.
18. Mr. Steffey saw Petitioner on the Wednesday or Thursday next following after the incident with the Evans' cat. Petitioner told him that he had shot a cat that was in the trap. Mr. Steffey told Petitioner about being bit by the cat in the trap. Mr. Steffey did not see the Petitioner on the Sunday of the incident at issue herein,

and therefore the Petitioner did not know of the interaction between Mr. Steffey and any cat on Petitioner's property until after the incident with the Evans family's cat.

19. At the administrative hearing, Mr. Steffey was shown Respondent's Exhibit 1, a photograph of the Evans' cat. He was positive that the cat in the photograph was not the same cat that bit him.
20. Petitioner testified on his own behalf. Petitioner is married and has three sons, who are approximately fourteen, twelve, and six years old. One son has cerebral palsy. Petitioner's house is located in the Bethlehem community, a rural area where Petitioner has lived his entire life. His family generally enjoys animals. The Houston family has had numerous animals including dogs and a cat. His family currently has pigmy goats, chickens, rabbits, and dogs on the property. One of his sons sells eggs from the chickens. The Evans and Petitioner are neighbors. Their houses are approximately thirty yards apart.
21. Prior to entering the law enforcement profession, Petitioner Houston engaged in construction work for 13 and a half years. After successfully completing the basic law enforcement training (BLET) curriculum, he earned a law enforcement certification through the North Carolina Criminal Justice Education and Training Standards Commission and his certification has always been in good standing. There has never been any discipline or adverse action against his certification.
22. Petitioner was previously certified as a deputy sheriff with the Alexander County Sheriff's Office from June 16, 2004 to February 14, 2005, as a detention officer with the Caldwell County Sheriff's Office from May 26, 2004 to April 25, 2007, and as a deputy sheriff with the Caldwell County Sheriff's Office from June 2, 2004 to April 25, 2007. (Respondent's Exhibit 3)
23. He worked for the North Carolina Highway Patrol from 2007 until January 21, 2010 when his employment was terminated. He has appealed his termination. Petitioner is not currently working with a law enforcement agency.
24. In the fall of 2009, Petitioner noticed muddy paw prints and minor scratches on his car. Some of his son's baby chickens had been killed and their pet rabbits' feet had been injured as if something had clawed them. On occasion when he would come home from work at approximately one or two o'clock in the morning, an animal would run through the shrubs along the side of his house. One night the animal even jumped at him. He was unable to determine what type of animal it was because it was dark.
25. On or about October 2, 2009, Petitioner set a live trap on his property to catch the animal that had been injuring or killing his domesticated animals. The trap was approximately a foot to a foot-and-a-half deep by a foot to a foot-and-a-half wide by two-and-a-half feet long. At the hearing, Petitioner was shown the video

- clip, *October 4, 2009 video_0001.wmv*. He identified the trap in the video as the trap in which he trapped the cat. (*October 4, 2009 video_0001.wmv* is located on the CD labeled Respondent's Exhibit 2) Petitioner set the trap in a mulch bed next to his house. The trap was approximately twenty to twenty-five yards away from where the chickens were kept, approximately twenty to twenty-five yards away from where he parked his vehicles, and twenty yards away from the Evans' property line.
26. On October 4, 2009, he noticed something in the trap. He sent his sons into the house out of concern for their safety. He retrieved his single-shot .22 rifle from the storage building, and went to the trap. Petitioner Houston took his gun with him when he approached the trap because he was not sure what animal he was going to find and he was concerned about rabies.
 27. There was a cat in the trap. Petitioner contends that it was a full grown cat and estimated the cat weighed eight or nine pounds. Petitioner was aware the Evans owned a cat, but he had not previously seen their cat and did not know that the cat in the trap belonged to the Evans. The cat did not have a collar or identification on it. The cat was not acting aggressive at that time. The cat did not look agitated, nor was there anything about the cat's appearance that concerned Petitioner. Petitioner planned on putting the trap in the back of his truck and contacting animal control. When Petitioner grabbed the handle on the trap to pick it up, the cat reached its paw through one of the one inch square holes in the wire mesh trap, around the metal plate for the handle and scratched him. After scratching Petitioner, the cat made a hissing noise and he observed a little foam at the corner of its mouth.
 28. At that point, the cat could not get out of the trap, and the cat could not attack anyone or anything unless they were close to the trap. Petitioner shot and killed the cat while it was confined in the trap. Petitioner Houston made a quick decision to shoot the cat based on the way it was acting, based on his assumption that it may have rabies, and his concern for his children's safety.
 29. After Petitioner killed the cat, his sons came outside. Petitioner dumped the cat out of the trap. He washed the blood out of the trap, and one of his sons cleaned some newspaper out of the trap. Petitioner got a feed sack out of the storage building and put the dead cat into the sack. He put the sack with the dead cat in it under a sink that was lying next to his storage building purportedly so his sons would not mess with the dead cat. He was aware that Animal Control generally worked Monday through Friday and intended to call Animal Control the next day (Monday) to see if they would test it for rabies.
 30. Petitioner thought he had a right to shoot a cat, or any animal, if it had been killing his chickens. He stated that at the time he shot the cat in the trap, he thought it had been killing his chickens. There is no evidence that the Evans' cat

had ever injured any of his animals or property. There is no evidence of what animal had been injuring or killing his animals.

31. He described the cat as having orange-brown hair with a little black. At the hearing, Petitioner was shown a digital photograph, jpg image, DSC_9314.JPG. (This image is located on the CD labeled Respondent's Exhibit 2.) He identified the cat in the image as the cat he shot in the trap. When asked if the cat in the photograph appeared to be the same cat as in photograph labeled Respondent's Exhibit 1, he replied yes, it appeared to be close to the same color of the cat he shot, but he thought that the cat in the photograph labeled Respondent's Exhibit 1 appeared to be smaller than the one he shot.
32. Andrea Evans is an elementary school teacher. She lives next door to Petitioner with her husband and two children, ages ten and twelve. Both she and her husband Darrell Evans identified Respondent's Exhibit 1 as a photograph of her older son holding their cat, Rowdy. The photograph was undated and the cat may have been a little heavier on October 4, 2009, but the photograph provided an accurate representation of how the cat appeared the last time they saw him alive at approximately 10:15 in the morning on October 4, 2009. Both estimated the cat weighed approximately three pounds. The cat was approximately six months old on October 4, 2009. Rowdy was acting normal that morning. The cat was named "Rowdy" because he was playful and mischievous. The Evans's loved their pet cat, Rowdy.
33. For a couple of weeks prior to October 4th the family had started letting Rowdy outside without someone from the family being outside with him. When outside, the cat was not confined by a fence. Prior to this incident, they had never received a complaint about their cat. The cat was allowed outside during the day but did not stay outside at night. He did not have a collar or other identification on him. Mrs. Evans had seen Petitioner's children play with her cat, but she had never seen Petitioner interact with her cat.
34. On October 4th, when the Evans' family returned from church around 12:30 p.m., Rowdy did not come when they called for him. The family went to Mrs. Evans' mother's home for lunch and returned around 3:30 or 4:00 p.m. After returning home, Mrs. Evans heard what sounded to her like a paintball gun. After hearing this noise, she saw Petitioner carrying a bag towards his storage building and wondered whether her cat was inside the bag. She went to Petitioner's house and asked if she could take pictures of goats on top of the building. According to Mrs. Evans, while she was taking pictures of the goats, she looked under a utility sink that was turned upside down next to the storage building and saw the feed sack. She did not open the bag at this time. According to Petitioner, it was approximately 5:00 p. m. when Mrs. Evans came over and took the pictures.
35. Later, when Rowdy still had not come home, she returned with her husband to Petitioner's property and looked in the feed sack and found Rowdy's body in the

bag. She took a picture of the dead cat in the bag. She took the bag to the front of the house where Petitioner and Mr. Evans were talking. She was quite upset and went to her house. She told her husband to come with her so they could make a phone call. She called 911.

36. After Mrs. Evans found their cat dead in the feed sack, the Evans' returned to their property. Petitioner tried to speak to Mr. Evans, but Mr. Evans refused. Petitioner started to come over to their house, but Mr. Evans told him to stay in his yard. Petitioner attempted to explain, but Mr. Evans told him that he did not have anything to say. Mr. Evans did not want anything said in front of his children. He wanted law enforcement to check into the matter.
37. When asked, Mrs. Evans agreed that she had an obligation to keep Rowdy appropriately controlled for its safety and for the safety of the children in the neighborhood. She said that is why they did not leave him outside alone until they were sure he would stay at home. It is impossible for her or her family to know where the cat went or what it did when out of their sight. Mrs. Evans also explained that she had videotaped Petitioner and his children cleaning out the trap because she felt it was suspicious and wanted to share it with her husband. There is no evidence that she had ever videoed Petitioner or his children before.
38. Mr. Evans' testimony was consistent with and corroborative of his wife's testimony. They asked Petitioner for permission to look for their cat in his yard, to which he agreed. Petitioner asked if the cat was male or female, and Mr. Evans replied that it was a male. Petitioner told him that the cat was probably just "tomcatting" around and would probably be back that night. Mr. Evans did not describe the cat to Petitioner because Mr. Evans thought Petitioner may have seen the cat before when the children were playing with the cat.
39. Petitioner did not tell them that he had shot a cat. Petitioner thought it was a possibility that he had shot their cat, but he thought it was highly unlikely. Petitioner thought their cat had run off and hoped it would come back. Petitioner had not previously seen their cat.
40. Deputy Dennis Foster of the Alexander County Sheriff's Office has been employed by the Sheriff's Office since 1998. He responded to a call at the Evans's residence on October 4, 2009 around 6:45 p.m. Mrs. Evans asked Deputy Foster if he was friends with Petitioner. Deputy Foster told her he knew Petitioner, but was not friends with him and he was there to do his job. Prior to this date, he knew Petitioner only on a professional basis.
41. When Deputy Foster arrived at the Evans' residence, Mrs. Evans told him her version of the events of that day which were consistent with the testimony offered in this hearing with very minor variations. She told Deputy Foster that she became suspicious and got her video camera and started filming Petitioner. When her husband returned home around 5:50 p.m., she was still in Petitioner's

yard. Mr. Evans account to Deputy Foster likewise was consistent with his testimony in this hearing. When Deputy Foster interviewed the Evans, Mrs. Evans was distraught and Mr. Evans was a little angry and a little distraught. Foster took pictures of the dead cat in the bag on their front porch.

42. Petitioner cooperated fully and respectfully with Deputy Foster. Petitioner admitted to Deputy Foster that he had shot and killed a cat. Petitioner's testimony is consistent with what he told Deputy Foster. Deputy Foster did not notice any injuries on Petitioner's hand, and Petitioner did not tell Deputy Foster that he had been scratched by the cat or that he thought the cat might have rabies.
43. The photographs of Petitioner's scratched hand were taken on Monday, October 5, 2009. On the next day, Tuesday October 6, 2009, Petitioner called Deputy Foster and reported the cat had scratched him. Petitioner told Deputy Foster that when he was talking to Deputy Foster on Sunday that he (Petitioner) was unaware that he had been scratched. Petitioner also called his doctor's office on Tuesday, October 6, 2009 concerning the cat scratch.
44. Mrs. Evans wanted Deputy Foster to do something about her cat being shot. Deputy Foster told her he would investigate it as best he could as he had never worked an animal cruelty case. Deputy Foster initially thought that Petitioner had committed a felony, and he would be charged accordingly. He told the Evans' that he would consult with the magistrate and his supervisors and then call them back to inform them as to what action he would take. After talking to his supervisor, Deputy Foster called Mr. Evans and informed him that because the relevant charges, injury to personal property and cruelty to animals, were both misdemeanors, the victims would have to pursue the charges themselves at the magistrate's office.
45. Mrs. Evans had also called Sergeant D. D. Dawson of the North Carolina State Highway Patrol. Sergeant Dawson has been a Highway Patrolman for sixteen years. He is an assistant district supervisor in Caldwell and Watauga Counties. He lives in Alexander County and knows Petitioner. He has never worked directly with Petitioner. He and his wife have known Mrs. Evans since he was in fourth grade.
46. Mrs. Evans informed Sgt. Dawson that Petitioner had shot and killed her cat. Sgt. Dawson specifically did not ask about the specifics of the incident, but he was aware from his many years with the patrol that there are always two sides to every story. In this instance, once he received information that a trooper may have violated the law, he felt that his duty was to make sure Mrs. Evans was informed on how to make a complaint with the patrol. He explained to Mrs. Evans that he was not Petitioner's supervisor and that he would provide the information that she needed and the information for a contact person, and he did so. He assured her that if she filed a complaint with the Patrol, it would be

investigated thoroughly and appropriate action would be taken. He also explained to her that when a crime occurs outside of the presence of law enforcement, the procedure to initiate a criminal complaint is generally to take the matter up with the magistrate, which in essence is the same thing that she was told by Deputy Foster. Sgt. Dawson also felt that his further obligation was to forward the information through the chain of command with the North Carolina State Highway Patrol, which he did as well.

47. On an unspecified date prior to October 4, 2009, Mrs. Evans and Petitioner both visited the church of which Sgt. Dawson is a member. Based on his conversations with both of them that day, he concluded that Mrs. Evans and Petitioner did not particularly like each other although there was nothing specific about the genesis of this mutual dislike.
48. Later on the same day as the incident with Petitioner, she was told by another member of the North Carolina State Highway Patrol to write a statement about the incident which she did. On Monday, October 5, 2009, she went to the magistrate's office to seek a criminal summons against Petitioner. At a later date, Mrs. Evans gave a statement to the North Carolina State Highway Patrol internal affairs about the incident. This was the first time she had filed a formal complaint against anyone.
49. After the incident with Mr. and Mrs. Evans and their discovery of the cat, Petitioner went into his house and tried to call one of his supervisors to report the incident, but was unable to reach anyone. On the next day, Monday, October 5, 2009, Sergeant Little and Sergeant Harris of the North Carolina State Highway Patrol came to Petitioner's house, took his service weapon and vehicle, and informed him that a criminal summons had been issued against him. Petitioner went to the courthouse and was served. On Tuesday, October 6, 2009, he submitted written notification to the North Carolina State Highway Patrol that he had been criminally charged.
50. Petitioner properly appeared in District Court pled not guilty to the charge and was tried on December 7, 2009. The presiding judge entered a prayer for judgment continued (PJC) for the cruelty to animal charge. Petitioner has filed a motion for appropriate relief in order to have a judgment rendered from which he may appeal. (Petitioner's Exhibit 3)
51. There is some evidence that there was animosity between Petitioner and Mrs. Evans prior to October 4, 2009. Mrs. Evans testified that she did not trust Petitioner, and Sgt. Dawson testified that they appear to not particularly like each other. However, it is specifically found that Petitioner did not kill her cat out of any ill-will or animosity toward Mrs. Evans or her family. At the time he killed the cat, he did not even know it was her cat.

52. While many find the killing of any animal offensive, it is noted that to a significant portion of the rural population of North Carolina, the killing of animals is a normal and regular occurrence, harkening back to our agrarian roots when even domesticated animals are killed for food. Even a significant number of our more urban residents enjoy the sport of hunting and killing of animals.
53. Petitioner thought that the cat he caught in his trap was the animal killing his chickens and he had a legal right to kill it.
54. There is no evidence that indicates the Evans's cat was the animal killing Petitioner's chickens. The only time the Evans's cat was seen on Petitioner's property was on October 4, 2009. Petitioner had seen an unidentified animal lurking around his premises at night, but the Evans's cat was inside their house at night. Even if the Evans's cat had previously killed some of Petitioner's chickens, Petitioner would not be justified in shooting the cat while in the trap when it did not pose a threat to the chickens.
55. Petitioner introduced an Employee Advisory Committee Report. (Petitioner's Exhibit 2) Petitioner introduced additional letters of support, some of which were written by people not at the hearing. The appropriate weight has been given to the report and to the letters. (Petitioner's Exhibits 4-5, 7-9)

BASED UPON the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the FINDINGS OF FACT contain CONCLUSIONS OF LAW, or that the CONCLUSIONS OF LAW are FINDINGS OF FACT, they should be so considered without regard to the given labels.
2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9A, to certify law enforcement officers and to revoke, suspend, or deny such certification.
3. 12 NCAC 09A .0204(b)(3)(A) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that a certified officer has committed or been convicted of a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B Misdemeanor.

4. "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice which is hereby incorporated by reference. . . ." 12 NCAC 09A .0103 (23)(b).
5. N.C.G.S. § 14-360, Cruelty to Animals, is classified as a Class B Misdemeanor in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice; therefore violation of N.C.G.S. § 14-360 is a Class B Misdemeanor. Similarly, a conviction for violating N.C.G.S. § 14-360, cruelty to animals, is a conviction of a Class B Misdemeanor.
6. "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense." 12 NCAC 09A .0103 (4).
7. N.C.G.S. § 14-360(a) provides:

[i]f any person shall intentionally overdrive, overload, wound, injure, torment, kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor.
8. N.C.G.S. § 14-360(c) in pertinent part provides "the word 'intentionally' refers to an act committed knowingly and without justifiable excuse," There is no question that Petitioner shot and killed the cat, a "knowing" and "intentional" act.
9. "Justifiable excuse" is limited to the exceptions set forth in N.C.G.S. § 14-360(c) which are:

However, this section shall not apply to the following activities:

- (1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).
- (2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.
- (2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

- (3) Activities conducted for lawful veterinary purposes.
 - (4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health.
 - (5) The physical alteration of livestock or poultry for the purpose of conforming with breed or show standards.
10. There is no evidence to support an argument that the Petitioner's shooting of the cat falls under exceptions N.C.G.S. § 14-360(c)(1), (c)(2), (c)(2a), (c)(3), or (c)(5).
11. North Carolina law has a long history of under what circumstances another animal, especially a domesticated animal, may be killed. In the 1911 North Carolina Supreme Court case *State v. Smith*, the Court held it would not be justifiable for the defendants to kill a dog that was not posing an imminent danger to the defendants' turkeys.

The object of the law in conferring this authority (to kill an animal) is not to punish past wrongs, but to prevent wrongs impeding or menaced. . . . If the danger to the animal, whose injury or destruction is threatened, be imminent or his safety presently menaced, in the sense that a man of ordinary prudence would be reasonably led to believe that it is necessary for him to kill in order to protect his property, and to act at once, he may defend it, even unto the death of the dog . . . which is about to attack it. . . .

State v. Smith, 156 N.C. 628, 634, 72 S.E. 321, 323 (1911)

"It is not the dog's predatory habits, nor his past transgressions, nor his reputation, however bad, but the doctrine of self-defense, whether of person or property, that gives the right to kill. [Killing the dog] was nothing but punishment inflicted upon him for his supposed past transgressions. . . ."
State v. Smith, 156 N.C. at 634, 72 S.E. at 323.

12. *State v. Dickens*, 215 N.C. 303, 1 S.E.2d 837 (1939) held that finding the offending dog on the Defendant's property only gave the Defendant the right to drive the dog away and previous offenses by the dog were not justification for killing the dog. The right to kill the offending animal is founded on the immediate necessity to protect property, another animal or a person.
13. Petitioner's belief that he was justified in killing the cat, based upon the totality of the circumstances as he perceived them, is not controlling. Even if the Evans's cat had previously killed Petitioner's chickens, Petitioner was not justified in shooting the cat when it did not pose a threat to the chickens. While the cat was confined to the trap, it did not pose an imminent danger to any person, animal or property. Therefore, the Petitioner's killing of the cat does not fall within the exception provided for under N.C.G.S. § 14-360(c)(4). Petitioner "committed" a

class B misdemeanor by performing all the acts necessary to satisfy the elements of the crime cruelty to animals, N.C.G.S. § 14-360.

14. A preponderance of the evidence exists to support the conclusion that on October 4, 2009, when Petitioner shot and killed the Evans's cat without legal justification in Alexander County, North Carolina, he performed the acts necessary to satisfy the elements of the Class B Misdemeanor of cruelty to animals in violation of N.C.G.S. § 14-360(a). At the time, he held certification as a law enforcement officer issued by Respondent.
15. 12 NCAC 09A .0103 (5) states:

"Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
16. On December 7, 2009 in District Court in Alexander County, Petitioner pled not guilty to the charge of cruelty to animal in violation of N.C.G.S. § 14-360. At trial, Petitioner was found guilty by the presiding Judge of committing the crime of cruelty to animals in violation of N.C.G.S. § 14-360 in that he intentionally killed a cat that belonged to Andrea Evans. Judgment was continued by the presiding judge. (Respondent's Exhibit 12)
17. The effect of the prayer for judgment continued (PJC) is determinative of whether or not Petitioner has been "convicted" of the offense at issue.
18. Prayer for judgment continued is a tool generally used by judges to show leniency toward a particular defendant. It is most often used in traffic offenses, infractions or lower level misdemeanors, to save DMV driver's points or to save insurance points. It is a tool oftentimes used in other misdemeanors to show that the judge believes that the elements of the offense have been proven but then to trivialize the manner by not entering a final judgment and thereby not administering any punishment on the defendant. It is rare to have judges use PJC for felonies with the exception of when there is an expectation that judgment will be prayed in the near future.
19. N. C. G. S. §15A-1331 (b) states "For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest." North Carolina case law has clearly established that a PJC after a plea of guilty or a plea of no contest has no effect in consideration of treating that case as a conviction. In *Britt v. N.C. Sheriffs' Education and Training Standards*, 348 N.C. 573, 501 S.E.2d 75 (1998), the Supreme Court upheld Respondent's revocation of the Petitioner's certification based on a prior

conviction despite the fact that she had been given a PJC after a plea of no contest to that particular case. In *State v. Hatcher*, 136 N.C. App.524, 524 S.E.2d 815 (2000), The Court of Appeals upheld assessment of points towards Defendant's felony sentencing based upon treating as a conviction a prior case in which he had tendered a plea of no contest and had been given a PJC. In *State v. Sidberry*, 337 N.C. 779, 448 S.E.2d 798 (1994), cross-examination of the Defendant concerning a prior conviction was allowed based on N.C.G.S. § 8C-1, Rule 609(a), even though he had been given a PJC on that charge.

20. The gravamen of continuing judgment is that no final judgment is entered. In fact, if any condition is placed upon continuing the judgment, it is considered as having entered judgment. *State v. Hatcher* states "We have interpreted N. C. Gen Stat § 15A-1331(b) to mean that formal entry of judgment is not required in order to have a conviction." (Cited in *State v. Canellas*, 164 N.C. App. 775, 596 S.E.2d 889, (2004).
21. The distinction, if any, is that the cases do not speak to when the Defendant has plead not guilty, such as in this case. 12 NCAC 09A .0103 (5)(b) says "entry of . . . a verdict or finding of guilt by a judge. . . ." N. C. G. S. §15A-1331 (b) says "when he has been adjudged guilty."
22. In the instant case, Judge Carlton Terry checked "guilty" as the "Verdict" on the standard form Criminal Summons judgment sheet. The Judge made a finding of guilt and entered a verdict of guilt. It is therefore concluded as a matter of law that Petitioner has been "convicted" of the Class B Misdemeanor of cruelty to animals for purposes of this contested case.
23. Having concluded as a matter of law that Petitioner committed and was convicted of the criminal offense of cruelty to animals, it is important to address the appropriate sanction.
24. N.C.G.S. §14-360, Cruelty to Animals, makes the offending treatment of animals applicable to any animal. (Emphasis added) The Statute would therefore be equally applicable to a fox, or a raccoon, or an opossum, or any other feral animal that might have wandered onto Petitioner's property and into his trap. If he shot and killed such a "wild" animal while confined in his trap, he would be equally guilty. Likewise, he would be equally guilty if he saw such an animal on his property and he shot it out of some sense that the animal might cause harm to his domesticated animals or livestock; or if he just shot it for sport.
25. What sets this case apart is that Petitioner shot and killed a domesticated cat, which just happened to belong to his neighbor. No one would have much cared had it been the fox, or the raccoon, or the opossum.
26. This is not to trivialize the value of the cat to the Evans family; however, it must be noted and reaffirmed that this Court finds as fact and concludes that there has

not been any evidence to show that Petitioner killed the cat out of any animus toward Mrs. Evans or any member of the Evans family despite some vague, undated and un-defined assertions that they may not have particularly cared for each other. Therefore, an appropriate remedy would be as though Petitioner did indeed kill a feral cat.

27. Judge Terry's decision to continue judgment is indicative that this case did not warrant further criminal sanction.
28. As stated above, a preponderance of the evidence exists to support the conclusion that Petitioner committed and was convicted of the Class B Misdemeanor of cruelty to animals. At the time, he held certification as a law enforcement officer issued by Respondent. 12 NCAC 09A .0204(b)(3)(A) provides that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that a certified officer has committed or been convicted of a Class B Misdemeanor.
29. 12 NCAC 09A .0205(b) provides that when the Commission suspends the certification of a criminal justice officer for the commission or conviction of a Class B Misdemeanor, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification following an administrative hearing, if the officer has not had a previous suspension of their certification for any of the causes requiring a five-year period of suspension.
30. The actions of Respondent are constitutional, within the statutory authority of the agency, made upon lawful procedure, not affected by error of law, supported by substantial evidence and are not arbitrary, capricious or an abuse of discretion.
31. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).
32. Petitioner has the burden of proof in the case at bar. (See Overcash v. N.C. Dep't of Env't & Natural Res., 179 N.C. App. 697, 635 S.E.2d 442, rev. denied 361 N.C. 220, 642 S.E.2d 445 (2007)).
33. While commission of and conviction of the Class B Misdemeanor of cruelty to animals gives the Respondent the authority to suspend Petitioner's certification, Petitioner has shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's law enforcement officer certification is not supported by substantial evidence. The totality of the facts and circumstances militates against a finding that Petitioner Houston acted so inappropriately that he should be decertified. The totality of the facts and circumstances do not warrant or justify revoking or actively suspending Petitioner's law enforcement

certification. The totality of the evidence demonstrates that Petitioner Houston is a person of good character and has been a dedicated professional law enforcement officer. Petitioner is fit to continue to serve as a law enforcement officer in North Carolina.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned Administrative Law Judge recommends Respondent suspend Petitioner's law enforcement officer certification for one year based upon Petitioner's commission of and conviction of the Class B Misdemeanor cruelty to animals in violation of N.C.G.S. § 14-360, and that the Commission utilize its powers and discretion and suspend the period of sanction because of the extenuating circumstances of this case, and that the Petitioner be on probation for a period of one year.


NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to the Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C. Gen. Stat. §150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

IT IS SO ORDERED.

This the 13th of December, 2010.



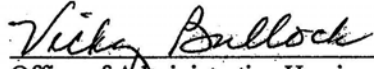
DONALD W. OVERBY
ADMINISTRATIVE LAW JUDGE

A copy of the foregoing was mailed to:

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This the 14th day of December, 2010.


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