

# ***NORTH CAROLINA REGISTER***

**VOLUME 27 • ISSUE 24 • Pages 2305 - 2342**

**June 17, 2013**

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**PUBLISHED BY**

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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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Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

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(919) 807-4740

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215 North Dawson Street

(919) 715-2893

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215 North Dawson Street

Raleigh, North Carolina 27603

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### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2013 – December 2013

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 <sup>th</sup> day from publication in the Register
27:13	01/02/13	12/06/12	01/17/13	03/04/13	03/20/13	05/01/13	05/2014	09/29/13
27:14	01/15/13	12/19/12	01/30/13	03/18/13	03/20/13	05/01/13	05/2014	10/12/13
27:15	02/01/13	01/10/13	02/16/13	04/02/13	04/22/13	06/01/13	05/2014	10/29/13
27:16	02/15/13	01/25/13	03/02/13	04/16/13	04/22/13	06/01/13	05/2014	11/12/13
27:17	03/01/13	02/08/13	03/16/13	04/30/13	05/20/13	07/01/13	05/2014	11/26/13
27:18	03/15/13	02/22/13	03/30/13	05/14/13	05/20/13	07/01/13	05/2014	12/10/13
27:19	04/01/13	03/08/13	04/16/13	05/31/13	06/20/13	08/01/13	05/2014	12/27/13
27:20	04/15/13	03/22/13	04/30/13	06/14/13	06/20/13	08/01/13	05/2014	01/10/14
27:21	05/01/13	04/10/13	05/16/13	07/01/13	07/22/13	09/01/13	05/2014	01/26/14
27:22	05/15/13	04/24/13	05/30/13	07/15/13	07/22/13	09/01/13	05/2014	02/09/14
27:23	06/03/13	05/10/13	06/18/13	08/02/13	08/20/13	10/01/13	05/2014	02/28/14
27:24	06/17/13	05/24/13	07/02/13	08/16/13	08/20/13	10/01/13	05/2014	03/14/14
28:01	07/01/13	06/10/13	07/16/13	08/30/13	09/20/13	11/01/13	05/2014	03/28/14
28:02	07/15/13	06/21/13	07/30/13	09/13/13	09/20/13	11/01/13	05/2014	04/11/14
28:03	08/01/13	07/11/13	08/16/13	09/30/13	10/21/13	12/01/13	05/2014	04/28/14
28:04	08/15/13	07/25/13	08/30/13	10/14/13	10/21/13	12/01/13	05/2014	05/12/14
28:05	09/03/13	08/12/13	09/18/13	11/04/13	11/20/13	01/01/14	05/2014	05/31/14
28:06	09/16/13	08/23/13	10/01/13	11/15/13	11/20/13	01/01/14	05/2014	06/13/14
28:07	10/01/13	09/10/13	10/16/13	12/02/13	12/20/13	02/01/14	05/2014	06/28/14
28:08	10/15/13	09/24/13	10/30/13	12/16/13	12/20/13	02/01/14	05/2014	07/12/14
28:09	11/01/13	10/11/13	11/16/13	12/31/13	01/21/14	03/01/14	05/2014	07/29/14
28:10	11/15/13	10/24/13	11/30/13	01/14/14	01/21/14	03/01/14	05/2014	08/12/14
28:11	12/02/13	11/06/13	12/17/13	01/31/14	02/20/14	04/01/14	05/2014	08/29/14
28:12	12/16/13	11/21/13	12/31/13	02/14/14	02/20/14	04/01/14	05/2014	09/12/14

## **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.



# State of North Carolina

PAT McCRORY  
GOVERNOR

May 21, 2013

## EXECUTIVE ORDER NO. 10

### DISASTER DECLARATION FOR THE TOWNS OF MURPHY AND ROBBINSVILLE

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7), and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

WHEREAS, starting on January 15, 2013, the Town of Murphy in Cherokee County, North Carolina and the Town of Robbinsville in Graham County, North Carolina were impacted by severe flooding caused by heavy rains; and

WHEREAS, as a result of the flooding the Town of Murphy proclaimed a local state of emergency on January 15, 2013; and

WHEREAS, as a result of the flooding the Town of Robbinsville proclaimed a local state of emergency on January 15, 2013; and

WHEREAS, due the impact of the flooding, a joint preliminary damage assessment was done by local, state and federal emergency management officials on January 23, 2013 in the Towns of Murphy and Robbinsville; and

WHEREAS, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in the Towns of Murphy and Robbinsville; and

WHEREAS, pursuant to N.C.G.S. § 166A-19.21(b)(1), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Towns of Murphy and Robbinsville declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment meets or exceeds the State infrastructure criteria set out in G.S. 166A-19.41(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-19.41(b), if a disaster is declared, the Governor may make State funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

Section 1. Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Town of Murphy in Cherokee County, North Carolina and for the Town of Robbinsville in Graham County, North Carolina.

Section 2. I authorize state disaster assistance in the form of public assistance grants to eligible governments located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.
- b. Emergency protective measures.

Section 3. I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

Section 4. This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

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 21<sup>st</sup> day of May in the year of our Lord two thousand and thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

PAT McCrory  
GOVERNOR

May 21, 2013

## EXECUTIVE ORDER NO. 11

### PROMULGATION AND IMPLEMENTATION OF THE NORTH CAROLINA EMERGENCY OPERATIONS PLAN

WHEREAS, the North Carolina Emergency Management Act, specifically, N.C.G.S. §166A-19.10(b)(7), authorizes the Governor to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State in planning for and responding to emergencies; and

WHEREAS, the North Carolina Emergency Management Act, specifically, N.C.G.S. §166A-19.10(b)(7), requires the officers and personnel of all such departments, offices, and agencies to cooperate with and extend such services and facilities upon request; and

WHEREAS, the functions of the State emergency management program include preparation and maintenance of State plans for disasters; and

WHEREAS, to facilitate a coordinated, effective relief and recovery effort among State and local government entities and agencies, this order is executed.

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

Section 1. All State and local government entities are directed to cooperate in the implementation of the provisions of the North Carolina Emergency Operations Plan dated June 2012.

Section 2. I hereby delegate to the Secretary of the North Carolina Department of Public Safety, or the Secretary's designee, all power and authority granted to me and required of me by Chapter 166A of the General Statutes for the purposes of promulgating and implementing the said Emergency Operations Plan.

Section 3. The Secretary of the North Carolina Department of Public Safety shall make necessary changes to the North Carolina Emergency Operations Plan with appropriate coordination and shall similarly promulgate additional annexes and appendices as required.

Section 4. The Secretary of the North Carolina Department of Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. §143B-602.

Section 5. This executive order supersedes Executive Order No. 15 (June 11, 2009). This order is effective immediately and shall remain in effect until rescinded or superseded.

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 21<sup>st</sup> of May in the year of our Lord two thousand and thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State







# State of North Carolina

PAT McCrory  
GOVERNOR

May 21, 2013

## EXECUTIVE ORDER NO. 12

### AMENDING THE STATE E-MAIL RETENTION AND ARCHIVING POLICY

WHEREAS, the North Carolina Public Records Law declares that the public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people; and

WHEREAS, Governor Perdue issued Executive Order 18, entitled E-mail Retention and Archiving Policy, on July 7, 2009; and

WHEREAS, the Office of Information Technology Services (ITS) is transitioning to a new enterprise e-mail archiving system; and

WHEREAS, the State will achieve significant cost savings by reducing the number of years e-mails that must be maintained in the ITS archiving system; and

WHEREAS, the North Carolina Department of Cultural Resources (DCR) may preserve e-mails of historical value for the State's permanent collection.

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

1. Executive Branch employees shall treat all e-mail messages which they send or receive in connection with the transaction of public business as public records and shall handle and maintain them in compliance with the Public Records Law and records retention schedules in the same manner as paper documents or other tangible records.
2. All Executive Branch agencies shall copy all e-mails sent and received by their employees to an archive at least once daily. ITS shall provide and maintain an archive service for all agencies for which it provides e-mail services. ITS e-mail archives shall be maintained for five years unless a longer period is required by law or by an approved records retention and disposition schedule. Each Executive Branch agency that does not use ITS e-mail services or the ITS e-mail archive shall employ an archiving system that creates a back-up copy of the messages in all agency e-mail systems at least once daily. E-mails retained in agency archives systems shall also be retained for five years.

3. All e-mail archives created after the issuance of Executive Order 150 and prior to the implementation of such enterprise e-mail archive systems shall be maintained for 5 years unless a longer period is required by law or by an approved records retention and disposition schedule.
4. The Department of Cultural Resources shall develop a policy that identifies those e-mails of historical value that should be retained for a longer period of time. ITS shall work with the North Carolina Department of Cultural Resources, and other agencies as necessary, to identify and transfer e-mails to the Department of Cultural Resources that should be preserved beyond 5 years.
5. Except as amended herein, Executive Order 18 remains in full force and effect.
6. This Executive Order is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the 21<sup>st</sup> day of May in the year of our Lord two thousand and thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State



**PUBLIC NOTICE  
STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**The Division of Water Quality (DWQ) invites public comment on, or objections to, the permitting action listed below.** Persons wishing to comment or object may submit written comments to the address below by the due date indicated. All comments received prior to the date will be considered in the final determinations regarding permit issuance. Public comments on the draft permit may result in changes to the final version. All comments should reference the specific permitting actions listed below and the permit number.

DWQ intends to renew NPDES General Permit NCG210000 for the discharge of stormwater from industrial activity classified as Lumber and Wood Products, Except Furniture. The public comment period closes July 17, 2013. The draft General Permit and Fact Sheet may be viewed at <http://portal.ncdenr.org/web/wq/ws/su/public-notice>.

Please direct comments or objections to:

Stormwater Permitting Unit  
NC Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
Telephone Number: (919) 807-6376  
[ken.pickle@ncdenr.gov](mailto:ken.pickle@ncdenr.gov)

**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 Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10C .0306-.0320, amend the rules cited as 15A NCAC 10C .0305; 10F .0201.

**Agency obtained G.S. 150B-19.1 certification:**

- ☒ **OSBM certified on:** May 15, 2013
- ☐ **RRC certified on:**
- ☐ **Not Required**

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

**Proposed Effective Date:** November 1, 2013

**Public Hearing:**

**Date:** July 17, 2013

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

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

### Reason for Proposed Action:

**15A NCAC 10C .0305** – As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. The Commission feels that this Rule does not meet the criteria of “clear and unambiguous.” The Commission proposes to amend 10C .0305 set for the seasons, creel limits, size limits and exception for black bass only. The Commission intends to adopt rules for every other game fish (considering saltwater fish collectively) in which regulations apply to only a single game fish per rule.

**15A NCAC 10C .0306** – As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning crappie and adopt 10C .0306 which will contain seasons, creel limits, size limits and exceptions for crappie only.

**15A NCAC 10C .0307** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning saltwater fish and adopt 10C .0307 which will contain seasons, creel limits, size limits and exceptions for saltwater fish only.

**15A NCAC 10C .0308** - As currently written, 10C .0305 contains too much information about too many different species

of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning kokanee salmon and adopt 10C .0308 which will contain seasons, creel limits, size limits and exceptions for kokanee salmon only.

**15A NCAC 10C .0309** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning muskellunge and adopt 10C .0309 which will contain seasons, creel limits, size limits and exceptions for muskellunge only.

**15A NCAC 10C .0310** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning pickerel and adopt 10C .0310 which will contain seasons, creel limits, size limits and exceptions for pickerel only.

**15A NCAC 10C .0311** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning roanoke and rock bass and adopt 10C .0311 which will contain seasons, creel limits, size limits and exceptions for roanoke and rock bass only.

**15A NCAC 10C .0312** - currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning saugers and adopt 10C .0312 which will contain seasons, creel limits, size limits and exceptions for sauger only.

**15A NCAC 10C .0313** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning shad and adopt 10C .0313 which will contain seasons, creel limits, size limits and exceptions for shad only.

**15A NCAC 10C .0314** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning striped bass and adopt 10C .0314 which will contain seasons, creel limits, size limits and exceptions for striped bass only.

**15A NCAC 10C .0315** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To

increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning sunfish and adopt 10C .0315 which will contain seasons, creel limits, size limits and exceptions for sunfish only.

**15A NCAC 10C .0316** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning trout and adopt 10C .0316 which will contain seasons, creel limits, size limits and exceptions for trout only.

**15A NCAC 10C .0317** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning walleye and adopt 10C .0317 which will contain seasons, creel limits, size limits and exceptions for walleye only.

**15A NCAC 10C .0318** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning white bass and adopt 10C .0318 which will contain seasons, creel limits, size limits and exceptions for white bass only.

**15A NCAC 10C .0319** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning white perch and adopt 10C .0319 which will contain seasons, creel limits, size limits and exceptions for white perch only.

**15A NCAC 10C .0320** - As currently written, 10C .0305 contains too much information about too many different species of game fish and the organization of the Rule is confusing. To increase clarity, the Commission intends to amend 10C .0305 to delete any text concerning yellow perch and adopt 10C .0320 which will contain seasons, creel limits, size limits and exceptions for yellow perch only.

**15A NCAC 10F .0201** - The proposed amendments to 10F .0201 will: provide a definition for racing vessels that are exempt from the personal flotation device (pfd) requirement; and exempt tubes, paddle boards and flotation toys from the pfd requirement.

**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 to Kate Pipkin, 1722 Mail Service Center, Raleigh, N.C. 27699-1722, E-Mail [regulations@ncwildlife.org](mailto:regulations@ncwildlife.org).

**Comments may be submitted to:** Kate Pipkin, 1722 Mail Service Center, Raleigh, N.C. 27699-1722, E-Mail [regulations@ncwildlife.org](mailto:regulations@ncwildlife.org).

**Comment period ends:** August 16, 2013

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

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

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10C - INLAND FISHING REGULATIONS

#### **15A NCAC 10C .0305 BLACK BASS**

(a) The daily creel limit for Largemouth, Smallmouth and Spotted Bass — collectively known as Black Bass — is five fish, except in waters identified in Paragraphs (b) and (c) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of this Rule. There is no closed season, except for waters identified in Paragraph (k) of this Rule.

~~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:~~

(b) In Lake Cammack in Alamance County and Lake Holt in Granville County the daily creel limit for Largemouth Bass is 10 fish and no more than two fish greater than 14 inches may be possessed.

(c) In Lake Santeetlah in Graham County, there is no daily creel limit for Black Bass less than 14 inches. The daily creel limit for Black Bass greater than 14 inches is five fish.

(d) The minimum size limit for Black Bass is 14 inches, with no exceptions in:

- (1) Lake Raleigh in Wake County;
- (2) Lake Mattamuskeet and associated canals in Hyde County;
- (3) Pungo Lake in Washington and Hyde counties;
- (4) New Lake in Hyde County;

**PROPOSED RULES**

(5) and the Currituck, Roanoke, Croatan and Albemarle sounds and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernong River and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge).

(e) 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 exceptions.

(f) In Lake Phelps the minimum size limit is 14 inches, with no exceptions, and no fish between 16 and 20 inches may be possessed.

(g) In Shearon Harris Reservoir, there is no minimum size limit for Black Bass, but only two Black Bass less than 14 inches and no Black Bass between 16 and 20 inches may be possessed.

(h) In Randleman Reservoir, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and only one Largemouth Bass greater than 20 inches may be possessed.

(i) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Black Bass is 18 inches with no exceptions.

(j) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) there is no minimum size limit for Black Bass, but no fish between 14 and 20 inches in length may be possessed and only one Black Bass greater than 20 inches may be possessed.

(k) In Sutton Lake, the minimum size limit for Black Bass is 14 inches with no exceptions and no Black Bass may be possessed from December 1 through March 31.

(l) For purposes of this Rule, creel limits apply to Largemouth, Smallmouth and Spotted Bass in aggregate unless otherwise specified.

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
<b>Mountain Trout:</b>			
Wild Trout Waters	4	7 in.	ALL YEAR (exe. (3))
Hatchery Sup- ported Trout Waters and undesignated waters	7 (exe. (3))	None (exe. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exe. (3))
Muskellunge	1	42 in.	ALL YEAR
Pickrel: Chain and Redfin	None	None	ALL YEAR
Walleye	8 (exe. (7)&(20))	None (exe. (7)&(20))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
<b>Black Bass:</b>			
Largemouth	5	14 in. (2 fish may be less than 14 in.)	ALL YEAR
Smallmouth and Spotted	(exes. (16),(19)&(21))	(exes.(6),(8),(16),(19)&(21))	(exe.(13))
Roanoke and Rock Bass	None (exe. (18))	None (exe. (18))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	(exe. (15))	(exe. (15))	(exe. (15))
Flounder	(exe. (15))	(exe. (15))	(exe. (15))
Red drum (channel bass, red fish, puppy drum)	(exe. (15))	(exe. (15))	(exe. (15))
Striped Bass and their hybrids— (Morone Hybrids)	8 aggregate	16 in. (2 fish may be	ALL YEAR less than 16 in.)
(4),(5)&(10))	(exes. (1),(2), (4),(5)&(10))	(exes. (1),(2),	(exes.(4),(5),(10)&(11))
Shad: (American and hickory)	10 aggregate (exe. (17))	None	ALL YEAR (exe. (14))
Kokanee Salmon	7	None	ALL YEAR
Crappie and	None	None	ALL YEAR

~~sunfish (exes. (9)&(12)) (exc. (9))~~

~~(b) Exceptions~~

- ~~(1) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA 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 24 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.~~
- ~~(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, Lake Rhodhiss, Lake Hickory, and Lookout Shoals 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 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.~~
- ~~(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) 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.~~

- ~~(5) 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.~~
- ~~(6) The minimum size limit for all species of black bass is 14 inches, with no exception in:  
(A) Lake Raleigh in Wake County;  
(B) Sutton Lake in New Hanover County;  
(C) Lake Mattamuskeet and associated canals in Hyde County;  
(D) Pungo Lake in Washington and Hyde counties;  
(E) New Lake in Hyde County;  
(F) and the Currituck, Roanoke, Croatan and Albemarle sounds and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernon River and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge).~~
- ~~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 Randleman Reservoir only one largemouth bass greater than 20 inches may be possessed.~~
- ~~(7) 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.
- (8) ~~The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.~~
- (9) ~~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 all the following waters and to the tributaries of the waters specified in Parts A, H, I, J, K L, M, N and O of this Subparagraph:~~
- (A) ~~all public waters west of Interstate 77,~~
- (B) ~~South Yadkin River downstream of Cooleemee Dam,~~
- (C) ~~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,~~
- (D) ~~Lake Norman,~~
- (E) ~~Lake Hyeo,~~
- (F) ~~Lake Ramseur,~~
- (G) ~~Cane Creek Lake,~~
- (H) ~~Tar River downstream of Tar River Reservoir Dam,~~
- (I) ~~Neuse River downstream of Falls Lake Dam,~~
- (J) ~~Haw River downstream of Jordan Lake Dam,~~
- (K) ~~Deep River downstream of Lockville Dam,~~
- (L) ~~Cape Fear River,~~
- (M) ~~Waccamaw River downstream of Lake Waccamaw Dam,~~
- (N) ~~Lumber River including Drowning Creek,~~
- (O) ~~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.~~
- (10) ~~In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Seppernong 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.~~
- (11) ~~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.~~
- (12) ~~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.~~
- (13) ~~In Sutton Lake, no largemouth bass shall be possessed from December 1 through March 31.~~
- (14) ~~The season for taking American and hickory shad with bow nets is March 1 through April 30.~~
- (15) ~~In inland fishing waters, sea trout (spotted or speckled), flounder, and red drum recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.~~
- (16) ~~In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia), the daily creel limit for black bass is five fish, except 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~~
- (17) ~~In the inland waters of Roanoke River, Neuse River, and their 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.~~
- (18) ~~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.~~
- (19) ~~In Lake Cammack in Alamance County and Lake Holt in Granville County the daily creel limit for largemouth bass is 10 fish and no more than two fish greater than 14 inches may be possessed.~~



- (20) ~~In John H. Kerr Reservoir, Lake Gaston, and Roanoke Rapids Lake, the minimum size limit for walleye is 18 inches and the daily creel limit is five fish.~~
- (21) ~~In Lake Santeetlah in Graham County, there is no daily creel limit for black bass less than 14 inches and no more than five black bass greater than 14 inches may be possessed.~~

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

**15A NCAC 10C .0306 CRAPPIE**

- (a) There is no daily creel limit for Crappie, except for waters identified in Paragraphs (b), (c), and (d) of this Rule. There is no minimum size limit for these fish, except for waters identified in Paragraphs (d) and (e). There is no closed season.
- (b) In Buckhorn Reservoir in Wilson and Nash counties the daily creel limit is 20 fish.
- (c) In the following waters, the daily creel limit is 20 fish and the minimum size limit is 10 inches:
- (1) B. Everett Jordan Reservoir,
  - (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam,
  - (3) Cashie River and its tributaries,
  - (4) Middle River and its tributaries, and
  - (5) Eastmost River and its tributaries.
- (d) In the following waters, the daily creel limit is 20 fish and the minimum size limit is eight inches:
- (1) South Yadkin River downstream of Cooleemee Dam;
  - (2) Yadkin River downstream from Idols Dam;
  - (3) Pee Dee River from Blewett Falls Dam to the South Carolina state line;
  - (4) High Rock Lake;
  - (5) Tuckertown Lake;
  - (6) Badin Lake;
  - (7) Falls Lake (Stanly and Montgomery counties);
  - (8) Lake Tillery;
  - (9) Blewett Falls Lake;
  - (10) Lake Norman;
  - (11) Lake Hyco;
  - (12) Lake Ramseur;
  - (13) Cane Creek Lake;
  - (14) Tar River downstream of Tar River Reservoir Dam;
  - (15) Neuse River downstream of Falls Lake Dam;
  - (16) Haw River downstream of Jordan Lake Dam;
  - (17) Deep River downstream of Lockville Dam;
  - (18) Cape Fear River;
  - (19) Waccamaw River downstream of Lake Waccamaw Dam;
  - (20) Lumber River including Drowning Creek;
  - (21) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and waters listed in Paragraph (c) of this Rule; and
  - (22) all public waters west of Interstate 77.

For waters in Subparagraphs (14) through (22), the restrictions apply to all tributaries.

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

**15A NCAC 10C .0307 FLOUNDER, SEA TROUT AND RED DRUM**

In inland fishing waters, Sea Trout (Spotted or Speckled), Flounder, and Red Drum (also know as Channel Bass, Red Fish or Puppy Drum) recreational seasons, size limits and creel limits are the same as those established in the Rules of the Marine Fisheries Commission or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

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

**15A NCAC 10C .0308 KOKANEE SALMON**

The daily creel limit for Kokanee Salmon is seven fish. There is no minimum size limit for these fish. There is no closed season for Kokanee Salmon.

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

**15A NCAC 10C .0309 MUSKELLUNGE**

The daily creel limit for Muskellunge is one fish. The minimum size limit for this fish is 42 inches. There is no closed season for Muskellunge.

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

**15A NCAC 10C .0310 PICKEREL**

There is no daily creel limit and no minimum size limit for Pickerel (Chain and Redfin). There is no closed season for Pickerel.

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

**15A NCAC 10C .0311 ROANOKE AND ROCK BASS**

- (a) There is no daily creel limit and no minimum size limit for Roanoke and Rock Bass, except for waters identified in Paragraph (b) of this Rule. There is no closed season for Roanoke and Rock Bass.
- (b) In all public fishing waters east of Interstate 77, the daily creel limit for Roanoke and Rock Bass is two fish in aggregate and the minimum size for these fish is 8 inches.

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

**15A NCAC 10C .0312 SAUGER**

The daily creel limit for Sauger is eight fish. The minimum size limit for these fish is 15 inches. There is no closed season for Sauger.

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

**15A NCAC 10C .0313 SHAD (AMERICAN AND HICKORY)**

(a) The daily creel limit for American and Hickory Shad in aggregate is 10 fish, except for waters identified in Paragraphs

(b), (c) and (d) of this Rule. There is no minimum size limit for these fish. There is no closed season, except for waters identified in Paragraph (e) of this Rule.

(b) In the inland waters of Roanoke River, Neuse River, and their tributaries, the daily creel limit for American and Hickory Shad is 10 in aggregate, only one of which may be an American Shad.

(c) In the inland waters of the Cape Fear River and its tributaries, the daily creel limit for American and Hickory Shad is 10 in aggregate, only five of which may be American Shad.

(d) In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American Shad may be possessed.

(e) The season for taking American and Hickory Shad with bow nets is March 1 through April 30.

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

#### **15A NCAC 10C .0314 STRIPED BASS**

(a) The daily creel limit for Striped Bass and its hybrids is eight fish in aggregate, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 16 inches, except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this Rule. There is no closed season, except for waters identified in Paragraphs (g), (h), (i), (j) and (k) of this Rule.

(b) In the Dan River upstream from its confluence with Bannister River to the dam at Union Street in Danville, VA and in John H. Kerr Reservoir, the daily creel limit on Striped Bass and its hybrids is two in aggregate and the minimum size limit is 24 inches from October 1 through May 31. From June 1 through September 30, the daily creel limit on Striped Bass and its hybrids is four in aggregate with no minimum size limit.

(c) In the Cape Fear River upstream of Buckhorn Dam; the Deep River to the first impoundment; the Haw River to the first impoundment; B. Everett Jordan Reservoir; Lake Rhodhiss; Lake Hickory; and Lookout Shoals Reservoir, the daily creel limit on Striped Bass and its hybrids is four in aggregate and the minimum size limit is 20 inches.

(d) In Lake Gaston and Roanoke Rapids Reservoir, the daily creel limit on Striped Bass and its hybrids is four in aggregate. The minimum size limit for these fish is 20 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(e) In Lake Norman the daily creel limit on Striped Bass and its hybrids is four in aggregate. The minimum size limit for these fish is 16 inches from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(f) In Lake Matamuskeet and in the Pee Dee River and its tributaries downstream the Blewett Falls Dam to the South Carolina state line, the daily creel limit is three fish in aggregate and the minimum size limit is 18 inches.

(g) 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 not specified in Paragraphs (f), (h), (i) and (j) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in

aggregate. The minimum size limit is 18 inches and no Striped Bass or 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.

(h) In the inland fishing waters of the Cape Fear River and its tributaries downstream of Buckhorn Dam, the season for taking and possessing Striped Bass is closed year-round.

(i) 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 its 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 its 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.

(j) 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.

(k) 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.

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

#### **15A NCAC 10C .0315 SUNFISH**

(a) For purposes of this Rule, Sunfish include bluegill, redbreast, redear, pumpkinseed, warmouth, flier and all other species of the sunfish family (Centrarchidae) not specified in 15A NCAC 10C .0305, 15A NCAC 10C .0306 and 15A NCAC 10C .0311.

(b) There is no daily creel limit for Sunfish, except for waters identified in Paragraph (c) of this Rule. There is no minimum size limit for these fish. There is no closed season.

(c) In the following waters and all their tributaries, the daily creel limit for Sunfish is 30 in aggregate, no more than 12 of which may be Redbreast Sunfish:

- (1) Roanoke River downstream of Roanoke Rapids Dam;
- (2) Tar River downstream of Tar River Reservoir Dam;
- (3) Neuse River downstream of Falls Lake Dam;
- (4) Haw River downstream of Jordan Lake Dam;
- (5) Deep River downstream of Lockville Dam;
- (6) Cape Fear River;
- (7) Waccamaw River downstream of Lake Waccamaw Dam;
- (8) Lumber River including Drowning Creek; and

- (9) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County.

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

**15A NCAC 10C .0316 TROUT**

(a) The daily creel limit for trout in Hatchery-Supported Trout Waters is seven fish. There is no minimum size limit for these fish. The open season is from 7 a.m. on the first Saturday in April until March 1, except for waters designated in Paragraphs (d) and (g) of this Rule.

(b) The daily creel limit for trout in Wild Trout Waters and Wild Trout/Natural Bait Trout Waters is four fish. The minimum size limit for these fish is seven inches. There is no closed season.

(c) No trout may be harvested from Catch and Release/Artificial Lures Only Trout Waters or Catch and Release/Artificial Flies Only Trout Waters. Trout may not be possessed while fishing these waters.

(d) The daily creel limit for trout in Delayed Harvest Trout Waters is seven fish. There is no minimum size limit for these fish. The Youth-only Delayed Harvest Trout Water Season is from 6 a.m. on the first Saturday in June until 12 p.m. that same day. During this season only individuals under the age of 16 may fish. From 12 p.m. on the first Saturday in June until September 30, the Delayed Harvest Trout Waters Season is open for all anglers. From October 1 to one-half hour after sunset on the Friday before the first Saturday in June, trout may not be harvested or possessed while fishing these waters. Delayed Harvest Trout Waters are closed to all fishing from one-half hour after sunset on the Friday before the first Saturday in June to 6 a.m. on the first Saturday in June.

(e) The daily creel limit for trout in Special Regulation Trout Waters is seven fish. There is no minimum size limit for these fish, but only one may be greater than 14 inches. There is no closed season.

(f) The daily creel limit for trout in undesignated trout waters is seven fish. There is no minimum size limit for these fish. Trout may not be possessed while fishing these waters from March 1 until 7 a.m. on the first Saturday in April, except waters designated in Paragraph (g) of this Rule.

(g) There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.

(h) In designated Public Mountain Trout Waters the season for taking all species of fish is the same as the trout fishing season.

(i) All trout water designations and manners of take are set forth in 15A NCAC 10C .0205.

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

**15A NCAC 10C .0317 WALLEYE**

(a) The daily creel limit for Walleye is eight fish except for waters identified in Paragraphs (b) and (d) of this Rule. There is no minimum size limit for these fish except for waters identified in Paragraphs (c) and (d) of this Rule. There is no closed season.

(b) In Linville River upstream upstream from the NC 126 bridge, the daily creel limit for Walleye is four fish.

(c) In Lake James and its tributaries, except the Linville River upstream from the N.C. 126 bridge, the minimum size limit for walleye is 15 inches.

(d) In John H. Kerr Reservoir, Lake Gaston, and Roanoke Rapids Lake, the daily creel limit is five fish and the minimum size limit for Walleye is 18 inches.

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

**15A NCAC 10C .0318 WHITE BASS**

The daily creel limit for White Bass is 25 fish. There is no minimum size limit for these fish. There is no closed season for White Bass.

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

**15A NCAC 10C .0319 WHITE PERCH**

There is no daily creel limit and no minimum limit size for White Perch. There is no closed season for White Perch.

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

**15A NCAC 10C .0320 YELLOW PERCH**

There is no daily creel limit and no minimum size limit for Yellow Perch. There is no closed season for Yellow Perch.

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

**SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

**SECTION .0200 - SAFETY EQUIPMENT AND ACCIDENT REPORTS**

**15A NCAC 10F .0201 SAFETY EQUIPMENT**

(a) Federal Regulations Adopted. As its regulations governing required equipment of vessels as defined in G.S. 75A-2(5), pursuant to G.S. 75A-6, the Wildlife Resources Commission adopts the following federal regulations, to be applicable to vessels operated on all waters of this state as defined by G.S. 75A-2(6): Code of Federal Regulations, Title 46, Part 25, and Title 33, Part 175, as supplemented by the Federal Register. To the extent that the vessel equipment requirements of G.S. 75A-6 conflict with these federal regulations, they are hereby modified to conform to the federal regulations as authorized by G.S. 75A-6(m) and 113-307.

Without limitation to the adoption of the Federal regulations named herein, the rules set forth in subsections (b) through (g) shall Paragraphs (b) through (g) apply to vessels operating in State waters.

(b) Personal Flotation Devices (hereinafter referred to as PFDs) are required as follows except as provided in Subparagraph (6) of this Paragraph:

- (1) No person may operate a vessel unless at least one PFD of the following types is on board and readily accessible for each person:
  - (A) Type I PFD;

- (B) Type II PFD; or
- (C) Type III PFD.
- (2) No person may operate a vessel 16 feet or more in length unless one type IV PFD is on board and immediately available for use, in addition to the total number of PFDs required in Subparagraph (1) of this Paragraph.
- (3) No person may operate a vessel while such vessel is underway with any child under 13 years old aboard unless each such child is:
  - (A) wearing an appropriate PFD approved by the Coast Guard; or
  - (B) below decks; or
  - (C) in an enclosed cabin.

This Subparagraph does not apply to a vessel that is registered as a commercial vessel.

- (4) A Type V PFD may be carried in lieu of any PFD required under Subparagraph (1) of this Paragraph provided:
  - (A) the approval label for the Type V PFD indicates that the device is approved for the activity for which the vessel is used; or
  - (B) the Type V PFD is used in accordance with the requirements on the approval label and with the requirements in its owners manual.
- (5) No person may operate a vessel unless each required PFD is:
  - (A) in serviceable condition;
  - (B) of appropriate size and fit for the intended wearer;
  - (C) USCG approved; and
  - (D) legibly marked with its approval number, as specified in CFR Title 46 Part 25 and CFR Title 33 Part 175.
- (6) Exemptions:
  - (A) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD as specified in Subparagraph (b)(2) of this Rule.
  - (B) Sailboards, surfboards, paddle boards, tubes, swimming rafts, inflatable toys and similar devices routinely used as water toys or swimming aids. Manually propelled vessels that are recognized by national and international racing associations for use in competitive racing and in which all occupants row, scull, or paddle, with exception of a coxswain, if one is provided, and are not designed to carry any equipment not solely for competitive racing such as racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for

carriage of any type PFD required under this Paragraph.

(c) Fire Extinguishers are required as follows:

- (1) All motorboats shall carry at least the minimum number of USCG approved hand portable fire extinguishers specified in this Rule if any one of the following conditions exist:
  - (A) Closed compartments under thwarts and seats wherein portable fuel tanks may be stored;
  - (B) double bottoms not sealed to the hull or which are not completely filled with flotation material;
  - (C) closed living spaces;
  - (D) closed stowage compartments in which combustible or flammable materials are stowed;
  - (E) permanently installed fuel tanks; or
  - (F) motorboats of Class 2 or longer;
- (2) Motorboats of Class A and 1 (less than 26 feet): One Type B-I
- (3) Motorboats of Class 2; Two Type B-I extinguishers
- (4) Motorboats of Class 3; Three Type B-I extinguishers
- (5) One Type B-II hand held fire extinguisher may be substituted for two B-I hand portable fire extinguishers. A fixed fire extinguishing system installed in the engine compartment is equal to one Type B-I hand portable fire extinguisher.

Exemption to fire extinguisher requirements: Open Vessels. Vessels less than 26 feet in length, propelled by outboard motors and not carrying passengers for hire, need not carry such portable fire extinguishers if the construction of such motorboats will not permit the entrapment of explosive or flammable gases or vapors.

(d) Every engine installed in a vessel using gasoline as fuel must be equipped with an acceptable means of backfire flame control, except outboard motors. An acceptable means of backfire flame control meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(e) Every vessel, except those open vessels defined in Paragraph (c) of this Rule, using as fuel any liquid of a volatile nature, shall be provided with such means of properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or flammable gases. Proper and efficient ventilation meets the requirements of CFR Title 46 Part 25 and CFR Title 33 Part 175.

(f) Sound Devices

- (1) Vessels of less than 12 meters (39.4 feet) in length shall be equipped with some means of making an efficient sound signal.
- (2) Vessels greater than 12 meters (39.4 feet) in length shall be provided with a whistle and a bell which complies with 33 USC 2033.

(g) Lights. The lights prescribed by these Rules shall be exhibited from sunset to sunrise, and in restricted visibility.

During such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with keeping a proper lookout. They may be exhibited in all other circumstances when deemed necessary:

- (1) Vessels greater than 12 meters (39.4 feet) but less than 20 meters (65.6 feet) in length shall exhibit:
  - (A) A masthead light forward visible for three miles;
  - (B) Sidelights, green to starboard and red to port visible for two miles; and
  - (C) A stern light visible for two miles;
- (2) Vessels less than 12 meters (39.4 feet) in length shall exhibit:
  - (A) An all-round white light visible for two miles; and
  - (B) Sidelights, green to starboard and red to port visible for 1 mile;
- (3) Sailing vessels underway that are seven meters (23 feet) in length or greater shall exhibit:
  - (A) A stern light visible for two miles; and
  - (B) Sidelights, green to starboard and red to port visible for two miles;
- (4) In a sailing vessel less than 20 meters in length the lights prescribed in Subparagraph (3) of this Paragraph may be combined in one lantern carried at or near the top of the mast where it can be best seen;
- (5) A sailing vessel of less than seven meters (23 feet) in length shall, if practicable, exhibit the lights prescribed in Subparagraph (3) or (4) of this Paragraph; if not the vessel shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision;
- (6) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if not, shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision; and
- (7) Vessels of 10 Horsepower or Less. On waters of this State not subject to the jurisdiction of the United States, vessels propelled by machinery of 10 horsepower or less, in lieu of the foregoing requirements, may carry from one-half hour after sunset to one-half hour before sunrise a white light in the stern or have on board a hand flashlight in good working condition which shall be ready at hand and shall be temporarily displayed in sufficient time to prevent collision. On waters of this State that are subject to the jurisdiction of the United States, this exception, though permissible under state law, is not sanctioned by any federal law or regulation.

*Authority G.S. 75A-3; 75A-6; 113-307.*

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 16 – BOARD OF DENTAL EXAMINERS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to amend the Rule cited as 21 NCAC 16Q .0501.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

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

**Proposed Effective Date:** *October 1, 2013*

**Public Hearing:**

**Date:** *July 11, 2013*

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

**Location:** *NC Dental Board, 507 Airport Blvd, Suite 105, Morrisville, NC 27560*

**Reason for Proposed Action:** *21 NCAC 16Q .0501 is proposed for amendment to clarify the requirement for renewal of a moderate conscious sedation permit, moderate pediatric conscious sedation permit, minimal conscious sedation permit and moderate conscious sedation permit limited to oral routes.*

**Procedure by which a person can object to the agency on a proposed rule:** *Submit written objections to Mr. Bobby D. White, Chief Operations Officer, N.C. State Board of Dental Examiners, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560.*

**Comments may be submitted to:** *Bobby D. White, 507 Airport Boulevard, Suite 105, Morrisville, NC 27560*

**Comment period ends:** *August 16, 2013*

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

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION**

**SECTION .0500 - RENEWAL OF PERMITS**

**21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED**

(a) General anesthesia and all sedation permits shall be renewed by the Board annually. Such renewal shall be accomplished in conjunction with the license renewal process, and applications for permits shall be made at the same time as applications for renewal of licenses. A one hundred (\$100.00) annual renewal fee shall be paid at the time of renewal.

(b) All sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of general anesthesia or any level of conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section .0700 of this Subchapter.

(c) As a condition for renewal of the general anesthesia permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0202 and document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other equivalent course, and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(d) As a condition for renewal of the moderate conscious sedation permit or moderate pediatric conscious sedation permit, the permit holder shall meet the requirements of 21 NCAC 16Q .0302 and the criteria set out in subparagraph (1) or (2); ~~and the following criteria:~~

- (1) document annual, successful completion of BLS training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
  - (A) sedation;
  - (B) medical emergencies;
  - (C) monitoring IV sedation and the use of monitoring equipment;
  - (D) pharmacology of drugs and agents used in IV sedation;

- (E) physical evaluation, risk assessment, or behavioral ~~management; or~~ management;
- (F) audit ACLS/Pediatric Advanced Life Support (PALS) ~~courses;~~ courses;
- (G) airway management.

- (2) document current, successful completion of ACLS training or its age-specific equivalent, or other equivalent course and annual successful completion of ~~BLS and;~~ BLS.

- ~~(3) moderate pediatric conscious sedation permit holders must have current PALS at all times.~~

(e) moderate pediatric conscious sedation permit holders must have current PALS at all times.

~~(e)(f)~~ As a condition for renewal of the minimal conscious sedation permit and the moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation, the permit holder shall meet the requirements of 16Q .0402 and shall document annual, successful completion of BLS training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;
- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; ~~or~~
- (6) audit ACLS/PALS ~~courses;~~ courses;
- (7) airway management.

~~(f)(g)~~ Any dentist who fails to renew a general anesthesia or sedation permit on or before March 31 of each year must complete a reinstatement application, pay the one hundred dollar (\$100.00) renewal fee and a one hundred dollar (\$100.00) penalty and comply with all conditions for renewal set out in this Rule for the permit sought. Dentists whose anesthesia or sedation permits have been lapsed for more than 12 calendar months must pass a facilities inspection as part of the reinstatement process.

*Authority G.S. 90-28; 90-30.1; 90-48.*

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**CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Hearing Aid Dealers and Fitters Board intends to adopt the rule cited as 21 NCAC 22L .0116 and amend the rules cited as 21 NCAC 22L .0101, .0103-.0106, .0109-.0113, .0115.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☐ OSBM certified on:
- ☐ RRC certified on:
- ☒ Not Required

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

**Proposed Effective Date:** *October 1, 2013*

**Public Hearing:**

**Date:** *August 1, 2013*

**Time:** *12:45 p.m.*

**Location:** *Commission Room, Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, NC 27609*

**Reason for Proposed Action:** *The Board has done an annual review of rules and is seeking to update how the Board processes complaints and administers discipline, including contested case hearings. The rule changes would also provide for how and when the Board makes disciplinary actions public.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person can object to the agency by speaking at the public hearing on June 6, 2013 or by submitting written comments to the following address no later than August 16, 2013: ATTN: Hearing Aid Dealers and Fitters Board, PO Box 97833, Raleigh, NC 27624.*

**Comments may be submitted to:** *Catherine Jorgensen, Rulemaking Coordinator, NC State Hearing Aid Dealers and Fitters Board, PO Box 97833, Raleigh, NC 27624*

**Comment period ends:** *August 16, 2013*

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

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

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**SUBCHAPTER 22L – ADMINISTRATIVE HEARINGS  
AND DISCIPLINE**

**21 NCAC 22L .0101 COMMITTEE ON INVESTIGATIONS**

~~(a) Upon receipt of a written and signed charge alleging misconduct against a licensee or registrant of the Board, the Board shall inform the accused party in writing of the nature of the charges as filed with the Board. The Board shall not accept anonymous complaints alleging misconduct against a licensee or registrant of the Board.~~

~~(b) The accused party shall respond to the charges by filing a written answer with the Board within 20 days of the receipt of the notification of charges.~~

~~(c) The Board shall provide the complaining party with a copy of the accused party's answer and within 20 days from receipt thereof the complaining party shall file a reply to the accused party's answer.~~

~~(d) The Board's Executive Secretary shall refer the charges as filed with the Board, the answer, and the reply to the Committee on Investigations (hereinafter referred to as "Committee") unless the complaining party withdraws the complaint at the time the reply cited in Paragraph (c) of this Rule is filed. The Committee shall consist of two members of the Board, one of whom shall serve as chairman.~~

~~(e) Whenever the Board receives a written and signed complaint with documentation of an advertisement which, on its face, appears to contain a violation of the Board's Statute or Rules, the advertisement shall be referred to the Committee for investigation.~~

~~(f) The Committee shall investigate each complaint or advertisement referred to it by the Board and as part of the investigation shall invite the accused party and the complaining party before the Committee and the Board's legal counsel to present their oral statements, but neither party shall be compelled to attend.~~

~~(g) If the complaint has not been withdrawn by the complaining party at the time of the completion of the investigation, the Committee, after consulting with the Board's legal counsel, shall submit its findings to the Board and the Board shall determine whether or not there is probable cause to believe that the accused party has violated any standard of conduct which would justify a disciplinary hearing based upon the grounds as specified in G.S. 93D-13 or this Chapter.~~

~~(h) If probable cause is found, the Board shall authorize a Notice of Hearing to be served on the licensee or registrant as required by G.S. 150B, Article 3A.~~

~~(i) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a private reprimand to the accused party. A statement of such reprimand shall be mailed to the accused party. Within 20 days after receipt of the reprimand, the accused party may refuse the reprimand. Such refusal shall be addressed to the Committee and filed with the Secretary for the Board. The legal counsel for the Board may thereafter prepare, file, and serve a Notice of Hearing as necessary. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the Board.~~

~~(j) If no probable cause is found, the Board shall dismiss the charges and direct the Committee to prepare a statement of the reasons therefor which shall be mailed to the accused party and the complaining party.~~

~~(k) Any committee member is disqualified to participate further in the contested case involving any person for whom the committee member participated in the investigatory process.~~

(a) The Committee on Investigations shall review all complaints submitted to the Board. The Committee on Investigations shall consist of two or three members of the Board, one of whom shall serve as chairman. The Committee on Investigations may:

- (1) employ such persons as it deems necessary to determine whether it believes that probable cause exists to support formal disciplinary action against a licensee, apprentice, or registered sponsor;
- (2) determine the need to subpoena persons to provide the Committee with sworn testimony or documents, provided that the subpoena is signed by the President or Secretary-Treasurer of the Board;
- (3) undertake other actions designed to assist the Committee in its inquiry; or
- (4) initiate charges against a licensee, apprentice or registered sponsor if other violations are suggested by the evidence considered by the Committee during an investigation of a complaint.

(b) The Complainant shall submit a signed complaint on the Board-approved complaint form which is available on the Board website (www.nchalb.org) or by contacting the Board office.

(c) The Board shall not respond to or investigate anonymous complaints or inquiries.

(d) The Committee may hire an investigator or subpoena testimony or records at any point during its review of the complaint, provided that the Board approves the issuance of a subpoena.

(e) The Committee on Investigations shall administratively close:

- (1) any complaint anonymously submitted;
- (2) a complaint that alleges an advertising violation which occurred more than one year prior to notifying the Board of the alleged violation; or
- (3) a complaint withdrawn by the Complainant at any stage of the investigation.

(f) After a preliminary review of a complaint, the Committee on Investigations shall:

- (1) recommend to the Board a finding that there is no probable cause to believe a violation of the law or rules exists, and upon approval of the Board close the matter without further inquiry; or
- (2) serve the Respondent with a written explanation of the charges being investigated by the Committee.

(g) The Respondent shall answer in writing within 20 days of receipt of the notification of charges.

(h) The Committee shall offer the Complainant a summary of the Respondent's answer.

(i) The Committee shall offer the parties an opportunity to present oral statements to the Committee after the written answer

is received from the Respondent. Neither party shall be compelled to attend.

(j) With assistance from the Board's legal counsel, the Committee shall determine the validity and merit of the charges, and whether the accused party has violated any standard of conduct which would justify a disciplinary action based upon the grounds as specified in G.S. 93D-13 or this Chapter.

(k) The Committee on Investigations shall present its findings and recommendation to the Board, including proposed discipline, if any, but shall not identify the parties to the complaint to the full Board except by descriptive titles, such as licensee, apprentice, sponsor, and consumer.

(l) The Board may find no probable cause for disciplinary action and dismiss the charges. The Committee on Investigations shall notify the parties of the Board action. This notification shall not be a public record pursuant to G.S. 93D-13(c).

(m) The Board may find no probable cause for disciplinary action but issue a letter of caution to the Respondent. This letter shall not be a public record pursuant to G.S. 93D-13(c).

(n) The Board may find probable cause for disciplinary action and serve the Respondent with a private reprimand. The content of the private reprimand shall not be a public record. The Board shall deem the private reprimand accepted as formal discipline in the matter unless the Respondent submits a refusal to accept the private reprimand which shall:

- (1) be in writing, addressed to the Committee on Investigations;
- (2) be filed with the executive secretary for the Board within 20 days after service of the private reprimand; and
- (3) include a request for a contested case hearing in accordance with 21 NCAC 22L .0103.

(o) The Board may find probable cause of a violation of the Board's statute or rules and authorize the Committee on Investigations, by and through the Board's legal counsel, to undertake negotiations with the Respondent to settle the matter without a hearing under terms agreed upon by the Board, when such settlement accomplishes the Board's duty to protect the consuming public.

(p) The Board may find probable cause for disciplinary action beyond a private reprimand due to the circumstances and nature of the violation. In such cases, the Board shall:

- (1) serve a Notice of Hearing on the accused party as required by G.S. 150B, Article 3A., which shall be a public record pursuant to G.S. 93D-13(c);
- (2) designate a presiding officer for the contested case; and
- (3) conduct a hearing in accordance with the rules of this Subchapter.

*Authority G.S. 93D-3; 93D-13; 150B-38.*

#### **21 NCAC 22L .0103 REQUEST FOR HEARING**

~~(a) When an individual believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual~~  
An individual that



cannot resolve a matter with the Board related to rights, duties, or privileges that have been affected by the Board's administrative action may file a formal request for a hearing.

~~(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.~~

~~(c) Subsequent to such informal action, if still dissatisfied, the individual must submit a request to the Board's office, with the~~

~~(b) The request bearing shall bear the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request must contain the following information: HEARING and contain the following:~~

- ~~(1) Name and address of the petitioner;~~
- ~~(2) A concise statement of the action taken by the Board which is challenged;~~
- ~~(3) A concise statement of the way in which the petitioner has been aggrieved; and~~
- ~~(4) A clear and specific statement of request for a hearing.~~

~~(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with Rule .0004 of this Subchapter, a hearing will be scheduled.~~

*Authority G.S. 93D-3; 150B-38.*

#### **21 NCAC 22L .0104 GRANTING OR DENYING HEARING REQUESTS**

(a) The Board shall grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6).

~~(e)(b)~~ Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule-.0005-.0105 of this Subchapter.

~~(b)(c)~~ The denial of request for a hearing shall be issued no later than 60 days after the submission of the request. ~~Such~~ The denial shall contain a statement of the reasons for the denial of the request.

*Authority G.S. 93D-3; 150B-38.*

#### **21 NCAC 22L .0105 NOTICE OF HEARING**

(a) The Board shall ~~give-serve~~ the party or parties in a contested case a notice of hearing not less than 30 days before the hearing. ~~Said~~ The notice shall include: ~~contain the following information, in addition to the items specified in G.S. 150B-38(b):~~

- ~~(1) the name, position, address and telephone number of a person at the office of the Board to contact for further information or discussion; and~~
- ~~(2) any other information deemed relevant to informing the parties as to the procedure of the hearing.~~
- (1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved;

(3) A short and plain statement of the facts alleged; and

(4) the name, position, address and telephone number of a person at the office of the Board to contact for further information on the hearing process.

(b) The Board shall ~~give-serve~~ notice to all parties with a the notice of hearing on all parties either personally or by certified mail or, if those methods are unavailable, in accordance with G.S. 1A-1, Rule 4(j1)-Rule 4(J). ~~In the event that notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of the service of notice.~~

(c) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or registration. Upon service of the order, the licensee or registrant to whom the order is directed shall immediately cease fitting and selling hearing aids in North Carolina. The Board shall ~~promptly give-serve~~ a notice of hearing ~~pursuant to G.S. 150B-38~~ following service of the order. The suspension shall remain in effect ~~pending issuance by the Board of until the Board issues~~ a final agency decision ~~pursuant to G.S. 150B-42~~ in accordance with Rule .0115 of this subchapter.

*Authority G.S. 93D-3; 93D-13; 150B-3(c); 150B-38; 150B-42.*

#### **21 NCAC 22L .0106 PRESIDING OFFICER**

~~For all contested case hearings, the Board shall~~ For each contested case, the Board shall designate one or more of its members as the presiding officer, unless the majority of the Board elects to apply to the Office of Administrative Hearings for the designation of an administrative law judge to hear the a case pursuant to G.S. 150B-40(e).

*Authority G.S. 93D-3; 150B-38; 150B-40.*

#### **21 NCAC 22L .0109 INFORMAL PROCEDURES**

(a) The ~~administrative law judge, as presiding officer acting for the Board,~~ may direct the parties to conduct an informal pre-hearing conference, or the parties may request such a conference, which shall be scheduled at a time and place ~~selected-agreed upon~~ by the parties. If the parties do not agree on the time and place of the pre-hearing conference within a reasonable time, the ~~Board-presiding officer~~ may set the time and place of the pre-hearing conference, giving reasonable written notice to all parties in the proceedings.

(b) At the discretion of the ~~Board, presiding officer,~~ all or part of the pre-hearing conference may be conducted by telephone or other electronic means, if each party has an opportunity to participate while the conference is taking place.

(c) The parties shall conduct the pre-hearing conference to deal with, where applicable:

- (1) exploring settlement possibilities;

- (2) formulating, clarifying, and simplifying the issues to be contested at the hearing;
- (3) preparing stipulations of facts or findings;
- (4) ruling on the identity and number of witnesses;
- (5) determining the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, video tape, or other electronic means will be used as a substitute for proceedings in person;
- (6) determining what depositions, discovery orders, or subpoenas will be needed;
- (7) determining the need for consolidation of cases or joint hearing;
- (8) determining the order of presentation of evidence and cross-examination; and
- (9) considering any other matters which may promote the prompt, orderly, and efficient disposition of the case.

*Authority G.S. 93D-3; 150B-38.*

#### **21 NCAC 22L .0110 DISQUALIFICATION OF BOARD MEMBERS**

(a) Self-disqualification. If for any reason a board member determines that personal bias or other factors render that member unable to perform all duties in an impartial manner, that ~~board~~ Board member shall voluntarily decline to participate in the final decision.

(b) Request for Disqualification. If for any reason any party in a contested case believes that a ~~board~~ Board member is personally biased or otherwise unable to perform all duties in an impartial manner, the party shall make a written request that ~~such board~~ the Board member be disqualified. The request shall be accompanied by a sworn, notarized affidavit. The title of such affidavit shall bear the notation: AFFIDAVIT IN SUPPORT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of Case).

(c) Contents of Affidavit. The affidavit shall state all facts the party deems to be relevant to the disqualification of the ~~board~~ Board member.

(d) Timeliness of Affidavit. An affidavit of disqualification shall be considered timely if filed 10 calendar days before commencement of the hearing. Any other affidavit shall be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule.

(e) The Board shall determine the matter as a part of the record in the case in accordance with G.S. 150B-40. Procedure for Determining Disqualification:

- (1) ~~The Board shall appoint a board member to investigate the allegations of the affidavit.~~

- ~~(2) The investigator shall report to the Board the findings of the investigation.~~
- ~~(3) The Board shall decide whether to disqualify the challenged individual.~~
- ~~(4) The person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the other members of the Board.~~
- ~~(5) A record of proceedings and the reasons for any decision reached shall be maintained as part of the contested case record.~~
- ~~(6) Where a petition for disqualification is filed less than 10 days before, or during the course of a hearing, the hearing shall continue. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member shall not participate in the final decision.~~

(f) In the event of disqualification, the disqualified member shall not participate in the final decision.

*Authority G.S. 93D-3; 150B-38; 150B-40.*

#### **21 NCAC 22L .0111 FAILURE TO APPEAR**

(a) Continuances and adjournments shall be granted ~~by the administrative law judge only upon a showing of good cause and upon the receipt of a timely made request at the discretion of the presiding officer.~~

(b) Should a party fail to appear at a hearing or fail to appear following the granting of a continuance or adjournment, the hearing shall be conducted in the party's absence. If a party fails to appear at a hearing after proper notice, the presiding officer shall determine whether to continue the hearing or proceed with the hearing and allow the agency to make its decision in the absence of the party.

(c) If a hearing is conducted and a decision is reached in an administrative hearing in the absence of a party, that party may file a written petition with the Board for a reopening of the case.

(d) Petitions for reopening a case shall not be granted except when the petitioner can show that the reasons for his failure to appear were justifiable and unavoidable and that fairness requires reopening the case. Such petitions, however, shall have no effect on the running of the 30 day period for seeking judicial review, which starts from the day the party is served with the final decision.

*Authority G.S. 150B-38; 150B-40.*

**21 NCAC 22L .0113 SUBPOENAS**

(a) ~~Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The administrative law judge, as presiding officer acting for the Board, shall issue the requested subpoenas within five days of receipt of the request.~~

(b) ~~Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer; and a "return of service". The "return of service" form, as filled out, shall show the name and capacity of the person serving the subpoena the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.~~

(c) ~~Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.~~

(d) ~~Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.~~

(e) ~~Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.~~

(f) ~~Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.~~

(g) ~~The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.~~

(h) ~~After receipt of the objection and response thereto, if any, the administrative law judge shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.~~

(i) ~~Promptly after the close of such hearing, the administrative law judge hearing the contested case will rule on the challenge~~

~~and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.~~

(a) A party in a contested case may request a subpoena. The request shall:

- (1) be made in writing to the Board;
- (2) include a particularized description of the books, papers, records or objects the recipient shall produce pursuant to the subpoena;
- (3) include the full name and home or business address of the person to be subpoenaed; and
- (4) include the date, time, and place for responding to the subpoena.

(b) The Board-designated presiding officer for the contested case shall issue the requested subpoena in duplicate within five days of receipt of the request. A subpoena shall include:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour and location to appear;
- (4) a particularized description of the books, papers, records or objects the recipient shall produce pursuant to the subpoena;
- (5) the identity of the party requesting the subpoena;
- (6) the date of issuance of the subpoena;
- (7) the signature of the presiding officer;
- (8) a return of service form; and
- (9) instructions for objecting to the subpoena.

(c) The party requesting the subpoena shall provide a copy of the issued subpoena to all parties in the contested case at the time the subpoena is served on the recipient.

(d) A subpoena shall be served in accordance with G.S. 1A-1, Rule 45. The person serving the subpoena shall return one copy of the subpoena with a completed return of service form to the Board.

(e) The completed return of service form shall provide:

- (1) the name and capacity of the person serving the subpoena;
- (2) the date on which service was made;
- (3) the person on whom service was made;
- (4) the manner in which service was made; and
- (5) the signature of the person effectuating service.

(f) A recipient of a subpoena issued by the Board may file a written objection to the subpoena with the presiding officer. The recipient shall serve a copy of the objection on the party requesting the subpoena. The objection may be made on any of the following grounds:

- (1) the subpoena requests evidence not related to a matter at issue;
- (2) the subpoena does not describe with sufficient particularity the evidence to produce;
- (3) the subpoena fails to allow reasonable time for compliance;
- (4) the subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection;
- (5) the subpoena subjects a person to an undue burden or expense;

(6) the subpoena is otherwise unreasonable or oppressive; or

(7) the subpoena is procedurally defective.

(g) The party requesting the subpoena, in such time as may be granted by the Board, may file a written response to the objection with the presiding officer, and shall serve the objecting recipient and all parties with a copy of the written response.

(h) The presiding officer shall issue a written notice to all parties of an open hearing, scheduled as soon as practicable, during which evidence regarding the objection and response may be presented.

(i) The presiding officer shall issue a written decision based upon the factors required by G.S. 150B-39(c). A copy of the decision shall be issued to all parties and made a part of the record.

*Authority G.S. 1A-2; 93D-3; 150B-38; 150B-39; 150B-40.*

## **21 NCAC 22L .0115 PROPOSALS FOR DECISIONS AND FINAL DECISION**

(a) ~~When an administrative law judge conducts the hearing, a "proposal for decision" shall be rendered within 45 days after the hearing pursuant to the Rules of the Office of Administrative Hearings in accordance with 26 NCAC 03 .0127. The parties may file written exceptions to this "proposal for decision" the proposal for decision and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals shall be filed within 10 days after the party has received the "proposal for decision" proposal for decision as drafted by the administrative law judge.~~

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter shall be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions shall be filed with the Board within 10 days of the receipt of the proposal for decision. The written exceptions shall bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of Case).

(c) Any party may present oral argument to the Board upon request. The request shall be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating the time and place for such oral argument.

(e) The Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be part of the record and a copy thereof given to all parties. The decision as adopted or modified shall become the "final agency decision" for the right to judicial review. ~~Said decision shall be rendered by the Board within 60 days after the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days after the next regularly scheduled Board meeting following receipt of the written exceptions.~~

(f) The Board shall render the final agency decision within 60 days after the next regularly scheduled Board meeting following the deadline for receipt of the written exceptions or the hearing of further oral arguments, whichever is later.

(g) When the Board conducts the contested case hearing, the Board shall render a final agency decision within 60 days after the hearing if no transcript is requested by the Board or either party, or within 45 days after receipt of a transcript of the hearing. The parties may submit proposed decisions within 20 days after the hearing or receipt of the transcript, whichever is later.

*Authority G.S. 93D-3; 150B-38; 150B-40.*

## **21 NCAC 22L .0116 PUBLICATION OF DISCIPLINARY ACTIONS**

(a) Formal disciplinary actions imposed by the Board shall be published on the Board's website (www.nchalb.org) within 60 days of the final agency decision as follows:

- (1) Notice of a suspension of license or registration shall be posted on the website during suspension period, including a link to a copy of the final agency decision;
- (2) Notice of the reinstatement of a suspended license or registration shall be posted on the website for 90 days, including a link to the final agency decision for reinstatement;
- (3) Notice of revocation of a license or registration shall be posted on the website for three years from the date of revocation, including a link to a copy of the final agency decision;
- (4) The number of private reprimands issued by the Board, and the nature of the violations shall be posted on the website for the current and previous fiscal year, without identifying associated individual(s); and
- (5) The number of suspensions and revocations shall be posted on the website for the current and previous fiscal year, without reference to individuals receiving the discipline.

(b) The content of the private reprimand will remain private (not a public record), but the existence of a private reprimand will be reported in accordance with this Rule.

(c) When responding to public information requests about disciplinary actions against a specific licensee, the Board shall respond with a record of the date and type of discipline for the preceding five years.

(d) The Board will purge records of disciplinary actions from the licensee's file after five years, except that a permanent notation shall be made on the licensee's file of the date a license was revoked.

*Authority G.S. 93D-3; 93D-13.*

*This Section contains information for the meeting of the Rules Review Commission on May 16, 2013 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

### **RULES REVIEW COMMISSION MEMBERS**

#### **Appointed by Senate**

Addison Bell  
Margaret Currin  
Pete Osborne  
Bob Rippy  
Faylene Whitaker

#### **Appointed by House**

Ralph A. Walker  
Anna Baird Choi  
Jeanette Doran  
Garth K. Dunklin  
Stephanie Simpson

### **COMMISSION COUNSEL**

Joe DeLuca (919)431-3081  
Amanda Reeder (919)431-3079

### **RULES REVIEW COMMISSION MEETING DATES**

June 19, 2013      July 18, 2013  
August 15, 2013      September 19, 2013

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### **RULES REVIEW COMMISSION MEETING MINUTES**

***May 16, 2013***

The Rules Review Commission met on Thursday, May 16, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Baird Choi, Margaret Currin, Garth Dunklin, Pete Osborne, Bob Rippy, Stefanie Simpson, Ralph Walker and Faylene Whitaker.

Staff members present were: Joe DeLuca and Amanda Reeder, Commission Counsel; Dana Vojtko and Tammara Chalmers.

The meeting was called to order at 10:04 a.m. with Vice-Chairman Currin presiding. She reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

#### **APPROVAL OF MINUTES**

Vice-Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the April 18, 2013 meeting. There were none and the minutes were approved as distributed.

Vice-Chairman Currin welcomed and introduced OAH summer extern, Matthew Henry.

#### **FOLLOW-UP MATTERS**

##### **Department of Commerce – Division of Employment Security:**

04 NCAC 24E .0102, .0104 – The Commission unanimously approved the re-written rules.

##### **Office of Information Technology Services:**

09 NCAC 06A .0101, .0102, .0103 – There has been no response from the agency and no action was taken.

Chapter 06B .0101, .0102, .0103, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0313, .0314, .0315, .0316, .0401, .0402, .0403, .0404, .0405, .0501,

.0502, .0503, .0504, .0505, .0601, .0602, .0603, .0701, .0702, .0703, .0801, .0901, .0902, .1001, .1002, .1003, .1004, .1005, .1006, .1008, .1101, .1102, .1103, .1104, .1105, .1106, .1107, .1108, .1109, .1110, .1111, .1112, .1114, .1115, .1117, .1118, .1120, .1121, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1301, .1302, .1303, .1304, .1305, .1402 – There has been no response from the agency and no action was taken.

**Child Care Commission:**

10A NCAC 09 .3004 – The rule was returned to the agency at the agency's request.

**Hearing Aid Dealers and Fitters Board:**

21 NCAC 22F .0120, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209 – There was no action on these rules. The rules were published on the OAH website on May 13, 2013 pursuant to G.S. 150B-21.1(a3).

**Board of Physical Therapy Examiners:**

21 NCAC 48A .0107 – The Commission unanimously approved the re-written rule.

**LOG OF FILINGS**

Vice-Chairman Currin presided over the review of the log of permanent rules.

**Alcoholic Beverage Control Commission**

04 NCAC 02S .0228 was unanimously approved.

**Department of Commerce – Credit Union Division**

The rules were withdrawn by the agency.

**Criminal Justice Education and Training Standards Commission**

All rules were approved unanimously.

**Department of Transportation**

All rules were unanimously approved.

The Commission received more than 10 letters of objection to 19A NCAC 02D .0531 and .0532. Pursuant to G.S. 150B-21.3, these rules are now subject to legislative review and a delayed effective date.

**Board of Barber Examiners**

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning these rules because Allen, Pinnix & Nichols handles some matters for the board as outside counsel.

At the request of Bain Jones, the board's attorney the Commission extended the period of review on all the rules. They did so in order to give the agency additional time to understand staff's comments concerning the rules, make technical changes, make any other changes the agency wished to satisfy staff's concerns, and to prepare any other response to staff's comments.

**Board of Cosmetic Art Examiners**

All rules were unanimously approved.

**Board of Podiatry Examiners**

21 NCAC 52 .0208 was unanimously approved.

21 NCAC 52 .0211 - The Commission objected to this rule, finding the board does not have statutory authority to issue the unrestricted temporary license for individuals practicing solely on federal military installations proposed by paragraph (b) of the rule.

The agency requested that the Commission waive its Rule 26 NCAC 05 .0108 and review the rewritten rule at the meeting. Commissioner Dunklin moved to deny the request. The motion was seconded and unanimously approved.

**Building Code Council**

Prior to the review of the rules from the Building Code Council, Commissioner Osborne recused himself and did not participate in any discussion or vote concerning these rules because he owns a construction business.

All rules were unanimously approved.

**G.S 150B-19.1(h) RRC CERTIFICATION**

**Home Inspector Licensure Board**

At the request of the agency these rules were removed from the agenda.

**Criminal Justice Education and Training Standards Commission**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09B .0205, .0209, .0226, .0227, .0232, .0233, .0305, .0405, .0502; 09E .0105; and 09G .0311.

Trevor Allen and Richard Squires from the agency addressed the Commission.

**State Board of Education**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 16 NCAC 06D .0508 and 06G .0504.

The agency requested that the Commission defer action on rules 16 NCAC 6G .0312 and .0503 until further notice and remove the items from the agenda. The Commission agreed to this request.

Katie Cornetto from the agency addressed the Commission.

**COMMISSION BUSINESS**

Commissioners agreed to move the June meeting to Wednesday, June 19<sup>th</sup> to ensure there will be a quorum.

Commission Counsel gave the Commissioners updates on proposed legislation affecting rulemaking.

The meeting adjourned at 11:38 a.m.

The next scheduled meeting of the Commission is Wednesday, June 19th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings / Rules Division.

Respectfully Submitted,

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Dana Vojtko  
Publications Coordinator

Minutes approved by the Rules Review Commission:

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Margaret Currin, Vice-Chair

Rules Review Commission

Meeting

Please **Print** Legibly

**MAY 16, 2013**

Name	Agency
Betsy Sheickland	DOT - Transportation
Bob Hamilton	ABC Commission
Helen Vardi	DOT
BARRY GUPTON	NCDDI - NCBCC
Camilla F. McClain	NC Dept of Comm, DES
Thelma M. Hill	Commerce
Lynda Elliott	NC Bd of Cosmetic Arts
Ben F. Massey Jr	N.C. Board of P.T. Examiners
John Silverstein	" "
Jed Pizer	NC DOT Ferry Division
Richard Bradford	DOT - ITS
Rich Szoss	DOT - CTS STLS
Trevor Allen	" "
Penney DePas	NC Bd of Podiatry Examiners
Laura Crumpler	NC State Bd of Ed
Kate Conetto	" " " "
Lee Martin	" " " "
Betsy West	" " " "
Neilyn Gonzalez	Sterrills University of Barber and Cosmetology
Trace Garrett	NCHBA



**LIST OF APPROVED PERMANENT RULES  
May 16, 2013 Meeting**

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Dispensing Alcoholic Beverages: Production Identification</u>	04	NCAC	02S	.0228
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**COMMERCE - EMPLOYMENT SECURITY, DIVISION OF**

<u>Request for Documents and Records</u>	04	NCAC	24E	.0102
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<u>Payment of Fees</u>	04	NCAC	24E	.0104
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**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Responsibilities of the School Director</u>	12	NCAC	09B	.0202
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<u>Specialized Instructor Certification</u>	12	NCAC	09B	.0304
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<u>Comprehensive Written Exam - Specialized Instructor Training</u>	12	NCAC	09B	.0414
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<u>Satisfaction of Minimum Training - Specialized Instructor</u>	12	NCAC	09B	.0415
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<u>Specialized Explosives and Hazardous Materials Instructor...</u>	12	NCAC	09B	.0417
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**TRANSPORTATION, DEPARTMENT OF**

<u>Free Operations</u>	19A	NCAC	02D	.0531
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<u>Toll Operations</u>	19A	NCAC	02D	.0532
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**COSMETIC ART EXAMINERS, BOARD OF**

<u>Water Supply</u>	21	NCAC	14H	.0301
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<u>Revocation of Licenses and Other Disciplinary Measures</u>	21	NCAC	14P	.0108
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<u>Permanent Records, Forms and Documentation</u>	21	NCAC	14T	.0502
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<u>Cosmetology Curriculum</u>	21	NCAC	14T	.0602
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<u>Apprentice Cosmetology Curriculum</u>	21	NCAC	14T	.0603
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<u>Natural Hair Care Styling Curriculum</u>	21	NCAC	14T	.0606
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<u>Instruction Guidelines</u>	21	NCAC	14T	.0612
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<u>School Operations/Licensure Maintenance</u>	21	NCAC	14T	.0701
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**PHYSICAL THERAPY EXAMINERS, BOARD OF**

<u>Identification Requirements</u>	21	NCAC	48A	.0107
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**PODIATRY EXAMINERS, BOARD OF**

<u>Continuing Education</u>	21	NCAC	52	.0208
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**BUILDING CODE COUNCIL**

<u>2012 NC Energy Conservation Code/Building Envelope Requir...</u>	502.1.2, 502.2(1), 502.2(2)
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<u>2012 NC Residential Code/Exterior Walls</u>	Table R302.1
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<u>2012 NC Residential Code/Ground Vapor Retarder</u>	R408.2
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<u>2012 NC Residential Code/Minimum Width of Concrete or Mas...</u>	Table R403.1
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<u>2012 NC Energy Conservation, Residential Codes/Duct Leaka...</u>	Chapter 4, Chapter 11
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**LIST OF CERTIFIED RULES  
May 16, 2013 Meeting****CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Basic Law Enforcement Training</u>	12 NCAC 09B .0205
<u>Criminal Justice Instructor Training</u>	12 NCAC 09B .0209
<u>Specialized Firearms Instruction Training</u>	12 NCAC 09B .0226
<u>Specialized Driver Instructor Training</u>	12 NCAC 09B .0227
<u>Specialized Subject Control Arrest Techniques Instructor ...</u>	12 NCAC 09B .0232
<u>Specialized Physical Fitness Instructor Training</u>	12 NCAC 09B .0233
<u>Terms and Conditions of Specialized Instructor Certification</u>	12 NCAC 09B .0305
<u>Completion of Basic Law Enforcement Training Course</u>	12 NCAC 09B .0405
<u>Terms and Conditions of School Director Certification</u>	12 NCAC 09B .0502
<u>Minimum Training Specifications: Annual In-Service Training</u>	12 NCAC 09E .0105
<u>Terms and Conditions of Specialized Instructor Certification</u>	12 NCAC 09G .0311

**STATE BOARD OF EDUCATION**

<u>NC General Assembly's Read to Achieve Program</u>	16 NCAC 06D .0508
<u>High School Accreditation Framework</u>	16 NCAC 06G .0504

*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	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Bobby Warren Joyner T/A Hillsdale Club	12 ABC 06153	11/06/12	
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	12 ABC 07260	12/11/12	
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Christopher A. Field v. Private Protective Services Board	12 DOJ 07548	12/19/12	
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Sabrina Richelle Wright v. Sheriffs' Education and Training Standards Commission	12 DOJ 08048	01/16/13	
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Brenda C. Hemphill v. Department of Treasurer, Retirement System Division	11 DST 10252	09/26/12	
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James A Layton v. Department of State Treasurer	11 DST 12958	11/30/12	
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Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
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**DEPARTMENT OF INSURANCE**

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Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
Teresa J. Barrett v. DENR	10 OSP 04754	10/22/12	27:16 NCR 1726
Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
Steven M Mukumgu v. DAG	10 OSP 05199	08/07/12	
Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
Brenda D. Triplett v. DOC	11 OSP 4605	03/20/12	27:06 NCR 669
Tommie J. Porter v. DOC	11 OSP 5352	06/05/12	27:06 NCR 678
Fortae McWilliams v. DOC	11 OSP 06236	05/30/12	27:06 NCR 684
Kimberly F. Loflin v. DOT, DMV	11 OSP 06762	07/10/12	
John Hardin Swain v. DOC, Hyde Correctional Inst.	11 OSP 07956	04/23/12	27:06 NCR 693
John Fargher v. DOT	11 OSP 08111	04/18/12	
Tammy Cagle v. Swain County, Department of Social Services	11 OSP 10307	09/26/12	27:16 NCR 1747
Doris Wearing v. Polk Correctional Inst. Mr. Solomon Superintendent	11 OSP 11023	10/19/12	
Fredericka Florentina Demmings v. County of Durham	11 OSP 11498	06/12/12	
Derick A Proctor v. Crime Control and Public Safety, State Capital Police Division	11 OSP 11499	12/06/12	
David B. Stone v. Department of Cultural Resources	11 OSP 11926	08/10/12	27:12 NCR 1245
Pattie Hollingsworth v. Fayetteville State University	11 OSP 12152	02/27/13	
William C. Spender v. Dept. of Agriculture & Consumer Services, Veterinary Division	11 OSP 12479	04/27/12	
Terrence McDonald v. NCSU	11 OSP 12682	05/21/12	
Terrence McDonald v. DHHS, Emery Milliken	11 OSP 12683	05/18/12	
Phyllis Campbell v. DOC	11 OSP 13381	08/27/12	27:15 NCR 1579
Raeford Quick v. DOC	11 OSP 14436	05/22/12	
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Marva G. Scott v. Edgecombe County Social Services Board (Larry Woodley, Fate Taylor, Ernest Taylor, Viola Harris and Evelyn Johnson), Edgecombe County Commissioners and Edgecombe county manager, Lorenzo Carmon	12 OSP 00430	12/20/12	27:22 NCR 2152



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Bon-Jerald Jacobs v. Pitt County Department of Social Services	12 OSP 00634	06/12/12	
Sherry Baker v. Department of Public Safety	12 OSP 00841	10/09/12	
Diane Farrington v. Chapel Hill-Carrboro City Schools	12 OSP 01300	07/12/12	
Cynthia Moats v. Harnett County Health Dept	12 OSP 01536	08/10/12	
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Clark D. Whitlow v. UNC-Chapel Hill	12 OSP 01740	06/12/12	
Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12	
Ricco Donnell Boyd v. NC A&T University	12 OSP 02219	01/31/13	
Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
Larry Batton v. Dept of Public Safety	12 OSP 02320	02/18/13	
Sheila Bradley v. Community College System Sandhills Community College	12 OSP 02473	06/06/12	
Brenda S. Sessoms v. Department of Public Safety	12 OSP 02507	07/25/12	
Donnette J Amaro v. Onslow County Department of Social Services	12 OSP 02578	11/21/12	
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James B. Bushardt III v. DENR, Division of Water Quality	12 OSP 02872	02/19/13	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 02950	08/01/12	
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Ronald Wayne Crabtree Jr., v. Butner Public Safety	12 OSP 03846	10/09/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 03910	10/22/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 04107	10/22/12	
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Audrey Melissa Tate v. Department of Public Safety, Division of Juvenile Justice	12 OSP 05182	08/03/12	
Jonathan Ashley Stephenson v. UNC-Chapel Hill	12 OSP 05223	01/15/13	
Charles E. Rouse v. DMV, Dist Sup Stacey Wooten	12 OSP 05315	09/05/12	
Edwards Robert Esslinger v. DPI	12 OSP 05459	09/12/12	
Barry L. Pruett v. DMV, Driver and Vehicle Services	12 OSP 05785	09/11/12	
Joseph Sandy v. UNC Chapel Hill	12 OSP 06152	09/05/12	
Natalie Wallace-Gomes v. Winston Salem State University	12 OSP 06309	10/22/12	
Paul Jeffrey Treadway v. Department of Public Safety, Division of Adult Supervision	12 OSP 06634	12/18/12	
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
Shirley M. Parker v. Department of Public Safety Caledonia Correctional Institution	12 OSP 07617	04/04/13	
Christopher Rashad Pippins v. PCS BOE PCS Facility Services	12 OSP 07744	10/18/12	
Wanda Edwards v. UNC School of Dentistry	12 OSP 07851	01/09/13	
Gary C. Clement v. DHHS	12 OSP 08105	11/14/12	
Oswald Woode v. DHHS, Central Regional Hospital	12 OSP 08664	01/09/13	
Gary C. Clement v. DHHS	12 OSP 09581	01/04/13	

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Jerry Lamont Lindsey v. Department of Revenue	11 REV 1914	07/25/12	
Thomas E Gust v. Department of Revenue	11 REV 13557	08/15/12	
James Cooper III Sui Juris v. Department of Revenue	11 REV 13792	11/14/12	
Brian Daniel Reeves v. Department of Revenue	12 REV 01539	06/04/12	
David Roser v. Department of Revenue	12 REV 01694	09/10/12	
Ronnie Lee Nixon v. Department of Revenue	12 REV 01881	10/03/12	
William S. Hall v. Department of Revenue	12 REV 04115	08/27/12	
Noah D. Sheffield v. Department of Revenue	12 REV 07074	11/14/12	
Jenny M. Sheffield v. Department of Revenue	12 REV 07075	11/14/12	
Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	

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Michael Anthony Farrow-Bey v. Department of Secretary of State	12 SOS 07865	12/14/12	
Jennifer Lynn Pierce-Founder Share Our Shoes v. Secretary of State's Office	12 SOS 01653	07/11/12	

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Onyedika C Nwaebube v. UNC Hospitals	12 UNC 01110	06/25/12	
Nephathiya Wade v. UNC Hospitals Chapel Hill NC	12 UNC 01209	07/17/12	
Fredia R Wall v. UNC Physicians & Associates	12 UNC 02256	10/04/12	
Carolyn A. Green v. UNC Hospitals	12 UNC 02259	09/19/12	
Annie E. Jarrett v. UNC Hospitals	12 UNC 03716	10/09/12	
Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12	
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12	
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12	

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**CONTESTED CASE DECISIONS**

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David Ryan Pierce v. UNC Hospitals, Patient Account Services, SODCA	12 UNC 05306	03/20/13
Shonte Hayes v. UNC P&A	12 UNC 05746	09/10/12
Tracy A. Spaine (Currier) v. UNC Hospitals	12 UNC 06822	11/06/12

**WILDLIFE RESOURCES COMMISSION**

People for the Ethical Treatment of Animals, Inc., v. NC Wildlife Resources Commission	12 WRC 07077	11/13/12	27:22 NCR 2165
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