

NORTH CAROLINA REGISTER

VOLUME 28 • ISSUE 17 • Pages 2040 – 2180

March 3, 2014

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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.

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
Dana Vojtko, Publications Coordinator dana.vojtko@oah.nc.gov (919) 431-3075
Tammara Chalmers, Editorial Assistant tammara.chalmers@oah.nc.gov (919) 431-3083

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Amanda Reeder, Commission Counsel amanda.reeder@oah.nc.gov (919) 431-3079
Abigail Hammond, Commission Counsel abigail.hammond@oah.nc.gov (919) 431-3076
Julie Brincefield, Editorial Assistant julie.brincefield@oah.nc.gov (919) 431-3073

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919) 807-4740

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Amy Bason amy.bason@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Erin L. Wynia ewynia@nclm.org

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

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2014 – December 2014

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
28:13	01/02/14	12/06/13	01/17/14	03/03/14	03/20/14	05/01/14	05/2014	09/29/14
28:14	01/15/14	12/19/13	01/30/14	03/17/14	03/20/14	05/01/14	05/2014	10/12/14
28:15	02/03/14	01/10/14	02/18/14	04/04/14	04/21/14	06/01/14	01/2015	10/31/14
28:16	02/17/14	01/27/14	03/04/14	04/21/14	05/20/14	07/01/14	01/2015	11/14/14
28:17	03/03/14	02/10/14	03/18/14	05/02/14	05/20/14	07/01/14	01/2015	11/28/14
28:18	03/17/14	02/24/14	04/01/14	05/16/14	05/20/14	07/01/14	01/2015	12/12/14
28:19	04/01/14	03/11/14	04/16/14	06/02/14	06/20/14	08/01/14	01/2015	12/27/14
28:20	04/15/14	03/25/14	04/30/14	06/16/14	06/20/14	08/01/14	01/2015	01/10/15
28:21	05/01/14	04/09/14	05/16/14	06/30/14	07/21/14	09/01/14	01/2015	01/26/15
28:22	05/15/14	04/24/14	05/30/14	07/14/14	07/21/14	09/01/14	01/2015	02/09/15
28:23	06/02/14	05/09/14	06/17/14	08/01/14	08/20/14	10/01/14	01/2015	02/27/15
28:24	06/16/14	05/23/14	07/01/14	08/15/14	08/20/14	10/01/14	01/2015	03/13/15
29:01	07/01/14	06/10/14	07/16/14	09/02/14	09/22/14	11/01/14	01/2015	03/28/15
29:02	07/15/14	06/23/14	07/30/14	09/15/14	09/22/14	11/01/14	01/2015	04/11/15
29:03	08/01/14	07/11/14	08/16/14	09/30/14	10/20/14	12/01/14	01/2015	04/28/15
29:04	08/15/14	07/25/14	08/30/14	10/14/14	10/20/14	12/01/14	01/2015	05/12/15
29:05	09/02/14	08/11/14	09/17/14	11/03/14	11/20/14	01/01/15	01/2015	05/30/15
29:06	09/15/14	08/22/14	09/30/14	11/14/14	11/20/14	01/01/15	01/2015	06/12/15
29:07	10/01/14	09/10/14	10/16/14	12/01/14	12/22/14	02/01/15	05/2016	06/28/15
29:08	10/15/14	09/24/14	10/30/14	12/15/14	12/22/14	02/01/15	05/2016	07/12/15
29:09	11/03/14	10/13/14	11/18/14	01/02/15	01/20/15	03/01/15	05/2016	07/31/15
29:10	11/17/14	10/24/14	12/02/14	01/16/15	01/20/15	03/01/15	05/2016	08/14/15
29:11	12/01/14	11/05/14	12/16/14	01/30/15	02/20/15	04/01/15	05/2016	08/28/15
29:12	12/15/14	11/20/14	12/30/14	02/13/15	02/20/15	04/01/15	05/2016	09/11/15

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.

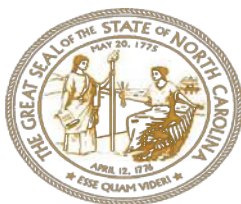
NOTICE OF TEXT

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

February 7, 2014

EXECUTIVE ORDER NO. 42

NOTICE OF TERMINATION OF THE STATE OF EMERGENCY DECLARED BY EXECUTIVE ORDER 40 AND THE TEMPORARY SUSPENSION OF TRANSPORTATION REGULATIONS IN EXECUTIVE ORDER 41

WHEREAS, Executive Order No. 40 was issued on January 29, 2014, declaring a state of emergency in the State of North Carolina due to a major winter storm; and

WHEREAS, Executive Order No. 41 was issued on January 29, 2014, which waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials. The order with the concurrence of the Council of State also temporarily suspended size and weight restrictions for vehicles used for utility restoration and carrying essentials on the State's interstate and intrastate highways due to anticipated damage from the winter storm; and

WHEREAS, the conditions that required the declaration of the States of Emergency have ended.

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

Pursuant to N.C.G.S. § 166A-19.20(c) the States of Emergency that were declared by Executive Orders 40 and 41 are hereby terminated as of 11:59 p.m., February 7, 2014.

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 7th day of February in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Secretary of State





State of North Carolina

PAT McCrory
GOVERNOR

February 11, 2014

EXECUTIVE ORDER NO. 43

DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

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

Section 1.

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the approach of winter storm Pax that will impact a significant portion of this State. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the entire State of North Carolina.

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

Section 5.

I further direct Secretary Perry or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

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) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary 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 assure proper implementation of this declaration.

Section 7.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 8.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 9.

This declaration 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 11th day of February in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Chief Deputy Secretary of State





State of North Carolina

PAT McCRORY
GOVERNOR

February 11, 2014

EXECUTIVE ORDER NO. 44

TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES AND TRANSPORTING ESSENTIALS

WHEREAS, due to the approach of winter storm Pax, vehicles bearing equipment and supplies for utility restoration and debris removal, carrying essentials such as food and medicine, transporting livestock and poultry and feed for livestock and poultry need to be moved on the highways of North Carolina; and

WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists due to the approaching winter storm and its likely impact in this State. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina; and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, livestock and poultry feed, and medical supplies to residential and commercial establishments is essential before, during and after the winter storm and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well-being; and

WHEREAS, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116 and 20-118. I have further found that citizens in this State may suffered losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

WHEREAS, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic

loss of livestock or poultry, the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock and poultry; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, transporting livestock and poultry and for vehicles used in the restoration of utility services.

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.

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials and for equipment for any debris removal. The Department of Public Safety shall temporarily suspend weighing pursuant to N.C.G.S. § 20-118.1 vehicles used to transport livestock and poultry in the emergency area.

Section 3.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on

all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

Section 4.

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 5.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 6.

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 8.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, carrying feed for livestock and poultry, or transporting livestock and poultry in the State of North Carolina.

Section 9.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

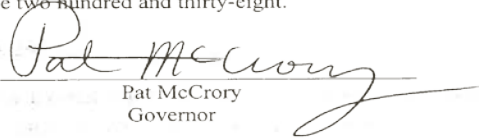
Section 10.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

Section 11.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 11th day of February in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred and thirty-eight.


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
chief deputy Secretary of State



**NC Board of Examiners for Engineers and Surveyors
Rescheduled Public Hearing**

The North Carolina Board of Examiners for Engineers and Surveyors published a notice in the North Carolina Register, January 15, 2014, pages 1623 – 1637, with a rulemaking public hearing scheduled for February 13, 2014. Due to adverse weather, the board meeting and public hearing for February 13, 2014 were cancelled. The public hearing is rescheduled for Thursday, March 27, 2014 at 9:00 a.m. at the board office located at 4601 Six Forks Road, Suite 310, Raleigh, NC. The comment period is extended to March 27, 2014.

**NOTICE OF FILING OF AN APPLICATION FOR PERMANENT VARIANCE
FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

The Commissioner of Labor of North Carolina ("Commissioner") hereby gives notice that, in accordance with N.C. Gen. Stat. § 95-132(b), Plastic Packaging, Inc. has filed, and the Commissioner has received, an application for a permanent variance from certain Occupational Safety and Health ("OSH") Standards.

Summary of the application: On December 18, 2013, Plastic Packaging, Inc. filed an application for a permanent variance with the Commissioner of the North Carolina Department of Labor. If granted, the variance will allow Plastic Packaging, Inc. to use a combination of lock-out/tag-out procedures, insulating blankets, safe guards for personnel protection, qualified persons, machine guarding and employee training in lieu of moving an existing 24" wide, belt-driven, box conveyor located 32" off of the floor that runs along a wall and has a number of electrical devices (circuit breaker panels and disconnect switches) located on the wall above the conveyor. All of the electrical devices are accessible within arm's reach of the conveyor. Unless the variance is granted, the location of the conveyor system adjacent to the wall and in front of the electrical devices is prohibited by OSH General Industry Standard, 29 CFR 1910.303(g)(1), Space About Electric Equipment. 29 CFR 1910 is adopted by the Commissioner, as required by N.C. Gen. Stat. § 95-131, through incorporating 29 CFR 1910 by reference into the North Carolina Administrative Code at 13 NCAC 07F .0101.

Section of the Act under which application was filed: N.C. Gen. Stat. § 95-132(b).

Interested Persons: All interested persons are invited to submit written data, views, or arguments regarding the application to Jane Ammons Gilchrist, Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; via facsimile at (919) 733-4235; or via electronic mail at jane.gilchrist@labor.nc.gov. Written data, views, or arguments submitted by interested persons shall include a reference to the specific variance request, the complete name(s) and contact information for the individual(s) submitting the information and must be received by **5:00 p.m. on March 24, 2014**.

Affected Employers and Employees: Employers and employees affected by the application may request a hearing on the application by submitting a written request for hearing to Jane Ammons Gilchrist, Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; via facsimile at (919) 733-4235; or via electronic mail at jane.gilchrist@labor.nc.gov. In accordance with 13 NCAC 07A .0711, requests for hearing shall include: a concise statement of facts showing how the employer or employee would be affected by the relief applied for; a specification of any statement or representation in the application which is denied; a concise summary of the evidence that would be adduced in support of each denial; and any views or arguments on any issue of fact or law presented. Complete requests for hearing must be received by **5:00 p.m. on March 24, 2014**.

Jane Ammons Gilchrist
General Counsel/Agency Rulemaking Coordinator

North Carolina Department of Health and Human Services
North Carolina Medical Care Commission
Notice of Receipt of Periodic Report

In accordance with GS131E-192.9 Certificate of Public Advantage, Periodic Reports the Department of Health and Human Services does hereby give notice of receipt of the Periodic Report dated September 30, 2013 (the "Report"). The Report relates to the Third Amended Certificate of Public Advantage dated August 31, 2011 and corrected on January 3, 2012 as issued to Mission Health System.

In accordance with GS131E-192.9 the public has 30 days from the date of this notice March 3, 2014 to file written comments on the Report and on the benefits and disadvantages of continuing the Certificate of Public Advantage.

A copy of the Report is available via electronic means upon request. Requests for a copy of the Report and comments thereon should be addressed to the following:

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

With a copy to:

KD Sturgis, Special Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, North Carolina 27602
ksturgis@ncdoj.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 21 – OCCUPATIONAL LICENSING BOARD AND COMMISSIONS

CHAPTER 57 – APPRAISAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Appraisal Board intends to adopt the rule cited as 21 NCAC 57B .0614, amend the rules cited as 21 NCAC 57A .0101, .0102, .0201, .0204, .0206, .0210, .0301-.0303, .0407; 57B .0102, .0201-.0203, .0207-.0209, .0301-.0303, .0306-.0307, .0401, .0603-.0605; 57C .0101; 57D .0101, .0202, .0303, .0310, and repeal the rule cited as 21 NCAC 57B .0104.

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.ncappraisalboard.org

Proposed Effective Date: July 1, 2014

Public Hearing:

Date: May 6, 2014

Time: 9:00 a.m.

Location: 5830 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: Most changes are the result of S.L. 2013-403, which reinstituted the category of licensed residential, changed some requirement for upgrading a credential, and added a surety bond requirement for appraisal management companies. Staff and stakeholders no longer use the term "precertification" when referring to required education; the term now generally used is "qualifying", so changes are proposed to bring the rule into conformity with common usage. Other changes are proposed as a result of input from stakeholders. USPAP requires appraisers to keep records only for 5 years, but the agency has received complaints regarding appraisal performed beyond that date. An amendment to the rules would make it clear that the agency will not accept a complaint if the applicable record keeping requirement has expired. Other amendments are made for clarification.

For proposed new rule 21 NCAC 57B .0614, the Appraisal Board staff has been teaching the trainee/supervisor class since 2005. Pursuant to S.L. 2013-403, both trainees and supervisors will be required to take the class. The agency will be turning the class over to private education providers to teach, but will maintain control over who can teach the course as well as the course content.

For the repeal of 21 NCAC 57B .0104, the Appraiser Qualifications Board of the Appraisal Foundation no longer allows states to exempt appraisers from taking any of the qualifying courses. This rule is unnecessary.

Comments may be submitted to: Roberta Ouellette, 5830 Six Forks Road, Raleigh, NC 27609; phone (919) 870-4854; fax (919) 870-4859; email Roberta@ncab.org

Comment period ends: May 6, 2014

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal impact (check all that apply).

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

SUBCHAPTER 57A – REGISTRATION LICENSING, CERTIFICATION AND PRACTICE

SECTION .0100 – APPLICATION FOR REAL ESTATE APPRAISER LICENSE OR CERTIFICATE

21 NCAC 57A .0101 FORM

A person who wishes to file an application for a real estate trainee registration or an appraiser license or certificate may obtain the required form upon request to the Board. The form calls for information such as the applicant's name and address, the applicant's social security number, a passport size photograph of the applicant, places of residence and employment, education, and such other information as may be necessary to identify the applicant and determine his

qualifications and fitness for ~~registration~~ registration, licensure, or certification.

Authority G.S. 93E-1-6(a); 93E-1-10.

21 NCAC 57A .0102 FILING AND FEES

(a) Each application for ~~registration~~ registration, licensure, or certification shall be accompanied by the required application fee. An additional fee may be charged to defray the cost of any competency examination administered by a private testing service. This additional fee shall be no more than the fee set by the private testing agency. The Board may reject and return to the applicant any application which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.

(b) The application fee shall be that prescribed in G.S. 93E-1-6(b).

(c) Payment of application fees shall be made by certified check, bank ~~check~~ check, or money order payable to the North Carolina Appraisal Board.

Authority G.S. 93E-1-6; 93E-1-10.

**SECTION .0200 – TRAINEE REGISTRATION,
APPRAISER LICENSING AND CERTIFICATION**

**21 NCAC 57A .0201 QUALIFICATIONS FOR
TRAINEE REGISTRATION AND APPRAISER
LICENSURE AND CERTIFICATION**

(a) Applicants for trainee registration, licensure as a licensed residential real estate appraiser, and for certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 and in this Section.

(b) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in 21 NCAC 57B .0101 or education found by the Board to be equivalent to such courses. Applicants for trainee registration must possess a high school diploma or its equivalent.

(c) Applicants for licensure as a licensed residential real estate appraiser shall have completed 150 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicant for licensure as a licensed residential real estate appraiser must hold an Associate's degree, or higher, from an accredited college, community college or university. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

~~(e)(d)~~ Applicants for certification as a certified residential real estate appraiser shall have completed 200 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified residential real estate appraiser must hold a Bachelor's degree, ~~an Associate's degree~~, or higher,

from an accredited college, ~~junior college~~, community college, or university. ~~In lieu of the Associate's degree requirements, applicants shall have successfully completed 21 semester credit hours in the following collegiate subject matter courses from an accredited college or university: English composition; principles of economics (macro or micro); finance; algebra; geometry or higher mathematics; statistics; introduction of computers, including word processing and spreadsheets; and business or real estate law.~~ Applicants shall have obtained at least 2,500 hours of appraisal experience acquired over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

~~(d)(e)~~ Applicants for certification as a certified general real estate appraiser shall have completed 300 hours of education as set forth in 21 NCAC 57B .0103 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified general estate appraiser must hold a Bachelor's degree or higher from an accredited college or university. ~~In lieu of the Bachelor's degree requirements, applicants shall have successfully completed 30 semester credit hours in the following collegiate subject matter courses from an accredited college university: English composition, micro economics, macro economics, finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, business or real estate law, and two elective courses in accounting, geography, business management or real estate.~~ Applicants shall have obtained at least 3,000 hours of appraisal experience acquired over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of special use properties such as schools, churches, or hospitals in which the income approach is not applicable or of improved properties in which the income approach was utilized in the appraisal process.

~~(e)(f)~~ Applicants for licensure or certification who are currently registered trainees must submit a copy of their complete appraisal log. Applicants for certification who are currently licensed or certified appraisers must submit an appraisal log showing that they possess the requisite amount and length of experience as set forth in Paragraphs (c) and (d) of this Rule. All applicants shall provide to the Board copies of appraisal reports and work files in support of experience credit. In order for an appraisal to be given experience credit, it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

~~(f)(g)~~ When a trainee or a licensed real estate appraiser becomes a certified real estate appraiser, his or her previous registration or licensure shall be immediately canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his or her previous certification shall be immediately canceled by the Board.

~~(g)~~(h) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee shall be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a ~~registration~~ registration, license, or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

~~(h)~~(i) An applicant may request that his or her application be withdrawn at any time before final action is taken by the Appraisal Board on the application.

~~(i)~~(j) If an applicant has a current open complaint before the North Carolina Appraisal Board or an appraiser licensing board from any other state, or if the applicant has pending criminal charges in this or any state, the application shall be accepted but no further action shall be taken on the application until the complaint or criminal charges are resolved. For the purposes of this Section, criminal charges do not include speeding tickets or traffic infractions.

Authority G.S. 93E-1-6(a); 93E-1-10.

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All registered trainees, real estate appraiser ~~licensees~~ licensees, and certificate holders shall, upon the renewal of their registration, ~~license~~ license, or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, ~~licensee~~ licensee, and certificate holder who must complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose ~~registered, licensed or certified~~ status has been upgraded to the level of licensed residential, certified—~~residential~~ residential, or certified general appraiser since the issuance or most recent renewal of their registration, ~~license~~ license, or certificate, and courses taken to satisfy the requirements of a higher level of certification shall not be applied toward the continuing education requirement. Trainees, ~~licensees~~ licensees, and certificate holders shall not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application

of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, ~~licensee~~ licensee, or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, ~~licensee~~ licensee, and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, complete the seven hour National USPAP update course between October 1 of an odd-numbered year and June 1 of an even numbered year, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent. USPAP is updated every even numbered year, and each trainee, ~~licensee~~ licensee, and certificate holder shall take the most recent USPAP update course prior to June 1 of every even numbered year.

(e) A ~~trainee, licensee~~ trainee, licensee, or certificate holder who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a certificate of course completion to each trainee, ~~licensee~~ licensee, and certificate holder successfully completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, ~~license~~ license, or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, ~~license~~ license, or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, ~~license~~ license, or certificate shall expire and the trainee, ~~licensee~~ licensee, or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, ~~licensee~~ licensee, or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, ~~licensee~~ licensee, or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, ~~licensee~~ licensee, or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal

education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit are deemed to have taken an equivalent course and are not subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, ~~licensee~~ licensee, or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every two years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and shall only be granted for a minimum of 7 hours.

(h) A trainee, ~~licensee~~ licensee, or certificate holder may receive continuing education credit by taking any of the Board-approved precertification courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. Trainee, ~~licensees~~ licensees, and certificate holders who wish to use a precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A ~~licensee or~~ certificate holder who resides in another state, is currently credentialed in another state and is active on the National Registry in another state may satisfy the requirements of this ~~section~~ Section, ~~other than the seven hour National USPAP update course requirement in Paragraph (d) of this Rule,~~ by providing a current letter of good standing from another state showing that the licensee or certificate holder has met all continuing education requirements in the other ~~state, including the most recent edition of USPAP.~~ state. A licensee or certificate holder who became licensed in North Carolina by licensure or certification with another state and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the appraiser moved to North Carolina on or after January 1 of an odd numbered year. If an appraiser was a resident of this state before January 1 of an odd-numbered year, the appraiser must comply with the requirements of this section regardless of how the license or certificate was obtained.

(j) A trainee, ~~licensee~~ licensee, or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year is allowed to renew his or her registration, ~~license~~ license, or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education must be completed within 180 days of when the trainee, ~~licensee~~ licensee, or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days is grounds for revocation. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

Authority G.S. 93B-15; 93E-1-7(a); 93E-1-10.

21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE

(a) Expired registrations, ~~licenses~~ licenses, and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7 and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If a ~~registration~~ registration, license, or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the ~~registration~~ registration, license, or certificate been continuously renewed. In addition, the Board may consider whether the applicant for reinstatement has any prior or current disciplinary actions, and may examine the applicant's fitness for ~~registration~~ registration, licensure, or certification before granting the request for reinstatement. A completed application for reinstatement must be received by June 1 of the second 12 months or it shall not be accepted.

(c) An application for reinstatement shall not be granted if the ~~registration~~ registration, license, or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

(e) A trainee or appraiser whose ~~registration~~ registration, license, or certification has expired and who is returning from active military duty may renew his or her ~~registration~~ registration, license, or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee or ~~certificate holder~~ appraiser renews the ~~registration~~ registration, license, or certificate within 180 days of when the trainee or ~~certificate holder~~ appraiser returns from active duty.

~~(f) A license holder whose license has been expired for more than 12 months may not apply for reinstatement.~~

Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser who does not reside in North Carolina and who is licensed or certified by the appraiser licensing or certifying agency in another state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a completed application accompanied by the fee prescribed in G.S. 93E-1-9(c) and otherwise satisfying the Appraisal Board as to his or her qualifications and eligibility for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. The fee must be paid by money order, certified ~~check~~ check, or cashier's check. The Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other

state, and may consider all other information outlined in Rule .0202 of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment. Such request for extension must be received before the original temporary practice permit expires or it shall not be granted.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina trainee or licensed or certified appraiser. Any appraisal report for an appraisal of property located in North Carolina must contain a copy of the temporary practice number for that assignment.

(e) ~~A trainee may not apply for a temporary practice permit. The supervising appraiser for the trainee must be a North Carolina licensed or certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are licensed and regulated by a state agency to perform real estate appraisals under the supervision of a certified appraiser. If the supervisor is not certified in North Carolina, the supervisor is not required to comply with the provisions of 21 NCAC 57A .0407 in order to supervise a trainee who is appraising in this state pursuant to the temporary practice permit. The supervisor shall actively and personally supervise the trainee on the assignment, and must accompany the trainee on all inspections of property located in this state for the assignment. If a trainee does enter the state to inspect a property located in this state, the trainee must be accompanied by the trainee's supervising appraiser. The trainee's supervisor must be a North Carolina licensed or certified real estate appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must receive a temporary practice permit for the assignment.~~

(f) An applicant for a temporary practice permit shall not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board. If an applicant does begin work before the permit is issued, the temporary practice permit shall be denied.

Authority G.S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a).

SECTION .0300 – APPRAISER EXAMINATIONS

21 NCAC 57A .0301 TIME AND PLACE

(a) Applicants who have completed the education and experience requirements for licensure or certification as set forth in 21 NCAC 57A .0201 shall be issued an examination approval form. The examination approval form is valid for ~~three~~ five attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for appraiser licenses or certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser educational qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions is grounds for denial, suspension or revocation of a certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0302 SUBJECT MATTER AND PASSING SCORES

(a) The examination for licensure as a licensed residential real estate appraiser or for certification as a certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subject areas listed in Paragraph (a) of this Rule, the examination for certification as a certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;
- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) The testing service shall inform applicants whether they have passed the examination, and shall inform them of their actual score only if they fail the examination.

Authority G.S. 93E-1-6(c); 93E-1-10.

21 NCAC 57A .0303 RE-EXAMINATION

(a) Applicants for an appraiser license or certificate who fail to pass or appear for any examination for which the applicant has been scheduled by the Board-approved private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

(b) Applicants may take the examination no more than ~~three~~ five times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by the ~~third~~ fifth attempt at the examination or within one year of the date of issuance of the examination approval form, the application is cancelled.

Authority G.S. 93E-1-6; 93E-1-10.

SECTION .0400 – GENERAL APPRAISAL PRACTICE

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him at any one time. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience to upgrade, a certified residential appraiser may add another trainee. A certified general appraiser may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision;
- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) reviews and signs the trainee's log of appraisals, which must be updated at least every 30 days. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and

(7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years. For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a ~~revocation~~ revocation, or any other action that affects a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee must maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days.

(d) All trainees and any ~~an~~ appraiser who wishes to supervise a trainee must attend an education program ~~offered by the Appraisal Board~~ regarding the role of a supervisor ~~either before such supervision begins, or within 90 days after such supervision begins. If the supervisor does not take the class within 90 days after the supervision begins, a trainee may no longer work under the supervision of that supervisor until the class is taken. This course shall be taught only by instructors approved by the Board in accordance with 21 NCAC 57B .0614. A trainee shall not receive experience credit for any appraisals performed before the trainee has taken the course.~~

(e) Trainees must assure that the Appraisal Board has received ~~the supervisor has completed and sent~~ the Supervisor Declaration Form ~~to the Appraisal Board~~ on or before the day the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted

in the report as having provided such assistance, the appraiser signing the report must have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential must be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them must be declared as the trainee's supervisor before the report is signed.

Authority G.S. 93E-1.6.1; 93E-1-10.

SUBCHAPTER 57B – REAL ESTATE APPRAISAL EDUCATION

SECTION .0100 – COURSES REQUIRED FOR REGISTRATION, LICENSURE AND CERTIFICATION

21 NCAC 57B .0102 LICENSED RESIDENTIAL AND CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for licensure as a licensed residential real estate appraiser or for certification as a certified residential real estate appraiser shall complete a minimum of 200 hours of ~~precertification~~ qualifying education, consisting of the following:

- (1) A minimum of 30 hours in basic appraisal principles;
- (2) A minimum of 30 hours in basic appraisal procedures;
- (3) a minimum of 15 hours in residential market analysis and highest and best use;
- (4) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (6) A minimum of 15 hours in Residential Report Writing and Case Studies;
- (7) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP);
- (8) A minimum of 15 hours in Statistics, Modeling and Finance;
- (9) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (10) A minimum of 20 hours of appraisal subject matter electives.

Credit for these courses must be earned from a Board-approved course sponsor or school.

(b) An applicant who is currently registered with the Board as a trainee shall satisfy the educational requirements to become a licensed or certified residential real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (2) A minimum of 30 Hours in Residential Sales Comparison and Income Approaches;
- (3) A minimum of 15 hours in Residential Report Writing and Case Studies;

- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (6) A minimum of 20 hours of appraisal subject matter electives.

(c) An applicant who was licensed as a licensed residential appraiser before January 1, 2015 ~~is currently a licensed residential appraiser~~ shall satisfy the educational requirements to become a certified residential real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in Statistics, Modeling and Finance;
- (2) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (3) A minimum of 20 hours of appraisal subject matter electives.

(d) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential real estate appraiser must have completed all required courses no earlier than January 1, 2008.

(e) An applicant who is currently registered by the Board as a trainee or who is currently licensed by the Board as a licensed residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure license, or certification no earlier than January 1, 2008.

(f) The Basic Appraisal Principles, Basic Appraisal Procedures, Residential Market Analysis, ~~USPAP~~ USPAP, and Residential Sales Comparison and Income Approach classes must have been obtained in a classroom setting. All other courses in this section may be taken on-line via the Internet.

Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0104 COURSE EXEMPTIONS FOR EQUIVALENT EDUCATION

~~A person desiring an exemption from the course requirements stated in Rules .0101, .0102 and .0103 of this Section must make application for exemption upon a form prescribed by the Board. The Board will grant exemptions only upon a finding that the person requesting the exemption possesses education determined by the Board to be equivalent to the course or courses for which exemption is requested.~~

Authority G.S. 93E-1-6(a); 93E-1-10.

SECTION .0200 – COURSE SPONSOR STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0201 PURPOSE AND APPLICABILITY

This Section establishes criteria for approval and operational requirements for all real estate appraisal ~~precertification~~ qualifying course sponsors and schools. These standards shall be satisfied in order for course sponsors and schools to obtain and maintain approval of their courses for appraiser ~~precertification~~ qualifying education credit. Schools and course

sponsors shall obtain course approval from the Board prior to conducting ~~precertification~~ qualifying courses and prior to advertising or otherwise representing that a course is or may be approved for credit in North Carolina.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0202 APPLICATION FOR APPROVAL

Schools and other course sponsors seeking approval to conduct real estate appraisal ~~precertification~~ qualifying courses shall make written application to the Board.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0203 CRITERIA FOR APPROVAL

Approval to conduct real estate appraisal ~~precertification~~ qualifying courses shall be granted to a school or course sponsor when it is shown to the satisfaction of the Board that:

- (1) the school or course sponsor has submitted all information required by the Board;
- (2) the school or course sponsor complies with the standards described in this Section; and
- (3) the courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0207 ADMINISTRATION

One person shall be designated as the Director for each approved school or course sponsor and shall be responsible for administrative matters such as program development, scheduling of classes, advertising, maintenance of facilities and equipment, record ~~keeping~~ keeping, and general supervision of the instruction program. The director shall ensure that the policies and general operations of the school or course sponsor comply with the provisions of Sections .0200 and .0300 of this Subchapter. The Director shall possess a good character and reputation and must also meet the fitness standards for applicants for trainee registration or appraiser licensure or certification. The Director shall:

- (1) have a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full time experience within the past 10 years as an instructor or school administrator; or
- (3) meet the minimum appraisal education and experience qualifications listed in 21 NCAC 57B .0306 to teach either the residential or general appraisal precertification courses; or
- (4) possess qualifications which are found by the Board to be substantially equivalent to Item (1), (2), or (3) of this Rule.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0208 ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The Board may suspend, ~~revoke~~ revoke, or deny renewal of approval of a real estate school or course sponsor to conduct appraiser ~~precertification~~ qualifying courses upon finding that any court of competent jurisdiction has found the school or course sponsor official or instructor in the employ of the school or course sponsor to be in violation of any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring that courses related to certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0209 CERTIFICATION OF COURSE COMPLETION

Approved schools or course sponsors must provide each passing student with a course completion certificate. Certificates of course completion shall be on a document bearing the letterhead or insignia of the school or course sponsor and shall have the signature or signature stamp of the school or course sponsor director. A student who has taken a ~~precertification~~ qualifying course, other than the 15 hour National USPAP course, for continuing education credit and who does not pass the examination shall not be given a course completion certificate, but shall be given a certificate of attendance for the course, provided that the student complies with the provisions of 21 NCAC 57B .0303. Either certificate is valid to obtain continuing education credit, in accordance with 21 NCAC 57B .0604.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0300 – COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0301 PURPOSE

This Section establishes minimum standards for real estate appraisal ~~precertification~~ qualifying courses prescribed by G.S. 93E-1-6(a).

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0302 COURSE CONTENT

- (a) All courses shall consist of instruction in the subject areas outlined in the Appraiser Qualification Board's Guide Note 1.
- (b) Courses may also include coverage of additional related subject areas; however, any such course must provide additional class time above the minimum required classroom hours specified in 57B .0101, .0102, and .0103 and the minimum requirement of 15 hours for USPAP for the coverage of such additional subject areas.
- (c) On or before the first class meeting day of the Basic Appraisal Principles course, the instructor shall give to each student material prepared by the Board regarding the trainee registration process and the process to upgrade to a licensed or certified appraiser.

Authority G.S. 93E-1-6; 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0303 COURSE COMPLETION STANDARDS

(a) Academic standards for course completion shall reasonably assure that students receiving a passing grade possess knowledge and understanding of the subject areas prescribed for the course. A student's grade shall be based solely on his or her performance on examinations and on graded homework and class work assignments.

(b) Course completion requirements shall include a comprehensive final course examination which covers all prescribed subject areas and which accounts for at least 50 percent of a student's grade for the course. Take-home or open-book final course examinations are prohibited. Schools and course sponsors may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course examination or to retake any failed course examination without repeating the ~~course, however~~ course; however, any make up examination shall be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the makeup examination shall be different from those used in the initial examination.

(c) The minimum attendance required for satisfactory course completion is 90 percent of all scheduled classroom hours for the course.

(d) The instructor may offer additional hours of instruction so that students can make up lost hours of instruction.

(e) Students who are taking a ~~precertification~~ qualifying course, other than the 15 hour National USPAP course, for continuing education credit may sit for the final course examination, but they are not required to pass the examination in order to receive continuing education credit. Students who take and pass the examination and who comply with the provisions of this Rule shall be given a course completion certificate. Students who do not take and pass the examination but who otherwise comply with the provisions of this Rule shall be given a certificate of attendance. Students who are taking the course as a result of a conditional dismissal, consent ~~order~~ order, or order of the Board after a hearing must take and pass the examination.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all ~~precertification~~ qualifying courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 200 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and two years' full-time experience as a certified residential

or general real estate appraiser within the previous five years. At least one-half of such experience must be in residential property appraising. Instructors must also be currently certified as a residential or general real estate appraiser.

- (2) General appraiser courses: 300 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years. At least one-half of such experience must be in income property appraising. Instructors must also be a certified general real estate appraiser and have been so certified for at least five years.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. The instructor must be a certified residential or a certified general appraiser. If a USPAP instructor fails to renew or loses his or her certification by the Appraiser Qualifications Board, the instructor must immediately stop teaching and notify the Appraisal Board of the loss of certification.
- (4) Statistics, modeling and finance: must have previously completed this class, or must have completed 3 semester hours of statistics in an accredited college or university.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.

(c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
- (2) The ability to present instruction in an accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students;
- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and

- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students' backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape or DVD in a manner and format which depicts the instructor teaching portions of a prelicensing qualifying course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Paragraph (c) of this Rule.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Proposed precertification qualifying course instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports or other evidence of experience.

(h) Persons desiring to become instructors for precertification qualifying courses must file an application for approval with the Board. There is no fee for application for instructor approval. Once an instructor has been approved to teach a specific precertification qualifying course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer precertification qualifying courses.

(i) Current Appraisal Board members shall not be eligible to teach precertification qualifying courses during their term of office on the Board.

Authority G.S. 93E-1-8(a); 93E-1-10.

21 NCAC 57B .0307 CRITERIA FOR COURSE RECOGNITION

(a) Schools and course sponsors seeking to offer appraiser precertification qualifying courses shall make written application to the Board and pay applicable fees as required by G.S. 93E-1-8(b).

(b) Appraisal subject matter electives offered for precertification qualifying credit shall meet all other requirements of this Chapter. The content of these electives shall be directly related to the appraisal of real property to be approved for precertification credit. Appraisal subject matter elective courses shall contain a minimum of 15 hours.

(c) Various combinations of courses may be recognized as equivalent to the appraiser precertification qualifying courses specified in 57B .0101, .0102 and .0103.

(d) The 15 hour USPAP course shall be the 15-hour National USPAP Course approved by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent.

(e) The application shall state the name of the instructor for the course. All instructors shall be approved by the Board pursuant to 57B .0306(h). After the course is approved, if a school or course sponsor wishes to change instructors, the school shall notify the Board of the name of the new instructor at least seven calendar days before the proposed change would take effect. If the proposed instructor is not currently approved in accordance with 57B .0306(h), the instructor shall be approved by the Board before the school or course sponsor may change instructors.

(f) Course sponsors may offer certain classes on-line via the Internet. The Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, an on-line precertification qualifying education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an on-line course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet must have received approval from the International Distance Education Certification Center (IDECC). A course completion certificate must be forwarded to the student as stated in Rule .0303(e) of this Section.

Authority G.S. 93E-1-8(a); 93E-1-10.

SECTION .0400 – COURSE SPONSOR FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION

21 NCAC 57B .0401 APPLICABILITY

This Section applies to private real estate appraisal schools offering precertification qualifying courses, appraisal trade organizations and to all other course sponsors other than North Carolina colleges, universities, ~~junior colleges, community~~ community, or technical colleges accredited by the Southern Association of Colleges and Schools, and agencies of the federal, State or local government.

Authority G.S. 93E-1-8(a), (b); 93E-1-10.

SECTION .0600 – CONTINUING EDUCATION COURSES

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification; and
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught;
 - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
 - (iii) two years' full-time experience teaching the subject matter to be taught;
 - (iv) an equivalent combination of such education and experience; or
 - (v) be approved by the Board pursuant to 57B. 0606(11).
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television

instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the course instructor and the course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation. Current Appraisal Board members shall not teach continuing education courses during their term of office on the Board.

- (6) A trainee or appraiser may receive up to 14 hours of credit every two years in the period ending on June 1 of each odd numbered year for participation in a course offered on-line via the Internet. A sponsor seeking approval of a computer-based education course must provide the Board access to the course via the internet at a date and time satisfactory to the Board and the Board shall not be charged any fee for such access. To be approved for credit, an on-line course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an on-line continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. The course design and delivery mechanism for an on-line course offered on the Internet must have received approval from the International Distance Education Certification Center (IDECC). A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.
- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade ~~conferences~~ conferences, or similar activities.

- (8) The course sponsor must certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.
- (9) The course title may not include the words "Uniform Standards of Professional Appraisal Practice" or "USPAP" unless the course is either the 15 hour National USPAP course or the 7 hour National USPAP update course. If the course is the 7 hour National USPAP course, the course title must state which edition of USPAP will be taught in that specific course.
- (10) Each course must utilize a textbook or course materials that have been approved by the Board.
- (11) If the course content is related to technology, such as software, hardware, electronic devices, manuals, or databases, the course shall be developed specifically for utilization in the real estate appraisal business in order to be approved for continuing education credit. Such courses shall not require the student to purchase specific products, and shall not use the course to sell or advertise particular products or software.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0604 QUALIFYING COURSES

(a) Appraisal ~~precertification~~ qualifying courses conducted by North Carolina approved schools or by appraisal trade organizations which are approved as equivalent to the North Carolina ~~precertification~~ qualifying courses may be separately approved as appraisal continuing education courses. Trainees, ~~licensed~~ licensed, and certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 57A. Appraisal trade organizations must at all times assure compliance with Rules .0606, .0607, and .0608 of this Section in order to retain such approval for these courses.

(b) It is presumed that any person taking any of the ~~precertification~~ qualifying courses is doing so for registration, licensure or certification purposes. If the person wishes to obtain continuing education credit for the course, he or she shall request such credit in writing and shall send the original course completion certificate or course attendance certificate with the request.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0605 CONTINUING EDUCATION CREDIT HOURS

The course approval issued to a course sponsor shall include the number of hours of continuing education credit that will be awarded for the course. The minimum number of continuing education credit hours awarded for a course shall be three and

one-half hours, and the maximum number of continuing education credit hours awarded for a course, regardless of its length, shall be thirty hours. Continuing education credit hours shall not be carried forward into subsequent licensing periods. No continuing education credit shall be given for courses taken before the ~~most recent registration, license or certification the applicant has attained.~~ student was registered as a trainee or licensed or certified as an appraiser in this state or any other state.

Authority G.S. 93E-1-8(c); 93E-1-10.

21 NCAC 57B .0614 INSTRUCTORS FOR THE TRAINEE/SUPERVISOR COURSE REQUIRED BY G.S. 93E-1-6.1

(a) Instructors for the trainee/supervisor course shall be real estate appraisers who have been certified residential or certified general for at least three years.

(b) Instructors shall not have received any disciplinary action regarding their appraisal certificate from the State of North Carolina or any other state within the previous three years. In addition, instructors shall not have been convicted of or pleaded guilty to any criminal act.

(c) All applicants for instructor of the trainee/supervisor course shall obtain a criminal records check that is satisfactory to the Board. This records check must have been performed within 60 days of the date the completed application for approval as an instructor is received by the Board. Applicants shall pay the vendor directly for the cost of these reports. In order to be satisfactory to the Board, the records check must comply with the provisions of 21 NCAC 57A .0202(e).

(d) Persons who wish to instruct the trainee/supervisor course shall be approved by the Board before they may teach this course. Approval of a trainee/supervisor course instructor authorizes the instructor to teach the course for any approved course sponsor.

(e) Applicants who wish to become instructors for the trainee/supervisor course must attend an educational workshop sponsored by the Board before they may be approved.

(f) Approval of trainee/supervisor course instructors shall run from July 1 to June of the next year.

Authority G.S. 93E-1-6.1; 93E-1-8(c); 93E-1-10.

SUBCHAPTER 57C – ADMINISTRATIVE LAW PROCEDURES

SECTION .0100 – APPRAISAL BOARD HEARINGS

21 NCAC 57C. 0101 FORM OF COMPLAINTS AND OTHER PLEADINGS

(a) There shall be is no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the trainee, appraiser or appraisal management company, identify the Complainant by name, provide a physical address and contact information for the Complainant, and shall reasonably apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation is not limited to the persons or transactions described or alleged in the complaint.

(c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(d) There is no specific form required for answers, ~~motions~~ motions, or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, ~~requests~~ requests, and other pleadings may be made on the record during the course of the hearing before the Board.

(e) During the course of an investigation of a licensee, the Board, through its legal counsel or staff, may send a trainee, ~~appraiser~~ appraiser, or appraisal management company one or more Letters of Inquiry requesting the trainee, ~~appraiser~~ appraiser, or appraisal management company to respond. The initial Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of a Letter of Inquiry, the trainee, ~~appraiser~~ appraiser, or appraisal management company shall respond within thirty calendar days. The response shall include copies of all documents requested in a Letter of Inquiry.

(f) Hearings in contested cases before the Board are governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

(g) A complaint shall not be accepted if the applicable time period for retention of the work file for that appraisal assignment pursuant to the Recordkeeping Rule of the Uniform Standards of Professional Appraisal Practice has expired. This Section does not apply to complaints involving the actions outlined in G.S. 93E-1-12 (b)(1), (2), (4), and (5).

Authority G.S. 93E-1-10; 93E-2-3; 93E-2-8.

SUBCHAPTER 57D – APPRAISAL MANAGEMENT COMPANIES

SECTION .0100 – APPLICATION FOR APPRAISAL MANAGEMENT REGISTRATION

21 NCAC 57D .0101 FORM

An appraisal management company that wishes to file an application for an appraisal management company certificate of registration may obtain the required form upon request to the Board. The form calls for information such as:

- (1) the legal name of the applicant;
- (2) the name under which the applicant will do business in North Carolina;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the applicant's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) a completed application for approval of the compliance manager;

- (7) any past criminal conviction of and any pending criminal charge against any person or entity that owns ten percent or more of the appraisal management company;
- (8) any past revocation, ~~suspension~~ suspension, or denial of an appraisal license of any person or entity that owns ten percent or more of the appraisal management company;
- (9) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (10) if a business entity other than a corporation, limited liability ~~company~~ company, or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents; ~~and~~
- (11) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and ~~pleadings~~ pleadings; ~~and~~
- (12) a certification that the applicant has obtained a surety bond as required by G.S. 93E-2-4(g).

Incomplete applications shall not be acted upon by the Board.

Authority G.S. 93E-2-4; SL 2013-403.

SECTION .0200 – APPRAISAL MANAGEMENT COMPANY REGISTRATION

21 NCAC 57D .0202 REGISTRATION RENEWAL

(a) All registrations expire on June 30, 2012 and every June 30 of each year thereafter unless renewed before that time. The renewal period shall be from May 1 through June 30 of each year.

(b) A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the Board and shall forward the renewal fee. The renewal fee shall be two thousand dollars (\$2000). ~~Forms are available upon request to the Board.~~ The renewal fee is not refundable under any circumstances.

(c) Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is expired is subject to disciplinary action and penalties as prescribed in G.S. 93E-2-8 and G.S. 93E-2-10.

Authority G.S. 93E-2-3; 93E-2-6.

SECTION .0300 – APPRAISAL MANAGEMENT COMPANY PROCEDURES

21 NCAC 57D .0303 COMPLIANCE MANAGER

(a) A compliance manager shall be designated with the Board for each appraisal management company. The compliance manager shall be a certified real estate appraiser certified under Article I of this chapter or in another state.

(b) An appraisal management company shall file an application with the Board for approval of the designated compliance manager. This application shall provide the Board with information such as the compliance manager's name, mailing and physical address, and phone and email contact information, and shall be signed by the designated compliance manager.

(c) The designated compliance manager shall obtain a criminal records check pursuant to 93E-2-11. Applicants shall pay all required fees to perform the check. This records check must have been performed within 60 days of the date the completed application is received by the Board. The criminal records check results must be attached to the application for approval as a compliance manager.

(d) The designated compliance manager is responsible for:

- (1) the notification to the Board of any change of trade name or contact information of the appraisal management company and the registration of any assumed business name adopted by the appraisal management company for its use;
- (2) the retention and maintenance of records relating to appraisals conducted by or on behalf of the appraisal management company;
- (3) the maintenance of a record of all appraisers in North Carolina who perform appraisals for the appraisal management company, including a log of payments to appraisers; and
- (4) the conduct of advertising of appraisal management services by or in the name of the appraisal management company;

(e) If an appraisal management company intends to change its compliance manager, it must submit an application for approval of the new compliance manager at least 10 business days before the effective date of the change.

(f) If a compliance manager leaves the appraisal management company and the company is unable to give at least 10 days' notice of the change, the company shall have 15 business days from the date the compliance manager leaves to obtain a new compliance manager.

Authority G.S. 93E-2-3; 93E-2-4(b); 93E-2-5.

21 NCAC 57D .0310 PAYMENT OF FEES TO APPRAISERS

(a) Appraisal management companies shall pay fees to an appraisers within 30 days of the date the appraisal is first transmitted by the real estate appraisers to the company as follows:

- (1) If payment is made by electronic means, the funds for the fee shall be deposited into the appraiser's account so that they are available to the appraiser on the 31st day following the date the appraisal is first transmitted to the company.
- (2) If payment is made by check, the check shall be postmarked no later than the 30th day following the date the appraisal is first transmitted to the company.

(b) If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for nonpayment. Such notice shall be sent to the appraiser within thirty days after the date the appraiser first transmits the appraisal to the appraisal management company. company by any established method that provides proof of delivery, including but not limited to registered mail, return receipt requested. The notice shall be sent by registered mail, return receipt requested, to the appraiser's business address contained in the records of the Appraisal Board. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid. The notice shall also notify the appraiser of any dispute resolution process that the appraisal management company may have in place.

Authority G.S. 93E-2-3; 93E-2-4(d).

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

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 – HEARING AID DEALERS AND FITTERS BOARD

Rule-making Agency: NC State Hearing Aid Dealers and Fitters Board

Rule Citation: 21 NCAC 22F .0104, .0105

Effective Date: February 10, 2014

Date Approved by the Rules Review Commission: January 31, 2014

Reason for Action: Session Law 2013-410 effective August 23, 2013 and Session Law 2013-296 effective October 1, 2013. Session Law 2013-410: 93D-1.1 was added to define the scope of practice for a hearing aid specialist, listing 16 activities that now fall within the scope of practice for regulated individuals. Additionally, 23D-5(a) was amended to state that "No person shall undertake any activity within the scope of practice of a hearing aid specialist in this State unless the person first has been issued a license by the Board or is an apprentice working under the supervision of a Registered Sponsor." Session Law 2013-296 allows a license to be designated as the provider of choice for certain insurance coverage. The proposed rules will better define the apprentice/sponsor relationship and the responsible party for services provided, providing greater clarity and – it is hoped – greater supervision and control on the part of the licensee for his apprentice.

The Board now seeks to update and adopt rules necessary to regulate licensees and apprentices as they provide services under the new scope of practice, including making it clear that it is unethical to engage in activities for which they are not properly trained. The Board has an existing mechanism by which licensee can demonstrate competence and necessary training, as referenced in this proposed rule, namely through the network of continuing education courses reviewed and approved by this Board.

Immediate action is justified and necessary for several reasons. First, immediate action is necessary in order to ensure that the Board is equipped to enforce the provisions of its governing statute, which was amended by the legislature in Fall 2013. The Board seeks to continue to preserve public interest and safety to ensure that no licensee or apprentice engages in practices for which they have not been trained – and through which they

could thus injure their clients. Immediate adoption would provide (1) clarity and guidance to licensees on how they can continue to ethically practice and (2) would allow the Board to take disciplinary action to prevent future harm in the event that a licensee or apprentice recklessly undertakes procedures for which he has not received any training. The immediate adoption of rules governing the apprenticeship process and examination is also necessary and justified in the interests of public safety. First of all these rules will ensure that the public only receives care from an individual who has demonstrated competency or has a supervisor immediately present to assist and train as services are provided. These rules, in essence, provide a more definite and clear description of the "direct supervision" already required of all apprentices. Secondly, and more importantly in the context of timeliness, is the fact that with the immediate adoption, amendment or repealing of these rules, the Board will be able to register apprentices for testing during the registration window (which will close prior to the adoption of these rules if done through permanent rulemaking only). The registration deadline is 45 days before the exam, and the exam is tentatively scheduled for the first weekend of May. The earliest these rules can be effective through permanent rulemaking is April 2014. The temporary adoption will also allow new apprentices coming into the field to start their apprenticeship under the new guidelines. Those who are currently apprentices may register for the May exam to demonstrate their competency to practice without personal supervision as defined in 21 NCAC 22A .0401. All apprenticeships renewed after May 2014 will be covered by the new rules of supervision. The Board believes this is in the public's best interest to ensure that services are provided in a safe and effective manner. This will also provide greater continuity and clarity for apprentices and licensees.

SUBCHAPTER 22F – LICENSING PROVISIONS

SECTION .0100 – EXAMINATION

21 NCAC 22F .0104 QUALIFICATIONS TO REGISTER FOR EXAM

(a) The Board may require such supplemental information to all ~~for applications for issuance and renewal of a license or an apprentice registration certificate as it deems necessary to~~ determine the facts governing the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. Supplemental information may ~~include, but is not necessarily limited to,~~ include letters of recommendation, affidavits, photographs, official transcripts, and personal appearances before the Board.

~~(b) Any registered apprentice who holds a masters degree in Audiology and any Audiologist who elects to be a registered apprentice shall, prior to the next scheduled qualifying examination, submit to 250 clock hours of direct supervision by a licensee approved by the Board, whenever such apprentice takes and fails to pass the qualifying examination.~~

~~(c) Any registered apprentice who is not an Audiologist and does not hold a masters degree in Audiology shall, for each week prior to the next scheduled qualifying examination, submit to 15 clock hours of direct supervision by a licensee approved by the Board, whenever such apprentice takes and fails to pass the qualifying examination.~~

(b) An apprentice may elect to take Part A, Part B, or Part C of the licensing exam at any time during the apprenticeship by submitting an application for license and exam registration prior to the registration deadline.

(c) An apprentice shall complete 365 days of apprenticeship prior to taking Part D of the licensing exam.

(d) The Board shall waive the application for license fee and exam registration fee for an applicant's initial registration to take Part D of the exam only if the applicant took and passed Part A, Part B, and Part C prior to completing 365 days of apprenticeship.

(e) Except as provided in Paragraph (d) of this Rule, an applicant shall submit a new application for license and exam registration and pay the fees set forth in 21 NCAC 22A .0501 each time the applicant registers for any parts of the licensing exam.

(f) The Board shall not prorate the application for license fee or the exam registration fee for retesting an applicant who failed any part of the licensing exam.

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-6; 93D-9;

Eff. April 23, 1976;

Amended Eff. February 1, 1996; April 1, 1989; May 1, 1988;

Paragraph (d) recodified to 21 NCAC 22F .0122 Eff. May 1, 2013;

Temporary Amendment Eff. February 10, 2014.

21 NCAC 22F .0105 PASSING EXAMINATION

(a) The exam consists of four parts:

- (1) Part A shall assess applicant's knowledge of hearing testing through a computer simulation program;
- (2) Part B shall assess applicant's practical knowledge and ability to make an ear impression;
- (3) Part C shall assess the applicant's knowledge of relevant laws and regulations governing hearing aid specialists; and
- (4) Part D shall assess the applicant's knowledge of the following:
 - (A) audiometry;
 - (B) anatomy and physiology pertaining to the dispensing of hearing aids;
 - (C) hearing aids;
 - (D) hearing aid technologies; and
 - (E) the scope of practice for hearing aid specialists.

(b) The Board shall annually review the contents and outcome of the previous qualifying examinations and shall determine the minimum performance criteria required for passing the examination. In accordance with G.S. 93B-8(a), each registered applicant shall be informed in writing of the requirements for passing the examination prior to his the applicant taking the examination.

(c) An applicant shall pass all parts of the exam within 31 months of the initial issuance of the apprentice registration certificate in order to receive a license.

History Note: Authority G.S. 93B-8; 93D-3(c); 93D-8;

Eff. April 23, 1976;

Amended Eff. May 1, 1988;

Temporary Amendment Eff. February 10, 2014.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on January 16, 2014.

**REGISTER CITATION TO THE
NOTICE OF TEXT****HOME INSPECTOR LICENSURE BOARD**

<u>Complaints</u>	11	NCAC	08	.1202*	28:04 NCR
<u>Board Staff</u>	11	NCAC	08	.1203	28:04 NCR
<u>Investigation</u>	11	NCAC	08	.1204*	28:04 NCR
<u>Disciplinary Hearing</u>	11	NCAC	08	.1205	28:04 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Basic Law Enforcement Training</u>	12	NCAC	09B	.0205*	28:02 NCR
<u>Completion of Basic Law Enforcement Training Course</u>	12	NCAC	09B	.0405*	28:02 NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC	09E	.0105*	28:06 NCR
<u>Filing and Fees</u>	12	NCAC	09F	.0107*	28:04 NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Minimum Standards for Justice Officers</u>	12	NCAC	10B	.0301*	28:07 NCR
<u>Basic Law Enforcement Training Course for Deputies</u>	12	NCAC	10B	.0502*	28:07 NCR
<u>Detention Officer Certification Course</u>	12	NCAC	10B	.0601*	28:07 NCR
<u>Evaluation for Training Waiver</u>	12	NCAC	10B	.0603*	28:07 NCR
<u>Completion of Detention Officer Certification Course</u>	12	NCAC	10B	.0605*	28:07 NCR
<u>Intermediate Law Enforcement Certificate</u>	12	NCAC	10B	.1004*	28:07 NCR
<u>Advanced Law Enforcement Certificate</u>	12	NCAC	10B	.1005*	28:07 NCR
<u>Intermediate Detention Officer Professional Certificate</u>	12	NCAC	10B	.1204*	28:07 NCR
<u>Advanced Detention Officer Professional Certificate</u>	12	NCAC	10B	.1205*	28:07 NCR
<u>Intermediate Telecommunicator Certificate</u>	12	NCAC	10B	.1604*	28:07 NCR
<u>Advanced Telecommunicator Certificate</u>	12	NCAC	10B	.1605*	28:07 NCR
<u>Minimum Training Requirements</u>	12	NCAC	10B	.2005*	28:07 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Definitions</u>	15A	NCAC	02D	.1003*	28:04 NCR
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MARINE FISHERIES COMMISSION

<u>Definitions</u>	15A	NCAC	03I	.0101*	28:03 NCR
<u>Trawl Nets</u>	15A	NCAC	03J	.0104*	28:03 NCR
<u>Pots</u>	15A	NCAC	03J	.0301*	28:03 NCR
<u>Public Health and Control of Oysters, Clams, Scallops ..</u>	15A	NCAC	03K	.0110*	28:03 NCR
<u>Crab Harvest Restrictions</u>	15A	NCAC	03L	.0201*	28:03 NCR
<u>Crab Trawling</u>	15A	NCAC	03L	.0202	28:03 NCR
<u>Crab Dredging</u>	15A	NCAC	03L	.0203*	28:03 NCR

APPROVED RULES

<u>Crab Pots</u>	15A NCAC 03L .0204*	28:03 NCR
<u>Crab Spawning Sanctuaries</u>	15A NCAC 03L .0205*	28:03 NCR
<u>Peeler Crabs</u>	15A NCAC 03L .0206	28:03 NCR
<u>Recreational Harvest of Crabs</u>	15A NCAC 03L .0209	28:03 NCR
<u>Minimum Size Limits</u>	15A NCAC 03M .0103	28:03 NCR
<u>Hybrid Striped Bass Culture</u>	15A NCAC 03M .0206	28:03 NCR
<u>Sheepshead</u>	15A NCAC 03M .0521*	28:03 NCR
<u>Permit Conditions; Specific</u>	15A NCAC 03O .0503*	28:03 NCR
<u>Designated Pot Areas</u>	15A NCAC 03R .0107*	28:03 NCR
<u>Designated Seed Oyster Management Areas</u>	15A NCAC 03R .0116	28:03 NCR
<u>Exempted Crab Pot Escape Ring Areas</u>	15A NCAC 03R .0118	28:03 NCR

WILDLIFE RESOURCES COMMISSION

<u>Hyde County</u>	15A NCAC 10F .0313*	n/a G.S. 150B-21.5(a)(4)
<u>Camden County</u>	15A NCAC 10F .0352*	n/a G.S. 150B-21.5(a)(4)

OCCUPATIONAL THERAPY, BOARD OF

<u>License Number: Display of License</u>	21 NCAC 38 .0301*	27:08 NCR
<u>Continuing Competence Requirements for Licensure</u>	21 NCAC 38 .0802*	27:08 NCR

APPRAISAL BOARD

<u>Fitness for Registration or Certification</u>	21 NCAC 57A .0202*	28:04 NCR
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TITLE 11 – DEPARTMENT OF INSURANCE**11 NCAC 08 .1202 COMPLAINTS**

(a) Anyone who believes that a licensee is or has been engaged in any conduct set out in G.S. 143-151.56(a) may file a written complaint against that licensee.

(b) A Complaint Memo containing instructions for filing the complaint is available through the NC Home Inspector Licensure Board website at www.nchilb.com or by contacting the NC Home Inspector Licensure Board.

(c) The complaint shall identify the licensee and describe the conduct complained of as set forth in G.S. 143-151.56(a).

(d) A copy of the contract agreement, the inspection report, and any reports made by other consultants shall be included with the complaint.

(e) The complaint shall be in writing, signed by the complainant, and dated. The complaint shall include the complainant's mailing address and a daytime phone number at which the complainant may be reached. The street address of the structure must be included if the complaint pertains to an inspection of a structure.

(f) Supporting information shall be included to justify the complaint. Supporting information shall refer to violations of the Board's rules or of the General Statutes. If the complaint involves items included in the Standards of Practice that the licensee did not observe, a list of those items may be submitted with the complaint. This information may be provided by the

complainant, an architect, professional engineer, licensed contractor, another licensed home inspector, or other person with knowledge of the Standards of Practice.

(g) The Board shall not consider services that are under the jurisdiction of other regulatory agencies or licensing boards, such as termite inspections; appraisals; or services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services claim to be home inspectors.

(h) The Board has no jurisdiction over persons who make specialized inspections as part of their repair or maintenance businesses, such as roofing repair contractors, chimney sweeps, duct cleaning, and interior environment specialists.

(i) The Board members or the Board staff may initiate an investigation without a written complaint when there is cause to believe that a licensee is or has been engaged in any conduct set out in G.S. 143-151.56(a).

History Note: Authority G.S. 143-151.49; 143-151.56(a); 143-151.58(d); 143-151.62; 150B-38(h); Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. February 1, 2014; April 1, 2006.

11 NCAC 08 .1203 BOARD STAFF

History Note: Authority G.S. 143-151.49; 150B-38(h);
 Codifier determined that agency findings did not meet criteria
 for temporary rule Eff. October 15, 1996;
 Temporary Adoption Eff. October 24, 1996;
 Eff. July 1, 1998;
 Amended Eff. April 1, 2005;
 Repealed Eff. February 1, 2014

11 NCAC 08 .1204 INVESTIGATION

- (a) On receipt of a complaint conforming to this Section, the Engineering and Codes Division shall conduct an investigation.
- (b) A copy of the complaint and supporting information as set forth in Rule .1202(d) and (f) of this Section shall be mailed to the home inspector. The home inspector shall submit a written response to the Engineering and Codes Division within two weeks after receipt of the copy of the complaint.
- (c) Upon completion of the investigation, the Board's Investigation Review Committee ("Committee") shall make a determination of whether there is sufficient evidence to support a violation of G.S. 143-151.56(a). Based on its determination, the Committee may:
- (1) recommend to the Board that the complaint be dismissed;
 - (2) recommend to the Board to dismiss the complaint and a letter of caution be issued to the home inspector;
 - (3) recommend to the Board that the complaint be resolved by consent agreement if the home inspector agrees to the terms of the consent agreement; or
 - (4) recommend to the Board to establish a time and place for a disciplinary hearing and give notice to the home inspector and complainant. Prior to the matters being heard and determined by the Board, it may be resolved by consent agreement with the approval of the Board.
- (d) The Committee shall notify the complainant and the home inspector of its determination.

History Note: Authority G.S. 143-151.49; 143-151.56; 150B-38(h);
 Codifier determined that agency findings did not meet criteria
 for temporary rule Eff. October 15, 1996;
 Temporary Adoption Eff. October 24, 1996;
 Eff. July 1, 1998;
 Amended Eff. February 1, 2014.

11 NCAC 08 .1205 DISCIPLINARY HEARING

The disciplinary hearing shall be held in accordance with G.S. 150B, Article 3A and this Section.

History Note: Authority G.S. 143-151.49; 143-151.56; 150B-38(h);
 Codifier determined that agency findings did not meet criteria
 for temporary rule Eff. October 15, 1996;
 Temporary Adoption Eff. October 24, 1996;

Eff. July 1, 1998;
 Amended Eff. February 1, 2014.

TITLE 12 – DEPARTMENT OF JUSTICE**12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING**

- (a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.
- (b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 620 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- (1) LEGAL UNIT

(A)	Motor Vehicle Laws	20 Hours
(B)	Preparing for Court and Testifying in Court	12 Hours
(C)	Elements of Criminal Law	24 Hours
(D)	Juvenile Laws and Procedures	8 Hours
(E)	Arrest, Search and Seizure/Constitutional Law	28 Hours
(F)	ABC Laws and Procedures	4 Hours
	UNIT TOTAL	96 Hours
- (2) PATROL DUTIES UNIT

(A)	Techniques of Traffic Law Enforcement	24 Hours
(B)	Explosives and Hazardous Materials Emergencies	12 Hours
(C)	Traffic Crash Investigation	20 Hours
(D)	In-Custody Transportation	8 Hours
(E)	Crowd Management	12 Hours
(F)	Patrol Techniques	28 Hours
(G)	Law Enforcement Communication and Information Systems	8 Hours
(H)	Anti-Terrorism	4 Hours
(I)	Rapid Deployment	8 Hours
	UNIT TOTAL	124 Hours
- (3) LAW ENFORCEMENT COMMUNICATION UNIT

(A)	Responding to Victims and the Public	10 Hours
(B)	Domestic Violence Response	12 Hours
(C)	Ethics for Professional Law Enforcement	4 Hours
(D)	Individuals with Mental Illness and Developmental Disabilities	8 Hours
(E)	Crime Prevention Techniques	6 Hours

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

(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the curriculum for this training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

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

and may be obtained at a cost of eighty-seven dollars and ten cents (\$87.10) from the Academy at the following address:

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

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing and delivering basic training courses. Copies of this guide may be obtained from the Justice Academy.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. February 1, 2014; July 1, 2011; July 1, 2009; January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.

12 NCAC 09B .0405 COMPLETION OF BASIC LAW ENFORCEMENT TRAINING COURSE

(a) Each delivery of an accredited basic training course includes all units as specified in Rule .0205 of this Subchapter. Each trainee shall attend and satisfactorily complete the full course as specified in Paragraph (b) of this Rule during a scheduled delivery. The school director may develop supplemental rules as set forth in Rule .0202(a)(7) of this Subchapter, but may not add substantive courses, or change or expand the substance of the courses as set forth in Rule .0205 of this Subchapter for purposes of Commission credit. This Rule does not prevent the instruction on local agency rules or standards; however, such instruction shall not be considered or endorsed by the Commission for purposes of certification. The Director of the Standards Division may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the trainee provides evidence that:

- (1) the trainee attended and satisfactorily completed specified class hours and topics of Basic Law Enforcement Training Course but through extended absence occasioned by illness, accident, emergency, or other good cause was absent for more than five percent of the total class hours of the course offering;
- (2) the trainee was granted excused absences by the school director that did not exceed five percent of the total class hours for the course offering and the school director has obtained approval from the Standards Division pursuant to Rule .0404 of this Section for make up work to be completed in a subsequent enrollment; or
- (3) the trainee participated in an accredited course but had an identified deficiency in essential knowledge or skill in no more than two of the specific topic areas incorporated in course content as prescribed under Rule .0205 of this Subchapter;

The trainee who is deficient in more than two topical areas shall be dismissed from the course delivery and shall be required to complete a subsequent training delivery in its entirety.

(b) The trainee shall demonstrate proficiency in the school's cognitive topical area tests by achieving a minimum score of 70 percent on each topical area test and shall also demonstrate proficiency in the motor skills and performance subjects:

- (1) a trainee who fails to achieve a passing score on the first attempt shall have one opportunity for reexamination following remediation;
- (2) a trainee shall be allowed failure, remediation, and reexamination in no more than four topical area tests;

(3) upon initial failure of a fifth topical area test, the trainee shall not be allowed remediation or reexamination and shall be immediately dismissed from the course and shall be required to complete a subsequent delivery of Basic Law Enforcement Training in its entirety.

(c) An authorization of limited enrollment in a subsequent delivery of the Basic Law Enforcement Training Course may not be issued by the Standards Division unless in addition to the evidence required by Paragraph (a) of this Rule:

- (1) The school director of the previous course offering submits to the Standards Division a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment; and
- (2) The school director makes written application to the Standards Division for authorization of the trainee's limited enrollment.

(d) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the Basic Law Enforcement Training Course commencing within 120 calendar days from the date of administration of the state comprehensive examination in the trainee's prior course delivery.

- (1) The trainee shall attend and satisfactorily complete in its entirety each topical area identified by the school director as an area of trainee deficiency in the prior course participation with the exception of the "Physical Fitness" topical area.
- (2) There are two options available for satisfying a deficiency in the "Physical Fitness" topical area with the school director's approval:
 - (A) the student shall be allowed to make up the deficiency at the original training site without enrolling in a subsequent delivery of BLET. Under this option, the student shall be given 120 calendar days from the date that the comprehensive state examination was administered to the original BLET course in order to successfully satisfy this deficiency. Students who select this option shall be allowed two attempts to complete the entire Police Officer Physical Abilities Test (POPAT) Course with a minimum of 24 hours of rest between attempts during the 120-day period to satisfy the deficiency; or
 - (B) the student shall be allowed to enroll in a subsequent delivery of BLET as a "limited enrollee." This delivery shall begin within 120 calendar days from the date that the comprehensive state examination was administered to the original BLET course in order to successfully satisfy this deficiency.

Students who select this option shall be allowed two attempts to complete the entire POPAT Course with a minimum of 24 hours of rest between attempts during the delivery period of the subsequent BLET course.

A certified "Physical Fitness" instructor is the only person qualified to administer and grade the fitness re-test. At the time of the re-test, the school director or the Qualified Assistant shall be present.

(3) Following limited enrollment in the subsequent course offering, scheduled class attendance, and active participation with passing grades on all required topic and motor-skill tests, and having no deficiencies, the trainee shall be eligible for administration of the comprehensive written examination by the Commission, as set forth in Rule .0406 of this Section.

History Note: Authority G.S. 17C-6; 17C-10;

Eff. January 1, 1981;

Amended Eff. February 1, 2014; August 1, 2000; July 1, 1989; July 1, 1985; April 1, 1984; January 1, 1983.

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

(a) The following topical areas and specifications are established as minimum topics, specifications and hours to be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) 2014 Firearms Training and Qualification (6 credits);
- (2) 2014 Legal Update (4 credits);
- (3) 2014 Juvenile Minority Sensitivity Training: A Juvenile – Now What? (2 credits);
- (4) 2014 Officer Safety: The First Five Minutes (4 credits); and
- (5) 2014 Department Topics of Choice (8 credits). The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission.

(b) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

(c) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training

program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

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

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

(d) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(e) Successful completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
- (2) A student shall pass each test by achieving 70 percent correct answers;
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student must complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989;

Amended Eff. January 1, 2005; November 1, 1998;

Temporary Amendment Eff. January 1, 2005;

Amended Eff. February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

12 NCAC 09F .0107 FILING AND FEES

(a) Each instructor of an approved course shall file with the Commission a copy of the firearms course description, outline, and proof of instructor certification at least annually, or upon modification of the course if it occurs before the annual certification. A fee of fifty dollars (\$50.00) shall be submitted for the initial and annual filing of a course. If modification of the course occurs before the renewal filing date, a fee of twenty-five dollars (\$25.00) shall be charged.

(b) Instructors shall, in writing, request the number of certificates needed and shall remit a fee of two dollars (\$2.00) per certificate with a minimum request of 25 certificates per instructor. Requests for certificates shall be sent to:

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

All such fees shall be paid by certified check made payable to the North Carolina Department of Justice.

History Note: Authority G.S. 14-415.12; 150B-19(5); 1995 S.L., c. 507 s. 22;

Temporary Adoption Eff. November 1, 1995;

Eff. May 1, 1996;

Amended Eff. February 1, 2014; November 1, 1998.

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every Justice Officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;
- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination as set out in 12 NCAC 10B .0304;
- (6) have produced a negative result on a drug screen administered according to the following specifications:
 - (A) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs [<http://workplace.samhsa.gov/>];
 - (B) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites; however, individual agencies may specify other drugs to be tested;

- (D) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall include any later amendments and editions of the referenced materials. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 [http://www.drugabuse.gov/] at no cost at the time of adoption of this Rule;
 - (E) the test results shall be dated no more than 60 days before employment or appointment, whichever is earlier;
 - (F) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples; and
 - (G) every agency head shall make arrangements for the services of a medical review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (7) make the following notifications:
- (A) within five business days, notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20 offenses defined as either a Class A or B Misdemeanor as set out in 12 NCAC 10B .0103(10). The initial notification required must specify the nature of the offense, the date of offense, and the arresting agency. Within five business days, notify the Standards Division of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) which are issued by a judicial official against the justice officer and which provide an opportunity for both parties to be present;
 - (B) within 20 days of the date the case was disposed, notify the appointing department head of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C). The department head, provided he or she has knowledge of the officer's charge(s), Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C), shall also notify the Division within 30 days of the date the case or order was disposed of in court.
 - (C) within 30 days of the date the case was disposed, notify the Standards Division of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C);
 - (D) the required notifications of adjudication must specify the nature of the offense, the court in which the case was handled and the date of disposition, and must include a certified copy of the final disposition from the Clerk of Court in the county of adjudication;
 - (E) receipt by the Standards Division of timely notification of the initial offenses charged and of adjudication of those offenses, from either the officer or the department head, is sufficient notice for compliance with this Subparagraph;
- (8) be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), *appeal dismissed* 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny;
- (9) have a background investigation conducted by the employing agency, to include a personal interview prior to employment as set out in Rules .0305 and .0306 of this Section;
- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 10B .0307.
- (b) The requirements of this Rule shall apply to all applications for certification and shall also be applicable at all times during which the justice officer is certified by the Commission.

History Note: Authority G.S. 17E-7; Eff. January 1, 1989; Amended Eff. February 1, 2014; January 1, 2006; January 1, 2005; August 1, 2002; January 1, 1996; January 1, 1994;

January 1, 1993; January 1, 1992; July 1, 1990; January 1, 1990.

12 NCAC 10B .0502 BASIC LAW ENFORCEMENT TRAINING COURSE FOR DEPUTIES

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

(b) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this Basic Law Enforcement Training Course. Copies of this manual may be obtained at a cost of eighty-seven dollars and ten cents (\$87.10) from the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099.

(c) The rules governing Minimum Standards for Completion of Training, codified as Title 12, Subchapter 09B, Section .0200 of the North Carolina Administrative Code [<http://www.ncoah.com/rules/>] and adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall include any later amendments and editions of the incorporated matter to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission. Copies of the incorporated materials may be obtained at no cost from the Criminal Justice Standards Division, North Carolina Department of Justice, 1700 Tryon Park Drive, Raleigh North Carolina 27602.

History Note: Authority G.S. 17E-4(a); Eff. January 1, 1989;

Amended Eff. February 1, 2014; August 1, 2011; January 1, 2010; January 1, 2006; August 1, 2000; January 1, 1996; January 1, 1995; February 1, 1991; January 1, 1990.

12 NCAC 10B .0601 DETENTION OFFICER CERTIFICATION COURSE

(a) This Section establishes the current standard by which Sheriffs' Office and district confinement personnel shall receive detention officer training. The Detention Officer Certification Course shall consist of a minimum of 172 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered essential to the administration and operation of a confinement facility.

(b) Each Detention Officer Certification Course shall include the following identified topic areas and minimum instructional hours for each area:

- | | | |
|-----|---------------|--|
| (1) | LEGAL UNIT | |
| | (A) | Orientation 3 hours |
| | (B) | Criminal Justice Systems 2 hours |
| | (C) | Legal Aspects of Management and Supervision 14 hours |
| | (D) | Introduction to Rules and Regulations 2 hours |
| | (E) | Ethics 3 hours |
| | UNIT TOTAL | 24 Hours |
| (2) | PHYSICAL UNIT | |
| | (A) | Contraband/Searches 6 hours |

- | | | |
|-----|--|---------|
| (B) | Patrol and Security Function of the Jail | 5 hours |
| (C) | Key and Tool Control | 2 hours |
| (D) | Investigative Process in the Jail | 8 hours |

- | | | |
|-----|---------------------------|---------|
| (E) | Transportation of Inmates | 7 hours |
|-----|---------------------------|---------|

UNIT TOTAL	8 Hours
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(3) PRACTICAL APPLICATION UNIT

- | | | |
|-----|---------------------------------------|---------|
| (A) | Processing Inmates | 8 hours |
| (B) | Supervision and Management of Inmates | 5 hours |
| (C) | Suicides and Crisis Management | 5 hours |
| (D) | Aspects of Mental Illness | 6 hours |
| (E) | Fire Emergencies | 4 hours |
| (F) | Notetaking and Report Writing | 6 hours |

UNIT TOTAL	39 hours
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(4) MEDICAL UNIT

- | | | |
|-----|----------------------------|----------|
| (A) | First Aid and CPR | 8 hours |
| (B) | Medical Care in the Jail | 6 hours |
| (C) | Stress | 3 hours |
| (D) | Subject Control Techniques | 32 hours |

- | | | |
|-----|---|----------|
| (E) | Physical Fitness for Detention Officers | 22 hours |
|-----|---|----------|

UNIT TOTAL	71 hours
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(5) REVIEW AND TESTING 7 hours

(6) STATE EXAM 3 hours

TOTAL HOURS	172 HOURS
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(c) Consistent with the curriculum development policy of the Commission as published in the "Detention Officer Certification Course Management Guide," the Commission shall designate the developer of the Detention Officer Certification Course curricula and such designation shall be deemed by the Commission as approval for the developer to conduct pilot Detention Officer Certification Courses. Individuals who complete such a pilot Detention Officer Certification Course offering shall be deemed to have complied with and satisfied the minimum training requirement.

(d) The "Detention Officer Certification Training Manual" published by the North Carolina Justice Academy shall be used as the basic curriculum for the Detention Officer Certification Course. Copies of this manual may be obtained by contacting the North Carolina Justice Academy, Post Office Box 99, Salemburg, North Carolina 28385-0099. The cost of this manual, CD, indexes and binder is fifty-one dollars and seventy-five cents (\$51.75) at the time of adoption of this Rule.

(e) The "Detention Officer Certification Course Management Guide" published by the North Carolina Justice Academy is hereby incorporated by reference and shall include any later amendments or editions of the incorporated matter to be used by school directors in planning, implementing and delivering basic detention officer training. The standards and requirements established by the "Detention Officer Certification Course Management Guide" must be adhered to by the school director. The Justice Academy shall issue to each certified school director

a copy of the guide at the time of certification at no cost to the certified school.

*History Note: Authority G.S. 17E-4(a);
Eff. January 1, 1989;*

Amended Eff. February 1, 2014; August 1, 2011; October 1, 2009; January 1, 2006; August 2, 2002; August 1, 2000; August 1, 1998; February 1, 1998; January 1, 1996; June 1, 1992; January 1, 1992; January 1, 1991.

**12 NCAC 10B .0603 EVALUATION FOR TRAINING
WAIVER**

(a) Only applicants for certification with prior detention or correctional officer experience who have been employed and certified as a detention or correctional officer may seek a training waiver evaluation pursuant to this Rule.

(b) The Division shall use the following to evaluate a detention officer's training and experience to grant a waiver:

- (1) Persons who separated from a detention officer position during the probationary period after completion of a commission-certified detention officer training course and who have been separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as set forth in Rule .0602(a) of this Section.
- (2) Persons who separated from a detention officer position during their probationary period after completion of a commission-certified detention officer training course and who have been separated from a detention officer position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.
- (3) Persons who separated from a detention officer position during the probationary period without completion of a detention officer training course or whose certification was suspended pursuant to Rule .0204(b)(1) of this Subchapter and who have remained separated or suspended for over one year shall complete a commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in Rule .0602(a) of this Section.
- (4) Persons holding General Detention Officer Certification who completed a commission-certified detention officer training course and who separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within

the 12 month probationary period as prescribed in Rule .0602(a) of this Section.

(5) Persons holding Grandfather Detention Officer Certification who separate from a detention officer position and remain separated from a detention officer position for more than one year shall complete a commission-certified detention officer training program in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in Rule .0602(a) of this Section.

(6) Persons transferring to a sheriff's office from another law enforcement agency who hold a detention officer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission are subject to evaluation of their prior training and experience on an individual basis. The Division shall review the training received against the training required by Rule .0601 of this Section and determine whether that training is comparable to the requirements set out in Rule .0601 based upon topics covered and determine what additional training, if any is required under Rule .0601.

(c) The Division shall use the following to evaluate a correction officer who holds a general certification as a correctional officer training and experience to grant a waiver if the individual has general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission;

- (1) completed training as a correctional officer between January 1, 1981 and August 1, 2002;
- (2) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (3) have had less than a one year break in service shall:
 - (A) serve a 12-month probationary period as set forth in Rule .0602(a) of this Section; and
 - (B) take the state examination in its entirety during that probationary period after completing the following topic areas in a commission-certified detention officer certification course:

Orientation	3 hours
Legal Aspects of Management & Supervision	14 hours
Medical Care in the Jail	6 hours
Investigative Process in the Jail	8 hours
Criminal Justice System	2 hours
Introduction to Rules and Regulations	2 hours
Governing Jails	2 hours
Subject Control Techniques	32 hours
TOTAL HOURS	67 hours

(d) The Division shall use the following to evaluate a correction officer who holds a general certification as a correctional officer training and experience to grant a waiver if the individual has general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission who:

- (1) completed training as a correctional officer after August 1, 2002;
- (2) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (3) have had less than a one year break in service shall:
 - (A) submit documentation of the training completed as a correctional officer. The Division shall review the training received against the training required by Rule .0601 of this Section and determine whether that training is comparable to the requirements set out in Rule .0601 based upon topics covered and determine what additional training, if any is required under Rule .0601. The Division shall notify the employing agency of the resulting training requirements; and
 - (B) take the state examination in its entirety during the probationary period after completing the required training in a commission-certified Detention Officer Certification.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989;

Amended Eff. February 1, 2014; August 1, 2011; January 1, 2006; August 1, 2002; August 1, 1998; February 1, 1998; January 1, 1996; January 1, 1993; January 1, 1992; January 1, 1991.

12 NCAC 10B .0605 COMPLETION OF DETENTION OFFICER CERTIFICATION COURSE

(a) Each trainee shall attend and satisfactorily complete a full course during a single scheduled delivery as set forth in Rule .0601 of this Section unless a waiver has been granted as set forth in Rule .0603 or .1901 of this Subchapter. Satisfactory completion is achieved by completion of the required topics, passing the end of block tests and passing the state examination as set out in Rule .0606 of this Section. The school director may develop supplemental rules as set forth in Rule .0704(a)(6) of this Subchapter, but may not add substantive courses, or change or expand the substance of the courses set forth in Rule .0601 of this Section. This Rule does not prevent the instruction on local agency rules or standards; however, such instruction shall not be considered or endorsed by the Commission for purposes of certification. The Director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the school director provides evidence that:

- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "Detention Officer Certification Course" but through extended absence occasioned by illness, accident, or emergency was absent for more than 10 percent of the total class hours of the course offering;
 - (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in Rule .0604(c) of this Section; or
 - (3) The trainee participated in an offering of the "Detention Officer Certification Course" but had an identified deficiency in essential knowledge or skill in no more than three of the specified topic areas incorporated in the course content as set forth in Rule .0601(b) of this Section.
- (b) An authorization of limited enrollment in a subsequent course delivery may not be granted by the Director unless in addition to the evidence required by Paragraph (a) of this Rule:
- (1) The trainee submits a written request to the Director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished pursuant to Paragraph (c) of this Rule; and
 - (2) The school director of the previous school offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.
- (c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Detention Officer Certification Course" commencing within 180 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:
- (1) The trainee need attend and satisfactorily complete only those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the initial course participation.
 - (2) Following authorized enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee shall be eligible for administration of the State Comprehensive Examination by the Commission.
 - (3) A trainee shall be enrolled as a limited enrollee in only one subsequent course offering within the 180 calendar days from the last date of trainee participation in prior course delivery. A trainee who fails to complete those limited portions of the course after one retest shall

enroll in an entire delivery of the Detention Officer Certification Course.

(d) A trainee who is deficient in four or more subject-matter or topical areas at the conclusion of the course delivery shall complete a subsequent program in its entirety.

History Note: Authority G.S. 17E-4; 17E-7;
Eff. January 1, 1989;
Amended Eff. February 1, 2014; August 1, 1998; January 1, 1996; January 1, 1993; January 1, 1992; January 1, 1991.

12 NCAC 10B .1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002 of this Section, applicants for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training and years of law enforcement training experience:

Educational Degrees	None	None	None	Associate	Bachelor
Years of Law Enforcement Experience	8	6	4	4	2
Minimum Law	20	35	50	24	23

12 NCAC 10B .1005 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule.1002 of this Section, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience:

Educational Degrees	None	None	Associate	Bachelor	Doctoral, Professional or Master
Years of Law Enforcement Experience	12	9	9	6	4
Minimum Law Enforcement Training Points	35	50	33	27	23
Minimum Total Education and Training Points	69	99	33	27	23

(b) Educational points or degrees claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

History Note: Authority G.S. 17E-4(b)(1); 17E-4(b)(12);

Eff. January 1, 1989;

Amended Eff. February 1, 2014; January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1994; January 1, 1992.

Enforcement Training Points					
Minimum Total Education and Training Points	39	69	99	24	23

(b) Educational points and degrees claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

History Note: Authority G.S 17E-4(b)(1); 17E-4(b)(12);

Eff. January 1, 1989;

Amended Eff. February 1, 2014; January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1992.

12 NCAC 10B .1204 INTERMEDIATE DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Intermediate Detention Officer Professional Certificate shall possess or be eligible to possess the Basic Detention Officer Professional Certificate and shall have acquired the following combination of educational points or degrees, detention officer or corrections training points and years of detention officer experience:

Educational Degrees	None	None	None	Associate	Bachelor
Years of Detention Officer Experience	8	6	4	4	2
Minimum Detention Officer Training Points	6	12	16	24	23
Minimum Total Education and Training Points	13	23	33	24	23

(b) Educational points and degrees claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

History Note: Authority G.S. 17E-4(b)(1); 17E-4(b)(12);

Eff. January 1, 1990;

Amended Eff. February 1, 2014; January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1992.

12 NCAC 10B .1205 ADVANCED DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Advanced Detention Officer Professional Certificate shall possess or be eligible to possess the Intermediate Detention Officer Professional Certificate and shall have acquired the following combination of educational points or degrees, detention officer or corrections training points and years of detention officer experience:

Educational Degrees	None	None	Associate	Bachelor	Doctoral, Professional or Master
Years of Detention Officer Experience	12	9	9	6	4
Minimum Detention Officer Training Points	12	16	27	26	26
Minimum Total Education and Training Points	23	33	27	26	26

(b) Educational points and degrees claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

History Note: Authority G.S. 17E-4(b)(1); 17E-4(b)(12);

Eff. January 1, 1990;

Amended Eff. February 1, 2014; January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1994; January 1, 1992.

12 NCAC 10B .1604 INTERMEDIATE TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Intermediate Telecommunicator Certificate shall possess or be eligible to possess the Basic Telecommunicator Certificate and shall have acquired the following combination of educational points or degrees, telecommunicator training points and years of telecommunicator training experience:

Educational Degrees	None	None	None	Associate	Bachelor
Years of Telecommunicator Experience	8	6	4	4	2
Minimum Telecommunicator Training Points	5	10	14	12	10
Minimum Total Education and Training Points	12	20	28	12	10

(b) Educational points and degrees claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

History Note: Authority G.S. 17E-4(b)(1); 17E-4(b)(12);

Eff. April 1, 2001;

Amended Eff. February 1, 2014; January 1, 2013; August 1, 2002.

12 NCAC 10B .1605 ADVANCED TELECOMMUNICATOR CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Advanced Telecommunicator Certificate shall possess or be eligible to possess the Intermediate Telecommunicator Certificate and shall have acquired the following combination of educational points or degrees, telecommunicator training points and years of telecommunicator experience:

Educational Degrees	None	None	Associate	Bachelor	Doctoral, Professional or Master
Years of Telecommunicator Experience	12	9	9	6	4
Minimum Telecommunicator Training Points	10	12	17	14	12
Minimum Total Education and Training Points	20	23	17	14	12

(b) Educational points and degrees claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence, on-line or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

History Note: Authority G.S. 17E-4(b)(1); 17E-4(b)(12);

Eff. April 1, 2001;

Amended Eff. February 1, 2014; January 1, 2013; August 1, 2002.

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of credits assigned to the number of hours, regardless of the amount of time the student spends completing the course where each hour shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or

the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The 2013 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Don't Press Send;
- (3) Domestic Violence: The Children are Watching;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

(c) The 2013 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Inmate Sexual Assaults;
- (2) Detention Officer Legal Update;
- (3) Awareness of Issues Surrounding Returning Military Personnel; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(d) The 2013 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Officer Involved Shootings;
- (2) Radio Demeanor and Broadcast Techniques; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2014 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: A Juvenile – What Now;
- (3) Officer Safety: The First Five Minutes;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

(f) The 2014 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Surviving In Custody Death;
- (2) Detention Officer Intelligence Update; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2014 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Hitting the Wall: Avoiding Complacency;
- (2) Customer Service and the 911 Professional; and
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

History Note: Authority G.S. 17E-4; 17E-7;

Eff. January 1, 2007;

Amended Eff. February 1, 2014; January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02D .1003 DEFINITIONS

The following definitions of terms apply to Rules .1002 through .1006 of this Section regulating either gasoline-powered or hybrid-powered motor vehicles:

- (1) "Fuel Cell Electric Vehicle" means as defined in G.S. 20-4.01.
- (2) "Gasoline-powered Motor Vehicle" means a four-wheeled motor vehicle designed primarily to be propelled by the burning of gasoline in an internal combustion engine.
- (3) "Heavy-duty Gasoline Vehicle" means either a gasoline-powered or hybrid-powered motor vehicle which is designed primarily for:
 - (a) transportation of property and has a Gross Vehicle Weight Rating (GVWR) of more than 8,500 pounds but less than 14,001 pounds;
 - (b) transportation of persons and has a capacity of more than 12 persons; or
 - (c) use as a recreational motor vehicle that is designed primarily to provide temporary or permanent living

- quarters for travel, camping, or other recreational use and has a GVWR of more than 8,500 pounds.
- (4) "Hybrid-powered Motor Vehicle" means a four-wheeled motor vehicle designed to be propelled by a combination of one or more electric motors and the burning of gasoline in an internal combustion engine.
 - (5) "Light-duty Gasoline Vehicle" means either a gasoline-powered or hybrid-powered motor vehicle which is designed primarily for:
 - (a) transportation of property and has a GVWR of 8,500 pounds or less; or
 - (b) transportation of persons and has a capacity of 12 persons or less.
 - (6) "Model year" means the year used to designate a discrete vehicle model, irrespective of the calendar year in which the vehicle was actually produced, provided that the production period does not exceed 24 months.
 - (7) "Motorcycle" means as defined in G.S. 20-4.01.
 - (8) "Motor Vehicle" means as defined in G.S. 20-4.01.
 - (9) "Plug-in Electric Vehicle" means as defined in G.S. 20-4.01.
 - (10) "Three most recent model years." For the purposes of Rules .1002 through .1006 of this Section, the term "Three most recent model years" shall be calculated by adding three years to the vehicle's Vehicle Identification Number (VIN) or the registration card model year to determine the first calendar year an emissions inspection is required.
 - (11) "Vendor" means any person who sells or leases equipment to inspection stations that is used to perform on-board diagnostic tests to show compliance with Rule .1005 of this Section.

History Note: Authority G.S. 20-4.01; 143-215.3(a)(1); Eff. December 1, 1982; Amended Eff. February 1, 2014.

15A NCAC 03I .0101 DEFINITIONS

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

- (1) Enforcement and management terms:
 - (a) Commercial Quota. Total quantity of fish allocated for harvest by commercial fishing operations.
 - (b) Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the

- N.C. Department of Environment and Natural Resources Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.
- (c) Internal Coastal Waters or Internal Waters. All Coastal Fishing Waters except the Atlantic Ocean.
- (d) Length of finfish.
 - (i) Curved fork length. A length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) Fork length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (iii) Pectoral fin curved fork length. A length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.
 - (iv) Total length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) Recreational Possession Limit. Restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (f) Recreational Quota. Total quantity of fish allocated for harvest for a recreational purpose.
- (g) Regular Closed Oyster Season. March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.

- (h) Scientific Institution. One of the following entities:
 - (i) An educational institution as defined in this Item;
 - (ii) A state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) A professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Subitems (h)(i) and (ii) of this Item.
- (i) Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.
- (2) Fishing Activities:
 - (a) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from permitted sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation,
 utilizing technology not found in the natural environment.
 - (b) Attended. Being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
 - (c) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation,
 utilizing technology not found in the natural environment.
 - (d) Depuration. Purification or the removal of adulteration from live oysters, clams, or mussels by any natural or artificially controlled means.
 - (e) Long Haul Operations. Fishing a seine towed between two vessels.
 - (f) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
 - (g) Possess. Any actual or constructive holding whether under claim of ownership or not.
 - (h) Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
 - (i) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
 - (j) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
 - (k) Shellfish production on leases and franchises:
 - (i) The culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (ii) The transplanting (relay) of oysters, clams, scallops or mussels from areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

- (l) Swipe Net Operations. Fishing a seine towed by one vessel.
 - (m) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 - (n) Use. Employ, set, operate, or permit to be operated or employed.
- (3) Gear:
- (a) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
 - (b) Channel Net. A net used to take shrimp that is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a vessel.
 - (c) Commercial Fishing Equipment or Gear. All fishing equipment used in Coastal Fishing Waters except:
 - (i) Cast nets;
 - (ii) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (iii) Dip nets or scoops having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (iv) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand;
 - (v) Hand operated rakes no more than 12 inches wide and weighing no more than six pounds and hand operated tongs;
 - (vi) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 - (vii) Landing nets used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 - (viii) Minnow traps when no more than two are in use;
 - (ix) Seines less than 30 feet in length;
 - (x) Spears, Hawaiian slings or similar devices that propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas, or similar means.
 - (d) Corkline. The support structure a net is attached to that is nearest to the water surface when in use. Corkline length is measured from the outer most mesh knot at one end of the corkline following along the line to the outer most mesh knot at the opposite end of the corkline.
 - (e) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
 - (f) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 - (g) Fyke Net. An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
 - (h) Gill Net. A net set vertically in the water to capture fish by entanglement of the gills in its mesh as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
 - (i) Headrope. The support structure for the mesh or webbing of a trawl that is nearest to the water surface when in use. Headrope length is measured from the outer most mesh knot at one end of the headrope following along the line to the outer most mesh knot at the opposite end of the headrope.
 - (j) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has

- one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (k) **Lead.** A mesh or webbing structure consisting of nylon, monofilament, plastic, wire, or similar material set vertically in the water and held in place by stakes or anchors to guide fish into an enclosure. Lead length is measured from the outer most end of the lead along the top or bottom line, whichever is longer, to the opposite end of the lead.
 - (l) **Mechanical methods for clamming.** Dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
 - (m) **Mechanical methods for oystering.** Dredges, patent tongs, stick rakes and other rakes when towed by engine power, and any other method that utilizes mechanical means to harvest oysters.
 - (n) **Mesh Length.** The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
 - (o) **Pound Net Set.** A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support the trap. The holding pen, enclosures, and lead(s) are not conical, nor are they supported by hoops or frames.
 - (p) **Purse Gill Nets.** Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 - (q) **Seine.** A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (4) **Fish habitat areas.** The estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Fish habitats as used in this definition, are vital for portions of the entire life cycle, including the early growth and development of fish species. Fish habitats in all Coastal Fishing Waters, as determined through marine and estuarine survey sampling, include:
- (a) **Anadromous fish nursery areas.** Those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
 - (b) **Anadromous fish spawning areas.** Those areas where evidence of spawning of anadromous fish has been documented in Division sampling records through direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
 - (c) **Coral:**
 - (i) Fire corals and hydrocorals (Class Hydrozoa);
 - (ii) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia); or
 - (iii) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia), which include sea fans (*Gorgonia* sp.), sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.), and sea pansies (*Renilla* sp.).
 - (d) **Intertidal Oyster Bed.** A formation, regardless of size or shape, formed of shell and live oysters of varying density.
 - (e) **Live rock.** Living marine organisms or an assemblage thereof attached to a hard substrate, excluding mollusk shells, but including dead coral or rock. Living marine organisms associated with hard bottoms, banks, reefs, and live rock include:
 - (i) Coralline algae (Division Rhodophyta);
 - (ii) *Acetabularia* sp., mermaid's fan and cups (*Udotea* sp.), watercress (*Halimeda* sp.), green feather, green grape algae (*Caulerpa* sp.) (Division Chlorophyta);
 - (iii) *Sargassum* sp., *Dictyopteris* sp., *Zonaria* sp. (Division Phaeophyta);
 - (iv) Sponges (Phylum Porifera);

- (v) Hard and soft corals, sea anemones (Phylum Cnidaria), including fire corals (Class Hydrozoa), and Gorgonians, whip corals, sea pansies, anemones, Solengastrea (Class Anthozoa);
- (vi) Bryozoans (Phylum Bryozoa);
- (vii) Tube worms (Phylum Annelida), fan worms (Sabellidae), feather duster and Christmas treeworms (Serpulidae), and sand castle worms (Sabellaridae);
- (viii) Mussel banks (Phylum Mollusca: Gastropoda); and
- (ix) Acorn barnacles (Arthropoda: Crustacea: Semibalanus sp.).
- (f) Nursery areas. Areas that for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season. Primary nursery areas are those areas in the estuarine system where initial post-larval development takes place. These are areas where populations are uniformly early juveniles. Secondary nursery areas are those areas in the estuarine system where later juvenile development takes place. Populations are composed of developing sub-adults of similar size which have migrated from an upstream primary nursery area to the secondary nursery area located in the middle portion of the estuarine system.
- (g) Shellfish producing habitats. Historic or existing areas that shellfish, such as clams, oysters, scallops, mussels, and whelks use to reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (h) Strategic Habitat Areas. Locations of individual fish habitats or systems of habitats that provide exceptional habitat functions or that are particularly at risk due to imminent threats, vulnerability, or rarity.
- (i) Submerged aquatic vegetation (SAV) habitat. Submerged lands that:
 - (i) are vegetated with one or more species of submerged aquatic vegetation including bushy pondweed or southern naiad (*Najas guadalupensis*), coontail (*Ceratophyllum demersum*), eelgrass (*Zostera marina*), horned pondweed (*Zannichellia palustris*), naiads (*Najas* spp.), redhead grass (*Potamogeton perfoliatus*), sago pondweed (*Stuckenia pectinata*, formerly *Potamogeton pectinatus*), shoalgrass (*Halodule wrightii*), slender pondweed (*Potamogeton pusillus*), water stargrass (*Heteranthera dubia*), water starwort (*Callitriche heterophylla*), waterweeds (*Elodea* spp.), widgeongrass (*Ruppia maritima*), and wild celery (*Vallisneria americana*). These areas may be identified by the presence of above-ground leaves, below-ground rhizomes, or reproductive structures associated with one or more SAV species and include the sediment within these areas; or
 - (ii) have been vegetated by one or more of the species identified in Sub-item (4)(i)(i) of this Rule within the past 10 annual growing seasons and that meet the average physical requirements of water depth (six feet or less), average light availability (secchi depth of one foot or more), and limited wave exposure that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered

- when average environmental conditions are altered by drought, rainfall, or storm force winds.
- This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or this Rule or Rules 03K .0304 and .0404, to apply to or conflict with the non-development control activities authorized by that Act.
- (5) Licenses, permits, leases and franchises, and record keeping:
- (a) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
 - (b) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
 - (c) For Hire Vessel. As defined by G.S. 113-174, when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
 - (d) Holder. A person who has been lawfully issued in his or her name a license, permit, franchise, lease, or assignment.
 - (e) Land:
 - (i) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
 - (iii) For recreational fishing operations, when fish are retained in possession by the fisherman.
 - (f) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - (g) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
 - (h) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
 - (i) North Carolina Trip Ticket. Paper forms provided by the Division, and electronic data files generated from software provided by the Division, for the reporting of fisheries statistics that include quantity, method, and location of harvest.
 - (j) Office of the Division. Physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
 - (k) Responsible party. Person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued license in compliance with applicable statutes and rules.
 - (l) Tournament Organizer. The person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
 - (m) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
 - (n) Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.

History Note: Authority G.S. 113-134; 113-174; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993;
July 1, 1993;
Recodified from 15A NCAC 03I .0001 Eff. December 17, 1996;
Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997;
Temporary Amendment Eff. May 1, 2000; August 1, 1999; July 1, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2014; April 1, 2011; April 1, 2009;
October 1, 2008; December 1, 2007; December 1, 2006;
September 1, 2005; April 1, 2003; April 1, 2001.

15A NCAC 03J .0104 TRAWL NETS

(a) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 500 pounds of finfish from December 1 through February 28, and 1,000 pounds of finfish from March 1 through November 30.

(b) It is unlawful to use trawl nets:

- (1) In internal coastal waters, from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour before sunrise on Monday;
- (2) For the taking of oysters;
- (3) In Albemarle Sound, Currituck Sound, and their tributaries, west of a line beginning on the south shore of Long Point at a point 36° 02.4910' N - 75° 44.2140' W; running southerly to the north shore on Roanoke Island to a point 35° 56.3302' N - 75° 43.1409' W; running northwesterly to Caroon Point to a point 35° 57.2255' N - 75° 48.3324' W;
- (4) In the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (1) of 15A NCAC 03R .0106 to peeler crab trawling;
- (5) From December 1 through February 28 from one hour after sunset to one hour before sunrise in the following areas:
 - (A) In Pungo River, north of a line beginning on Currituck Point at a point 35° 24.5833' N-76° 32.3166' W; running southwesterly to Wades Point to a point 35° 23.3062' N-76° 34.5135' W;
 - (B) In Pamlico River, west of a line beginning on Wades Point at a point 35° 23.3062' N - 76° 34.5135' W; running southwesterly to Fulford Point to a point 35° 19.8667' N - 76° 35.9333' W;
 - (C) In Bay River, west of a line beginning on Bay Point at a point 35° 11.0858'

N - 76° 31.6155' W; running southerly to Maw Point to a point 35° 09.0214' N - 76° 32.2593' W;

- (D) In Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34° 57.9116' N - 76° 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34° 56.3658' N - 76° 48.7110' W; and
- (E) In New River, all waters upstream of the N.C. Highway 172 Bridge when opened by proclamation; and

- (6) In designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), (a)(7), (a)(8) and (a)(9) within an area bound by the shoreline to the depth of six feet.

(c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 03L .0103 and .0202.

(d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.

(e) It is unlawful to use shrimp trawls for recreational purposes unless the trawl is marked by attaching to the codend (tailbag), one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) gear owner's current motor boat registration number; or
- (2) owner's U.S. vessel documentation name.

(f) It is unlawful to use shrimp trawls for the taking of blue crabs in internal waters, except that it shall be permissible to take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:

- (1) For individuals using shrimp trawls authorized by a Recreational Commercial Gear License, 50 blue crabs, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board.
- (2) For commercial operations, crabs may be taken incidental to lawful shrimp trawl operations provided that the weight of the crabs shall not exceed the greater of:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds.

(g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52; Eff. February 1, 1991; Amended Eff. August 1, 1998; May 1, 1997; March 1, 1994; February 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. April 1, 2014; April 1, 2009; September 1, 2005; August 1, 2004; August 1, 2000.

15A NCAC 03J .0301 POTS

(a) It is unlawful to use pots except during time periods and in areas specified herein:

- (1) In Coastal Fishing Waters from December 1 through May 31, except that all pots shall be removed from internal waters from January 15 through February 7. Fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 15 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 19 if it is determined that such waters are free of pots.
- (2) From June 1 through November 30, north and east of the Highway 58 Bridge at Emerald Isle:
 - (A) In areas described in 15A NCAC 03R .0107(a);
 - (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 03R .0107(b); or any part thereof, for the use of pots.
- (3) From May 1 through November 30 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) It is unlawful to use pots:

- (1) in any navigation channel marked by State or Federal agencies; or
- (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

(c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot pink or any combination of colors that include yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) gear owner's current motorboat registration number; or
 - (2) gear owner's U.S. vessel documentation name; or
 - (3) gear owner's last name and initials.
- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.
- (e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.
- (f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.
- (g) It is unlawful to use crab pots in coastal fishing waters unless each pot contains no less than two unobstructed escape rings that are at least two and five-sixteenths inches inside diameter and located in the opposite outside panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:
- (1) unbaited pots;
 - (2) pots baited with a male crab; and
 - (3) pots set in areas and during time periods described in 15A NCAC 03R .0118.
- (h) The Fisheries Director may, by proclamation, exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:
- (1) specify areas;
 - (2) specify time periods; and
 - (3) specify means and methods.
- (i) It is unlawful to use more than 150 crab pots per vessel in Newport River.
- (j) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.
- (k) User Conflicts:
- (1) In order to address user conflicts, the Fisheries Director may by proclamation impose any or all of the following restrictions:
 - (A) specify areas;
 - (B) specify time periods; and
 - (C) specify means and methods.

The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.
 - (2) Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769. Such requests shall contain the following information:
 - (A) a map of the affected area including an inset vicinity map showing the location of the area with detail

- (B) sufficient to permit on-site identification and location; identification of the user conflict causing a need for user conflict resolution;
 - (C) recommended solution for resolving user conflict; and
 - (D) name and address of the person(s) requesting user conflict resolution.
- (3) Upon the requestor's demonstration of a user conflict to the Fisheries Director and within 90 days of the receipt of the information required in Subparagraph (k)(2) of this Rule, the Fisheries Director shall issue a public notice of intent to address a user conflict. A public meeting shall be held in the area of the user conflict. The requestor shall present his or her request at the public meeting, and other parties affected may participate.
- (4) The Fisheries Director shall deny the request or submit a proclamation that addresses the results of the public meeting to the Marine Fisheries Commission for their approval.
- (5) Proclamations issued under Subparagraph (k)(1) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 03R .0107 as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Subparagraph (k)(1) of this Rule.

(l) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

(m) It is unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, leads or leaders are defined as any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish is not a pot.

History Note: Authority G. S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52;

Eff. January 1, 1991;

Amended Eff. August 1, 1998; May 1, 1997; March 1, 1996; March 1, 1994; October 1, 1992; September 1, 1991;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. September 1, 2000;

Amended Eff. April 1, 2014; September 1, 2005; August 1, 2004; August 1, 2002.

15A NCAC 03K .0110 PUBLIC HEALTH AND CONTROL OF OYSTERS, CLAMS, SCALLOPS AND MUSSELS

(a) To protect public health, the Fisheries Director may, by proclamation, impose any or all of the following restrictions on oysters, clams, scallops, and mussels to ensure the sale or

distribution of shellfish from approved areas or shellstock dealers as defined in Rule 15A NCAC 18A .0301 and to ensure that shellfish have not been adulterated or mislabeled during cultivation, harvesting, processing, storage and transport, in compliance with the National Shellfish Sanitation Program Guide for Control of Molluscan Shellfish, Section II: Model Ordinance:

- (1) specify time and temperature controls;
- (2) specify sanitation control procedures as specified in 21 Code of Federal Regulations (CFR) Part 123.11;
- (3) specify Hazard Analysis Critical Control Point (HACCP) requirements as specified in 21 CFR Part:
 - (A) 123.3 Definitions;
 - (B) 123.6 HACCP Plan;
 - (C) 123.7 Corrective Actions;
 - (D) 123.8 Verification;
 - (E) 123.9 Records; and
 - (F) 123.28 Source Controls;
- (4) specify tagging and labeling requirements;
- (5) implement the National Shellfish Sanitation Program's training requirements for shellfish harvesters and certified shellfish dealers;
- (6) require sales records and collection and submission of information to provide a mechanism for shellfish product to be traced back to the water body of origin; and
- (7) require implicated product recall and specify recall procedures.

(b) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

History Note: Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 113-221.2; 143B-289.52;

Eff. April 1, 2014.

15A NCAC 03L .0201 CRAB HARVEST RESTRICTIONS

(a) It is unlawful to possess more than 10 percent by number in any container, male and immature female hard blue crabs less than five inches from tip of spike to tip of spike and to fail to return hard blue crabs not meeting this restriction to the waters from which taken, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs. All blue crabs not sorted into containers as specified in Paragraph (b) of this Rule shall be deemed hard blue crabs for the purpose of establishing the 10 percent culling tolerance.

(b) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike unless individual crabs are sorted to and placed in separate containers for each of the following categories:

- (1) soft crabs;
- (2) pink and red-line peeler crabs;
- (3) white-line peeler crabs; and
- (4) from March 1 through October 31, male crabs to be used as peeler crab bait.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(c) It is unlawful to possess more than five percent by number of white-line peelers in a container of pink and red-line peelers, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(d) It is unlawful to:

- (1) sell white-line peelers;
- (2) possess white-line peelers unless they are to be used in the harvester's permitted blue crab shedding operation; and
- (3) possess male white-line peelers from June 1 through September 1.

The Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(e) It is unlawful to possess more than 50 blue crabs per person per day, not to exceed 100 blue crabs per vessel per day for recreational purposes, except the Fisheries Director may, by proclamation authority established in Paragraph (f) of this Rule, further restrict the harvest of blue crabs.

(f) In order to comply with management measures adopted in the N.C. Blue Crab Fishery Management Plan, the Fisheries Director may, by proclamation, close the harvest of blue crabs and take the following actions for commercial and recreational blue crab harvest:

- (1) specify areas;
- (2) specify seasons;
- (3) specify time periods;
- (4) specify means and methods;
- (5) specify culling tolerance; and
- (6) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

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

Eff. January 1, 1991;

Amended Eff. April 1, 1997; July 1, 1993;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. April 1, 2014; September 1, 2005; August 1, 2000.

15A NCAC 03L .0202 CRAB TRAWLING

(a) It is unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It is unlawful to use a trawl to take crabs that does not meet mesh length requirements, except as provided in 15A NCAC 03J .0104. The minimum mesh length to take hard crabs with a trawl is three inches, except:

- (1) The minimum mesh length is four inches in the area of western Pamlico Sound west of a

line beginning at a point 35° 48.3693' N - 75° 43.7232' W on Roanoke Marshes Point; running easterly to a point 35° 48.3000' N - 75° 37.1167' W near Beacon "1" at the southern end of Roanoke Island; running southerly to a point 35° 30.7500' N - 75° 40.5667' W near the "S" Beacon at Long Shoal; running southwesterly to a point 35° 12.6167' N - 76° 04.3833' W near the "BL" Beacon on Bluff Shoal; running westerly to a point 35° 08.1000' N - 76° 17.5000' W near the "BI" Beacon at Brant Island Shoal; running southwesterly to a point 35° 04 .6167' N - 76° 27.8000' W on Point of Marsh; and

- (2) The Fisheries Director may, by proclamation, specify areas other than the area described in Subparagraph (b)(1) of this Rule for trawl mesh length use and increase the minimum trawl mesh length to no more than four inches to take hard crabs.

(c) It is unlawful to use a trawl with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet to take soft or peeler crabs, except as provided in 15A NCAC 03J .0104.

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

Eff. February 1, 1991;

Amended Eff. April 1, 2014; September 1, 2005; August 1, 2004; March 1, 1994; September 1, 1991.

15A NCAC 03L .0203 CRAB DREDGING

(a) It is unlawful to take crabs with dredges except:

- (1) from January 1 through March 1 in the area of Pamlico Sound described in 15A NCAC 03R .0109; and
- (2) incidental to lawful oyster dredging operations in areas not subject to the exception in Subparagraph (a)(1) of this Rule provided the weight of the crabs shall not exceed:
 - (A) 50 percent of the total weight of the combined oyster and crab catch; or
 - (B) 500 pounds, whichever is less.

The Fisheries Director may, by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of dredges to take blue crabs.

(b) It is unlawful to take crabs with dredges between sunset and sunrise and between sunset on any Saturday and sunrise on the following Monday, except in the Atlantic Ocean.

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

Eff. January 1, 1991;

Amended Eff. April 1, 2014; May 1, 1997.

15A NCAC 03L .0204 CRAB POTS

(a) It is unlawful to take crabs with pots except as provided in 15A NCAC 03J .0301 and .0302. The Fisheries Director may,

by proclamation authority established in 15A NCAC 03L .0201, further restrict the use of pots to take blue crabs.

(b) The Fisheries Director may, by proclamation, require the use of terrapin excluder devices in each funnel entrance in crab pots and impose the following restrictions concerning terrapin excluder devices:

- (1) specify areas;
- (2) specify time periods; and
- (3) specify means and methods.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. April 1, 2014.

**15A NCAC 03L .0205 CRAB SPAWNING
 SANCTUARIES**

(a) It is unlawful to set or use trawls, pots, and mechanical methods for oysters or clams or take crabs with the use of commercial fishing equipment from the crab spawning sanctuaries described in 15A NCAC 03R .0110 from March 1 through August 31.

(b) The Fisheries Director may, by proclamation, designate additional areas as crab spawning sanctuaries and may impose the following restrictions in any crab spawning sanctuary:

- (1) specify areas;
- (2) specify time periods;
- (3) specify means and methods; and
- (4) specify limits on harvest based on size, quantity, sex, reproductive stage, or peeler stage.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. January 1, 1991;
Amended Eff. May 1, 1997;
Temporary Amendment Eff. October 2, 1999;
Amended Eff. April 1, 2014; April 1, 2001.

15A NCAC 03L .0206 PEELER CRABS

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Temporary Adoption Eff. July 1, 1999;
Eff. August 1, 2000;
Amended Eff. September 1, 2005;
Repealed Eff. April 1, 2014.

**15A NCAC 03L .0209 RECREATIONAL HARVEST OF
 CRABS**

History Note: Authority G.S. 113-134; 113-182; 143B-289.52;
Eff. October 1, 2008;
Repealed Eff. April 1, 2014.

15A NCAC 03M .0103 MINIMUM SIZE LIMITS

It is unlawful to possess, sell, or purchase finfish under four inches in length except:

- (1) bait in the crab pot fishery in North Carolina with the following provision: such crab pot bait shall not be transported west of U.S. Interstate 95 and when transported, shall be accompanied by documentation showing the name and address of the shipper, the name and address of the consignee, and the total weight of the shipment;
- (2) bait in the finfish fishery with the following provisions:
 - (a) It is unlawful to possess more than 200 pounds of live finfish or 100 pounds of dead finfish; and
 - (b) Such finfish bait may not be transported outside the State of North Carolina;
- (3) live finfish in aquaria, provided the finfish are not subject to other minimum size limits under the authority of Marine Fisheries Commission Rule; and
- (4) menhaden, herring, gizzard shad, and pinfish.

Bait dealers who possess a valid finfish dealer license from the Division of Marine Fisheries are exempt from Sub-Items (2)(a) and (b) of this Rule. Tolerance of not more than five percent by number of species shall be allowed.

History Note: Authority G.S. 113-134; 113-185; 143B-289.52;
Eff. July 1, 1993;
Amended Eff. April 1, 2014.

**15A NCAC 03M .0206 HYBRID STRIPED BASS
 CULTURE**

History Note: Authority G.S. 113-132; 113-134; 143B-289.52;
Eff. January 1, 1991;
Repealed Eff. April 1, 2014.

15A NCAC 03M .0521 SHEEPSHEAD

The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of sheepshead:

- (1) specify time;
- (2) specify area;
- (3) specify means and methods;
- (4) specify season;
- (5) specify size; and
- (6) specify quantity.

History Note: Authority G.S. 113-134; 113-182; 113-221.1; 143B-289.52;
Eff. April 1, 2014.

**15A NCAC 03O .0503 PERMIT CONDITIONS;
 SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
 - (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
 - (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Horseshoe Crab monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission or the Division of Marine Fisheries' Morehead City Headquarters Office, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769.
- (b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:
- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:
 - (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
 - (B) submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
 - (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
 - (D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and
 - (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.
- (2) Striped Bass Dealer Permit:
- (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and
 - (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring as defined in 15A NCAC 03J .0209.
- (4) Atlantic Ocean Flounder Dealer Permit:

- (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Black Sea Bass North of Cape Hatteras Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
 - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (e) Pound Net Set Permits. Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.
- (f) Aquaculture Operations/Collection Permits:
 - (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
 - (2) It is unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
 - (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
 - (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
 - (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting under an Aquaculture Collection Permit at the time of application.
- (g) Scientific or Educational Activity Permit:
 - (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect, hold, culture or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
 - (2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational purposes and for collection methods and possession allowances approved by the Division of Marine Fisheries.

- (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.
- (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit a report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
- (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license(s) for such sale;
 - (B) authorization stated on the permit for such sale; and
 - (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.
- (6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.
- (7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.
- (h) Under Dock Oyster Culture Permit:
 - (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
 - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
 - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.
- (i) Atlantic Ocean Striped Bass Commercial Gear Permit:
 - (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.
- (j) Coastal Recreational Fishing License Exemption Permit:
 - (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.
 - (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:
 - (A) individuals with physical or mental limitations;
 - (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
 - (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
 - (D) disadvantaged youths.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.
 - (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.
 - (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 03O .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:

- (A) the name, date(s), time and physical location of the event;
- (B) documentation that substantiates local, state, or federal involvement in the organized fishing event, if applicable;
- (C) the cost or requirements, if any, for an individual to participate in the event; and
- (D) an estimate of the number of participants.

(k) For Hire Fishing Permit:

- (1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in 15A NCAC 03O .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.
- (2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:
 - (A) holding the USCG certification required in 15A NCAC 03O .0501(g)(1);
 - (B) having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection; and
 - (C) having current picture identification in possession and ready at hand for inspection.
- (3) It is unlawful for the permittee to fail to notify the Division within five days of any changes to information provided on the permit.
- (4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for-hire recreational fishing.
- (5) The For Hire Fishing Permit is valid for one year from the date of issuance.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52; Temporary Adoption Eff. September 1, 2000; August 1, 2000; May 1, 2000; Eff. April 1, 2001; Amended Eff. April 1, 2014; April 1, 2009; July 1, 2008; January 1, 2008; September 1, 2005; October 1, 2004; August 1, 2004; August 1, 2002.

15A NCAC 03R .0107 DESIGNATED POT AREAS

(a) The pot areas referenced in 15A NCAC 03J .0301(a)(2)(A) are delineated in the following Coastal Fishing Waters:

- (1) In Albemarle and Currituck sounds and tributaries.
- (2) In Roanoke Sound and tributaries.
- (3) In Croatan Sound and tributaries.

- (4) In Pamlico Sound and tributaries, except areas further described in Subparagraphs (a)(5), (a)(7), and (a)(8) of this Rule. Pots shall not be set within the following area described by lines:

- (A) Striking Bay - beginning on shore at a point 35° 23.7003' N - 76° 26.6951' W; running southeasterly to shore at a point 35° 23.3580' N - 76° 26.3777' W; running easterly along shore to Long Point to a point 35° 23.3380' N - 76° 26.2540' W; running southeasterly to Drum Point to a point 35° 22.4830' N - 76° 25.1930' W; running southerly along shore to Point of Narrows to a point 35° 21.9240' N - 76° 25.4080' W; running northwesterly near Marker "2" to a point 35° 22.4166' N - 76° 26.4833' W; running westerly to a point 35° 22.3833' N - 76° 27.0000' W; running northerly to Short Point to a point 35° 23.3831' N - 76° 26.9922' W; running northerly along shore to a point 35° 23.5000' N - 76° 26.9666' W; running northeasterly to the beginning point.

- (5) In the Pamlico River and its tributaries west of a line beginning on Willow Point at a point 35° 22.3741' N - 76° 28.6905' W; running southerly to Pamlico Point to a point 35° 18.5882' N - 76° 28.9625' W; pots may be used in Coastal Fishing Waters within an area bound by the shoreline to the depth of six feet. Pots shall not be used in areas listed in Paragraph (b) of this Rule, unless opened to the use of pots by proclamation; and pots shall not be set within the following areas described by lines:

- (A) Long Point - beginning on shore at a point 35° 22.4833' N - 76° 43.4167' W; running northwesterly to a point 35° 22.6500' N - 76° 43.4333' W; running easterly along the six foot depth to a point 35° 22.7333' N - 76° 42.7333' W; running to shore to a point 35° 22.4000' N - 76° 43.0833' W; running westerly along shore to the beginning point.

- (B) Pamlico River Mainstream Channel - beginning at a point 250 yards north of Marker "7" at a point 35° 27.2953' N - 76° 55.1351' W; running westerly to a point near Marker "8" at a point 35° 27.4217' N - 76° 56.0917' W; running westerly along the north side of the marked channel to a point 100 yards north of Marker "9" at a point 35° 27.7472' N - 76° 57.5392' W; running westerly along the north side

- of the marked channel to a point near Marker "16", north of Whichard Beach at a point 35° 30.4750' N - 77° 01.2217' W; running southwesterly across the channel to a point 35° 30.4373' N - 77° 01.2614' W; running southeasterly along the south side of the marked channel at a distance of 100 yards from the north side of the marked channel to a point near Marker "7" at a point 35° 27.1722' N - 76° 55.1380' W; running northerly to the beginning point.
- (C) Chocowinity Bay Channel - beginning at a point near the Wildlife Resources Commission (WRC) red marker in Chocowinity Bay at a point 35° 29.5501' N - 77° 01.4335' W; running easterly to the south side of the marked navigation channel in Pamlico River, at a point 35° 29.0408' N - 76° 59.5437' W; running southeasterly to a point 35° 28.9236' N - 76° 59.3109' W; running westerly to the WRC green buoy in Chocowinity Bay at a point 35° 29.5004' N - 77° 01.4339' W; running northerly to the beginning point.
- (D) Whichard Beach Channel - beginning on shore at a point 35° 30.2364' N - 77° 01.3679' W; running easterly to the south side of the marked navigation channel in Pamlico River at a point 35° 30.1952' N - 77° 01.0252' W; running southeasterly to a point 35° 30.1373' N - 77° 00.9685' W; running westerly to shore at a point 35° 30.2002' N - 77° 01.4518' W, running northeasterly to the beginning point.
- (E) Broad Creek Channel - beginning near Marker "3" in Broad Creek at a point 35° 29.0733' N - 76° 57.2417' W; running southwesterly near Marker "1" at a point 35° 28.8591' N - 76° 57.3823' W; running southerly to the marked navigation channel in Pamlico River at a point 35° 27.8083' N - 76° 57.6250' W; running southeasterly to a point 35° 27.7344' N - 76° 57.4822' W; running northerly to the six foot depth at a point 35° 28.5779' N - 76° 57.2924' W; running northerly to the six foot depth at a point 35° 28.7781' N - 76° 57.3508' W; running northerly along the six foot depth to a point near Marker "4" at a point 35° 29.0933' N - 76° 57.1967' W; running southwesterly to the beginning point.
- (F) Blounts Bay - from June 1 through September 15, on the south side of Pamlico River beginning near Marker "7" at a point 35° 27.1722' N - 76° 55.1381' W; running westerly and along the south side of the marked navigation channel to a point near Marker "9" at a point 35° 27.7070' N - 76° 57.5739' W; running northwesterly along the south side of the marked channel to the intersection of the Chocowinity Bay Channel at a point 35° 28.9236' N - 76° 59.3109' W; running westerly along the south side of the Chocowinity Bay Channel to a point 35° 29.0206' N - 76° 59.6678' W; running southerly to the eight foot depth at a point 35° 28.6667' N - 76° 59.6667' W; running southeasterly along the eight foot depth to a point 35° 27.0833' N - 76° 55.1667' W; running northerly to the beginning point.
- (6) In the Pamlico River and its tributaries west of a line beginning on Willow Point at a point 35° 22.3741' N - 76° 28.6905' W; running southerly to Pamlico Point to a point 35° 18.5882' N - 76° 28.9625' W; pots may be used in Coastal Fishing Waters within an area bound by the shoreline to the depth of six feet. Pots shall not be used in areas listed in Paragraph (b) of this Rule, unless opened to the use of pots by proclamation; and except pots may be set within the following areas described by lines:
- (A) Durants Point and South Shore, upper Pungo River - beginning on Durants Point at a point 35° 30.5197' N - 76° 35.1521' W; running northwesterly to a point 35° 31.1333' N - 76° 35.5833' W; running northeasterly 200 yards south of Marker "10" to a point 35° 31.2032' N - 76° 35.5558' W; running easterly parallel to the marked navigation channel at a distance of 200 yards to the shore south of Wilkerson Creek to a point 35° 33.0493' N - 76° 27.2752' W; running southerly and westerly along the shoreline and following the Inland/Coastal lines of Horse Island, Tarklin, Scranton, and Smith Creeks to the beginning point.
- (B) Tooleys Point and North Shore, upper Pungo River - beginning at the "Breakwater" 200 yards northeast of Beacon "6", at a point 35° 31.7833' N

- 76° 36.8500' W; running southeasterly to a point 200 yards from Marker "4" at a point 35° 31.5167' N - 76° 36.3500' W; running easterly parallel to the marked navigation channel at a distance of 200 yards to the north shore of Wilkerson Creek to a point 35° 33.2339' N - 76° 27.5449' W; running northwesterly along the shoreline to the east end of the US 264 bridge; running westerly along the south side of the bridge and following the Inland/Coastal line to the western shore; running southerly and westerly along the shoreline and following the Inland/Coastal lines of Upper Dowry Creek and Lower Dowry Creek; running westerly and along the shoreline of Battalina and Tooleys creeks; running along the river shore to the "Breakwater" to a point 35° 31.9908' N - 76° 36.6105' W; running southwestly along the "Breakwater" to the beginning point.
- (C) Pungo Creek - beginning on Windmill Point at a point 35° 30.7444' N - 76° 38.2869' W; running northeasterly to a point 200 yards west of Marker "3" to a point 35° 31.3500' N - 76° 36.6167' W; running northwesterly to the "Breakwater" to a point 35° 31.6296' N - 76° 37.1201' W; running westerly along the "Breakwater" to shore to a point 35° 31.5653' N - 76° 37.3832' W; running westerly along shore and into Pungo Creek following the shoreline and the Inland/Coastal lines of Vale, Scott, and Smith creeks to the north end of the NC 92 bridge over Pungo Creek; running southerly along the bridge and following the Inland/Coastal line to the southern shore; running easterly along shore to the beginning point.
- (D) Upper Pamlico - in Coastal Fishing Waters west of a line beginning on the north shore of Gum Point at a point 35° 25.1699' N - 76° 45.5251' W; running southwestly to a point on the south shore of Pamlico River to a point 35° 23.4453' N - 76° 46.4346' W, except as described in Paragraph (a)(5)(B) through (F) of this Rule.
- (E) North Side Pamlico - beginning on the north shore of Gum Point at a point 35° 25.1699' N - 76° 45.5251' W; running southwestly 500 yards from shore to a point 35° 24.9339' N - 76° 45.6495' W; running easterly parallel to the shoreline at a distance of 500 yards near Adams Point to a point 35° 23.3949' N - 76° 35.8089' W; running northerly to shore at a point 35° 23.1754' N - 76° 35.9619' W; running westerly along shore to the beginning point.
- (F) South Creek - in Coastal Fishing Waters of South Creek and tributaries west of a line beginning on Hickory Point at a point 35° 21.7385' N - 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N - 76° 41.7870' W.
- (7) In Bay River west of a line beginning on Bay Point at a point 35° 11.0750' N - 76° 31.6080' W; running southerly to Maw Point to a point 35° 09.0407' N - 76° 32.2348' W; pots may be used in Coastal Fishing Waters within an area bound by the shoreline to the depth of six feet. Pots shall not be used in areas listed in Paragraph (b) of this Rule, unless opened to the use of pots by proclamation; and pots shall not be set within the following areas described by lines:
 - (A) Vandemere - beginning on the west shore of Vandemere Creek at a point 35° 11.2280' N - 76° 39.6046' W; running southeasterly to the east shore to a point 35° 11.0920' N - 76° 39.3240' W; running southerly to a point 35° 10.9390' N - 76° 39.4426' W; running southwestly to a point 35° 10.8567' N - 76° 39.6212' W; running northwesterly to shore west of Vandemere Creek to a point 35° 10.8983' N - 76° 39.7307' W; running northerly along shore to the beginning point.
 - (B) Moore Bay - beginning on shore west of Bell Point at a point 35° 09.6712' N - 76° 39.9651' W; running northwesterly to a point 35° 09.7331' N - 76° 40.0928' W; running southerly along the six foot depth to a point 35° 09.0045' N - 76° 40.3141' W; running southeasterly to the north shore of Moore Creek to a point 35° 08.9640' N - 76° 40.2000' W; running northerly along shore to the beginning point.
- (8) In the Neuse River and Point of Marsh area south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N -

76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southeasterly to a point 35° 04.7670' N - 76° 25.7920' W; running southwesterly to shore to a point 35° 03.9387' N - 76° 27.0466' W; pots may be used in Coastal Fishing Waters within an area bound by the shoreline to the depth of six feet. Pots shall not be used in areas listed in Paragraph (b) of this Rule, unless opened to the use of pots by proclamation; and pots shall not be set within the following areas described by lines:

- (A) Oriental - in that area including Greens Creek and tributaries downstream of the bridge on State Secondary Road 1308, and Whittaker Creek north of a line beginning on the west shore at the Whittaker Creek primary nursery area (PNA) line; running easterly along the Whittaker Creek PNA line to the east shore; running southerly to a point 35° 01.3833' N - 76° 40.9500' W; running westerly following the six foot depth to a point 35° 01.1666' N - 76° 41.8833' W; running southerly across the channel to a point 35° 01.1339' N - 76° 41.9589' W; running westerly to Windmill Point to the south shore of the Shop Gut Creek PNA line; running northerly along the Shop Gut Creek PNA line to the north shore of the Shop Gut Creek PNA line.
- (B) Greens Creek - more than 75 yards from shore in the area beginning on the south shore of Greens Creek primary nursery area (PNA) line; following the PNA lines of Greens Creek and Kershaw Creek to the east shore of Kershaw Creek; running easterly along the shore of Greens Creek, and running along the shore of Smith Creek and its tributaries to the bridge on State Secondary Road 1308; running southwesterly along the bridge to the south shore of Greens Creek; running westerly along the shore to the beginning point.
- (C) Dawson Creek - beginning on the west shore at a point 34° 59.5920' N - 76° 45.4620' W; running easterly along the bridge on State Secondary Road 1302 to shore at a point 34° 59.5800' N - 76° 45.4140' W; running northerly and easterly along the shore to the primary nursery area (PNA) line of the southeastern tributary; running northerly along the PNA line

to shore; running northerly along shore to the PNA line of the unnamed northeastern tributary; running northwesterly along the PNA line to shore; running northwesterly along shore to the Inland/Coastal line on Tarklin Creek; running westerly along the Inland/Coastal line to shore; running southwesterly along shore to the Inland/Coastal line on Dawson Creek; running southerly along the Inland/Coastal line to the shore; running easterly and then southerly along shore to the beginning point.

- (D) Wilkerson Point - beginning on the west side of the Minnesott Beach Yacht Basin Channel at a point 34° 58.2682' N - 76° 49.1903' W; running southerly to a point 34° 58.1403' N - 76° 49.2253' W; running easterly along the six foot depth to a point 34° 58.4000' N - 76° 46.5667' W; running northerly to shore to a point 34° 58.5333' N - 76° 46.6333' W; running westerly along shore to the beginning point.
- (E) Beard Creek - beginning on shore west of Beard Creek at a point 35° 00.1902' N - 76° 52.2176' W; running southerly to a point 34° 59.8883' N - 76° 52.3594' W; running easterly along the six foot depth to a point 34° 59.4167' N - 76° 51.2333' W; running northeasterly to shore to a point 34° 59.5989' N - 76° 51.0781' W; running westerly along shore to the Beard Creek tributary primary nursery area (PNA) line; running northeasterly along the PNA line to the Inland/Coastal line in Beards Creek; running westerly along the Inland/Coastal line to the western shore; running southerly along shore to the beginning point.
- (F) Clubfoot Creek - more than 50 yards from shore in the area south of a line beginning at a point 34° 54.9327' N - 76° 45.6506' W on the west shore; running northerly to a point 34° 55.1501' N - 76° 45.6221' W; running northeasterly to a point 34° 55.1812' N - 76° 45.5172' W near Marker "5"; running northeasterly to a point 34° 55.2994' N - 76° 45.1180' W on the east shore and north of line beginning at a point on the west shore 34° 54.5424' N - 76° 45.7252' W; running

- easterly to a point 34° 54.4853' N - 76° 45.4022' W on the east shore.
- (G) Lower Broad Creek - beginning on the north shore at a point 35° 05.8314' N - 76° 35.3845' W; running southwesterly along the secondary nursery area line to the six foot depth at 35° 05.7321' N - 76° 35.5046' W; running southerly following the six foot depth near Marker "2A" to a point 35° 05.5442' N - 76° 35.2886' W; running northerly to a point 35° 05.7446' N - 76° 35.2980' W; running westerly along the shore to the point of beginning.
- (9) In the Neuse River and Point of Marsh area south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N - 76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southeasterly to a point 35° 04.7670' N - 76° 25.7920' W; running southwesterly to shore to a point 35° 03.9387' N - 76° 27.0466' W; pots may be used in Coastal Fishing Waters within an area bound by the shoreline to the depth of six feet. Pots shall not be used in areas listed in Paragraph (b) of this Rule, unless opened to the use of pots by proclamation; and except pots may be set in Coastal Fishing Waters west of a line beginning on shore west of Beards Creek at a point 35° 00.1902' N - 76° 52.2176' W; running southwesterly to shore west of Slocum Creek to a point 34° 57.0333' N - 76° 53.7252' W.
- (10) In the West Bay and Long Bay area south and west of a line beginning on shore at a point 35° 03.9387' N - 76° 27.0466' W; running northeasterly to a point 35° 04.7670' N - 76° 25.7920' W; running southeasterly to the eastern shore of West Bay to a point 35° 02.1203' N - 76° 21.8122' W; areas described by lines:
- (A) Raccoon Island, northern shore - beginning at the western point at a point 35° 04.3696' N - 76° 26.1815' W; running southeasterly along the north shore to a point 35° 03.9814' N - 76° 25.5862' W; running easterly 150 yards to a point 35° 03.9777' N - 76° 25.4910' W; running northwesterly at a distance of 150 yards from shore to a point 35° 04.4417' N - 76° 26.2150' W; running easterly to the beginning point.
- (B) Raccoon Island, southern shore - beginning at the western point at a point 35° 04.3696' N - 76° 26.1815' W; running southeasterly along the south shore to a point 35° 03.9814' N - 76° 25.5862' W; running easterly 50 yards to a point 35° 03.9800' N - 76° 25.5513' W; running westerly at a distance of 50 yards from shore to a point 35° 04.3955' N - 76° 26.1934' W; running easterly to the beginning point.
- (C) West Bay: Point of the Narrows - beginning on shore at a point 35° 03.5421' N - 76° 26.3909' W; running northeasterly to a point 35° 03.5980' N - 76° 26.3894' W; running southeasterly parallel to shore at a distance of 100 yards to a point 35° 02.4740' N - 76° 26.1280' W; running northwesterly to shore to a point 35° 02.5440' N - 76° 26.1486' W; running northerly along shore to the beginning point.
- (D) West Bay: Point of Island Bay, Dowdy Bay - beginning on shore at a point 35° 01.5271' N - 76° 26.2836' W; running southeasterly to a point 35° 01.4684' N - 76° 26.2450' W; running southeasterly parallel to shore at a distance of 100 yards to a point 35° 00.0701' N - 76° 25.4414' W; running southerly to a point 35° 00.0620' N - 76° 25.5074' W on Dowdy Point; running westerly and northerly along shore to the beginning point.
- (E) West Bay - beginning on Dowdy Point at a point 35° 00.0620' N - 76° 25.5074' W; running easterly to a point 35° 00.1000' N - 76° 25.2000' W; running southerly to a point 34° 58.7500' N - 76° 24.7000' W; running westerly to Jack's Bay Point to a point 34° 58.6886' N - 76° 25.3683' W; running northerly along shore to the beginning point.
- (F) Long Bay: Jack's Bay, Stump Bay - beginning on Jack's Bay Point at a point 34° 58.6886' N - 76° 25.3683' W; running southwesterly to a point 34° 57.6500' N - 76° 25.8500' W; running westerly to shore to a point 34° 57.2089' N - 76° 27.2292' W; running northerly along shore to the boundary of the military restricted area (having its center at a point 34° 58.8000' N - 76° 26.2000' W) in Jack's Bay to a point 34° 58.4208' N -

- 76° 25.9417' W; running northeasterly along the boundary of the military restricted area to a point 34° 58.7746' N - 76° 25.6733' W; running easterly along shore to the beginning point.
- (G) Long Bay - beginning on the east point of the southern shore of Stump Bay at a point 34° 57.2089' N - 76° 27.2292' W; running southeasterly to Swimming Point to a point 34° 56.7619' N - 76° 26.3838' W; running southerly along shore to the head of Long Bay; running northerly along the west shore to the beginning point.
- (H) Long Bay: Owens Bay - beginning on Swimming Point at a point 34° 56.7619' N - 76° 26.3838' W; running northwesterly to a point 34° 56.8470' N - 76° 26.5363' W; running northeasterly parallel to shore at a distance of 300 yards to a point 34° 57.9394' N - 76° 24.1326' W; running southwesterly to Long Bay Point at a point 34° 57.7863' N - 76° 24.1837' W; running southwesterly along shore to the beginning point.
- (I) West Thorofare Bay, Merkle Bay - beginning on Long Bay Point at a point 34° 57.7863' N - 76° 24.1837' W; running northeasterly near Marker "8WB" to a point 34° 58.4600' N - 76° 23.9600' W; running easterly to Tump Point to a point 34° 58.7000' N - 76° 22.8166' W; running southerly along the shore of Merkle Bay and West Thorofare Bay back to the beginning point.
- (J) West Bay, North Bay - beginning on the eastern shore of West Bay at a point 35° 02.1203' N - 76° 21.8122' W; running northwesterly to a point 35° 02.5412' N - 76° 22.4445' W; running southwesterly near Marker "5WB" to a point 35° 02.0798' N - 76° 22.8729' W; running southerly to a point 35° 00.5666' N - 76° 21.8333' W; running southerly to Deep Bend Point to a point 34° 58.5923' N - 76° 21.7325' W; running easterly and northerly along shore to the beginning point.
- (11) Core Sound, Back Sound, and the Straits and their tributaries.
- (12) North River:
- (A) Goose Bay - beginning on shore west of South Leopard Creek at a point 34° 45.4517' N - 76° 35.1767' W; running northerly to a point 34° 45.6409' N - 76° 35.2503' W; running southwesterly to a point 34° 45.3333' N - 76° 35.7500' W; running southerly to a point 34° 43.4667' N - 76° 35.2333' W; running easterly to shore at a point 34° 43.5833' N - 76° 34.9167' W; running northerly along shore to the beginning point.
- (B) Ward Creek - Coastal Fishing Waters north and east of a line beginning on the north shore at a point 34° 46.2667' N - 76° 35.4933' W; running southerly to south shore to a point 34° 45.4517' N - 76° 35.1767' W.
- (C) Upper North River - Coastal Fishing Waters north of a line beginning on the west shore at a point 34° 46.0383' N - 76° 37.0633' W; running easterly to shore to a point 34° 46.2667' N - 76° 35.4933' W.
- (D) Newby Creek, Gibbs Creek - beginning on Marsh Hen Point at a point 34° 45.2004' N - 76° 37.0639' W; running southwesterly to a point 34° 44.5833' N - 76° 36.6000' W; running southeasterly to shore near Holland's Rocks to a point 34° 43.6667' N - 76° 37.3333' W; running northerly along shore to the beginning point.
- (E) North River Marshes - beginning near Marker "6" at a point 34° 43.4833' N - 76° 37.3500' W; running northeasterly to a point 34° 44.1333' N - 76° 36.8667' W; running southeasterly to a point 34° 43.8000' N - 76° 36.1333' W; running southeasterly to a point 34° 43.5000' N - 76° 35.7833' W; running southerly near Marker "56" to a point 34° 42.2391' N - 76° 35.8498' W; running westerly to a point 34° 42.2333' N - 76° 36.7167' W; running northerly to a point 34° 42.7500' N - 76° 36.9667' W; running northerly to a point 34° 43.2333' N - 76° 36.9667' W; running northwesterly to the beginning point.
- (13) Newport River:
- (A) Lower portion - beginning on shore east of Penn Point at a point 34° 45.4397' N - 76° 43.0638' W; running northeasterly to shore east of Oyster Creek to a point 34° 46.5480' N - 76° 41.9910' W; running easterly along shore to a point on the western shore of Core Creek to a point 34° 47.0816' N - 76° 41.2605' W; running easterly to the eastern shore at a point 34°

- 46.9867' N - 76° 41.0437' W; running southerly along shore to Gallant Point to a point 34° 43.9911' N - 76° 40.2762' W; running westerly near Marker "2" to a point 34° 44.0031' N - 76° 40.5038' W; running southeasterly near Marker "4" to a point 34° 43.7064' N - 76° 40.1627' W; running southerly to the west side of Gallant's Channel at the drawbridge to a point 34° 43.3500' N - 76° 40.1833' W; running westerly along the US 70 and the US 70 bridge to its terminus at the State Port Terminal; running westerly and northerly along the western shore of Newport River and its tributaries to the beginning point.
- (B) Upper portion - the Coastal Fishing Waters west of a line beginning on shore east of Harlowe Creek at a point 34° 46.5730' N - 76° 42.6350' W; running southerly to shore east of Penn Point to a point 34° 45.6970' N - 76° 43.5180' W.
- (14) Bogue Sound:
- (A) South of the Intracoastal Waterway - beginning on the south shore at the NC 58 bridge at a point 34° 40.0585' N - 77° 03.8005' W; running northerly along the bridge to the south side of the IWW channel to a point 34° 40.4464' N - 77° 03.9155' W; running easterly along the south side of the IWW channel to the Atlantic Beach bridge to a point 34° 43.0320' N - 76° 44.1300' W; running easterly to the northeastern shore of Tar Landing Bay to a point 34° 42.5000' N - 76° 42.2000' W; running easterly along shore to a point 34° 42.1990' N - 76° 41.3873' W; running southeasterly to a point 34° 42.1631' N - 76° 41.3491' W; running southeasterly and westerly along shore to the beginning point.
- (B) North of the Intracoastal Waterway - beginning on the north shore at the NC 58 bridge at a point 34° 40.7780' N - 77° 04.0010' W; running southerly along the bridge to the north side of the IWW channel to a point 34° 40.4640' N - 77° 03.9090' W; running easterly along the north side of the IWW channel to the Atlantic Beach bridge to a point 34° 43.0620' N - 76° 44.1240' W; running northerly along the bridge to shore to a point 34° 43.2780' N - 76° 44.0700' W; running westerly along shore to the beginning point.
- (15) Designated primary nursery areas in all Coastal Fishing Waters which are listed in 15A NCAC 03R .0103, except Burton Creek off Lower Broad Creek in Pamlico County.
- (b) The pot areas referenced in 15A NCAC 03J .0301(a)(2)(B) to be opened by proclamation are delineated in the following Coastal Fishing Waters:
- (1) Wysocking Bay:
- (A) Lone Tree Creek - beginning on shore at a point 35° 25.9705' N - 76° 02.7799' W; running easterly along the shoreline to the primary nursery area (PNA) line on the north shore of Lone Tree Creek; running southeasterly along the PNA line to the south shore; running southwesterly to a point 35° 24.7666' N - 76° 02.5333' W; running northwesterly to a point 35° 25.7000' N - 76° 03.2666' W; running northeasterly to the beginning point.
- (B) Mt. Pleasant Bay - beginning on shore west of Green Point at a point 35° 24.6160' N - 76° 03.9690' W; running easterly to a point 35° 24.4500' N - 76° 03.2000' W; running southerly to a point 35° 23.2833' N - 76° 03.5333' W; running southwesterly to shore to a point 35° 23.1166' N - 76° 04.2000' W; running westerly and northerly along shore to the primary nursery area (PNA) line on the western shore of Hickory Creek Bay; running northeasterly along the PNA line to Browns Island; running along the eastern shore of Browns Island to the PNA line on the south shore of Old Hill Bay; running northerly along the PNA line to shore; running northeasterly along shore to the beginning point.
- (2) Juniper Bay - beginning on shore at a point 35° 21.7957' N - 76° 14.3545' W; running southeasterly along shore to the primary nursery area (PNA) line on the western shore of Buck Creek; running southeasterly along the PNA line to the eastern shore; running southeasterly along shore to the PNA line on the north shore of Laurel Creek; running southerly to the south shore; running southerly along shore to Juniper Bay Point to a point 35° 20.4420' N - 76° 13.2680' W; running westerly to a point 35° 20.2500' N - 76° 14.7500' W; running northerly near Marker "3" to a point 35° 21.5360' N - 76° 14.8040' W; running northeasterly to the beginning point.

- (3) Swanquarter Bay - beginning in Caffee Bay on the north shore at a point 35° 21.9928' N - 76° 17.6720' W; running southerly to the south shore at a point 35° 21.5240' N - 76° 17.8130' W; running westerly along shore to Drum Point to a point 35° 21.5920' N - 76° 18.3560' W; running westerly to a point 35° 21.2833' N - 76° 19.0500' W; running northwesterly to a point 35° 21.8500' N - 76° 19.4500' W; running easterly to Sandy Point to a point 35° 22.1080' N - 76° 18.7440' W; running easterly along shore and following the PNA line of the northern tributary in Caffee Bay to the beginning point.
- (4) Deep Cove - beginning on the north shore at a point 35° 21.5784' N - 76° 22.7505' W; running easterly along shore to a point 35° 21.5002' N - 76° 22.1112' W; running southerly to shore to a point 35° 20.6851' N - 76° 22.0524' W; running westerly along shore to a point 35° 20.5390' N - 76° 22.7790' W; running northerly to the beginning point.
- (5) Rose Bay - beginning on shore south of Swan Point at a point 35° 23.9650' N - 76° 23.5530' W; running southeasterly along shore to a point 35° 23.5060' N - 76° 23.2090' W; running westerly to a point 35° 23.3166' N - 76° 24.0666' W; running northwesterly to a point 35° 24.0500' N - 76° 24.5500' W; running easterly to the beginning point.
- (6) Spencer Bay - beginning on Roos Point at a point 35° 22.3590' N - 76° 28.1850' W; running northeasterly to a point 35° 22.9500' N - 76° 27.2166' W; running northwesterly to a point 35° 23.4166' N - 76° 27.9500' W; running southwesterly to shore to a point 35° 23.0209' N - 76° 28.5060' W; running southeasterly along shore and the primary nursery area line of the unnamed western tributary of Spencer Bay to the beginning point.
- (7) Pamlico River:
 - (A) Lee Creek - beginning on shore at a point 35° 22.8779' N - 76° 45.7149' W; running northerly to a point 35° 23.1011' N - 76° 45.7371' W; running easterly along the six foot depth to a point 35° 22.9450' N - 76° 44.8403' W; running southwesterly to shore to a point 35° 22.7667' N - 76° 45.2333' W; running westerly along shore to the beginning point.
 - (B) Huddy Gut - beginning on shore at a point 35° 22.5000' N - 76° 44.4500' W; running northerly to a point 35° 22.7166' N - 76° 44.5000' W; running easterly along the six foot depth to a point 35° 22.7170' N - 76° 43.9500' W; running southwesterly to shore to a point 35° 22.4657' N - 76° 44.0536' W; running westerly along shore to the beginning point.
- (C) Indian Island - beginning on shore at the west end of Indian Island at a point 35° 21.6240' N - 76° 39.4090' W; running westerly to a point 35° 21.7667' N - 76° 40.2667' W; running easterly along the six foot depth to a point 35° 21.6107' N - 76° 38.2202' W; running westerly to the east end of Indian Island to a point 35° 21.6100' N - 76° 38.6290' W; running westerly along the northern shore to the beginning point.
- (D) Old Field Point, Goose Creek - beginning on shore at a point 35° 20.2297' N - 76° 37.3456' W; running southeasterly to a point 35° 20.1500' N - 76° 37.1000' W; running southerly along the six foot depth to a point 35° 19.9031' N - 76° 37.2308' W; running westerly to shore to a point 35° 19.9812' N - 76° 37.4917' W; running northerly along shore to the beginning point.
- (8) Big Porpoise Bay - beginning on the north shore at a point 35° 16.0028' N - 76° 29.1708' W; running southerly to Sage Point at a point 35° 15.5930' N - 76° 29.1270' W; running easterly to a point 35° 15.4660' N - 76° 28.6000' W; running northerly to shore to a point 35° 15.8120' N - 76° 28.4270' W; running westerly along shore to the beginning point.
- (9) Middle Bay - beginning on Middle Bay Point at a point 35° 14.8310' N - 76° 28.7500' W; running southerly to Sow Island Point at a point 35° 13.2876' N - 76° 29.5585' W; running westerly along shore to Big Fishing Point at a point 35° 14.0285' N - 76° 29.9336' W; running northerly to Oyster Creek Point at a point 35° 14.6042' N - 76° 29.8544' W; running easterly along shore to the beginning point.
- (10) Jones Bay - beginning on Sow Island Point at a point 35° 13.1811' N - 76° 29.6096' W; running southerly near Marker "3" to a point 35° 12.0250' N - 76° 29.9660' W; running northwesterly to a point 35° 12.8000' N - 76° 30.9666' W; running southwesterly to shore at the east shore of the Little Drum Creek primary nursery area (PNA) line; running westerly along the PNA line to the west shore of the Little Eve Creek PNA; running westerly along shore to a point 35° 12.6000' N - 76° 32.0166' W; running northeasterly to a point 35° 12.8666' N - 76° 31.7500' W; running northwesterly to a point 35° 13.1833' N - 76°

- 32.1166' W; running northerly to a point 35° 13.6500' N - 76° 31.9000' W; running southeasterly to a point 35° 13.1500' N - 76° 30.8000' W; running northerly to shore at a point 35° 13.4886' N - 76° 30.7785' W; running easterly along shore to the beginning point.
- (11) Bay Point - beginning on Boar Point at a point 35° 12.1450' N - 76° 31.1150' W; running easterly near Marker "5" to a point 35° 12.0250' N - 76° 29.9660' W; running southerly to a point 35° 10.9333' N - 76° 30.1666' W; running westerly to Bay Point to a point 35° 11.0750' N - 76° 31.6080' W; running northerly along shore to the beginning point.
- (12) Bay River:
- (A) Rockhole Bay - beginning on the western shore of Dump Creek at a point 35° 11.6708' N - 76° 33.4359' W; running southerly to a point 35° 11.3833' N - 76° 33.3166' W; running southeasterly along the six foot depth to a point 35° 10.8333' N - 76° 32.1333' W; running northerly to shore at a point 35° 11.1250' N - 76° 32.1340' W; running northwesterly along shore to the southeast shore of the Rockhole Bay PNA line; running northwesterly along the PNA line to the western shore; running westerly along shore to the east shore of PNA line in Dump Creek; running southwesterly along the PNA line to the western shore; running southerly along shore to the beginning point.
- (B) Hogpen Creek - beginning on shore north of Bonner Bay at a point 35° 10.4174' N - 76° 34.7041' W; running northerly to a point 35° 10.7500' N - 76° 34.7333' W; running easterly along the six foot depth to a point southwest of Marker "3" to a point 35° 10.8137' N - 76° 33.5120' W; running southwesterly to shore to a point 35° 10.3195' N - 76° 34.0876' W; running westerly along shore to the beginning point.
- (C) Fisherman Bay - beginning on the western shore of Fisherman Bay at a point 35° 09.2345' N - 76° 33.0199' W; running northwesterly to a point 35° 09.9892' N - 76° 33.2213' W; running easterly along the six foot depth to a point southwest and near Marker "1" to a point 35° 09.7951' N - 76° 32.0099' W; running southwesterly to shore to a point 35° 09.2668' N - 76° 32.3668' W; running westerly along shore to the beginning point.
- (13) Neuse River:
- (A) Swan Creek - beginning at a point on shore south of Maw Bay at a point 35° 08.5760' N - 76° 32.6320' W; running southerly along shore to a point north of Swan Creek to a point 35° 07.3182' N - 76° 33.4620' W; running southeasterly to the six foot depth to a point 35° 07.2524' N - 76° 33.2078' W; running northeasterly along the six foot depth to a point 35° 08.3214' N - 76° 31.9971' W; running westerly to the beginning point.
- (B) Broad Creek - beginning on Tonney Hill Point at a point 35° 05.5505' N - 76° 35.7249' W; running southeasterly along shore and following the primary nursery area line of Cedar Creek; running southerly along shore to a point north of Gum Thicket Creek to a point 35° 04.6741' N - 76° 35.7051' W; running southeasterly to a point 35° 04.5786' N - 76° 35.4808' W; running northerly near Marker "1" to a point 35° 05.4809' N - 76° 34.9734' W; running westerly along the six foot depth near Marker "3" to a point 35° 05.6400' N - 76° 35.6433' W; running southwesterly to the beginning point.
- (C) Gum Thicket Shoal - beginning on shore west of Gum Thicket Creek at a point 35° 04.2169' N - 76° 36.2119' W; running southwesterly along shore to a point 35° 04.0634' N - 76° 36.6548' W; running southerly to a point 35° 03.6833' N - 76° 36.7166' W; running easterly along the six foot depth to a point 35° 03.9166' N - 76° 35.8000' W; running northwesterly to the beginning point.
- (D) Orchard Creek - beginning on the eastern shore at a point 35° 03.6712' N - 76° 37.9040' W and running southwesterly along the Orchard and Old House Creeks primary nursery area line to Cockle Point; running easterly to a point 35° 03.3000' N - 76° 37.8833' W; running northerly to the beginning point.
- (E) Dawson Creek - beginning on the eastern shore of Dawson Creek at a point 34° 59.5800' N - 76° 45.4140' W; running westerly along the bridge to the western shore to a point 34° 59.5920' N - 76° 45.4620' W; running southwesterly along shore to a point

- 34° 59.0667' N - 76° 45.9000' W; running southeasterly to a point 34° 58.7833' N - 76° 45.6500' W; running northerly along the six foot depth to a point 34° 59.3666' N - 76° 45.3166' W; running northwesterly near Marker "4" to a point 34° 59.4430' N - 76° 45.4521' W; running northerly to the beginning point.
- (F) Pine Cliff Recreation Area - beginning on shore at a point 34° 56.4333' N - 76° 49.5833' W; running easterly along shore to a point 34° 56.3422' N - 76° 49.1158' W; running northeasterly near Marker "2" to a point 34° 56.7650' N - 76° 48.5778' W; running northerly to a point 34° 56.8333' N - 76° 48.6000' W; running southwesterly along the six foot depth to a point 34° 56.6067' N - 76° 49.6190' W; running southerly to the beginning point.

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

Eff. January 1, 1991;

Amended Eff. March 1, 1996; March 1, 1994; July 1, 1993; September 1, 1991;

Recodified from 15A NCAC 03R .0007 Eff. December 17, 1996;

Amended Eff. April 1, 2014; September 1, 2005; May 1, 1997; April 1, 1997.

15A NCAC 03R .0116 DESIGNATED SEED OYSTER MANAGEMENT AREAS

The Seed Oyster Management Areas referenced in 15A NCAC 03K .0208 are delineated in the following coastal water areas:

- (1) Croatan Sound and tributaries: Cedar Bush Bay Seed Oyster Management Area, within the area described by a line beginning at a point 35° 50.0383' N - 75° 40.0712' W; running easterly to a point 35° 50.2328' N - 75° 39.4930' W; running southeasterly to a point 35° 49.3831' N - 75° 39.1521' W; running southwesterly to a point 35° 48.8000' N - 75° 39.5000' W; running westerly to a point 35° 48.6333' N - 75° 40.7000' W; running northerly to a point 35° 49.7000' N - 75° 40.6333' W; running northeasterly back to the point of beginning;
- (2) Croatan and Roanoke sounds and tributaries: Wanchese Marshes Seed Oyster Management Area, within an area described by a line beginning at a point 35° 49.0000' N - 75° 38.3000' W; running northerly to a point 35° 49.2243' N - 75° 38.3000' W; running easterly to a point 35° 49.0806' N - 75° 37.5293' W; running easterly to a point 35° 49.2893' N - 75° 37.0335' W; running northeasterly to a

- point 35° 49.5541' N - 75° 36.9715' W; running southerly to a point 35° 49.0000' N - 75° 36.5500' W; running southwesterly to a point 35° 48.1500' N - 75° 36.9500' W; running westerly to a point 35° 48.1000' N - 75° 37.6333' W; running northwesterly to the point of beginning;
- (3) Pamlico Sound and tributaries: Bay River Seed Oyster Management Area, within an area described by a line beginning at a point 35° 10.7670' N - 76° 36.7000' W off Spencer Point; running southeasterly to a point 35° 10.5330' N - 76° 36.4670' W; running westerly to a point 35° 10.4670' N - 76° 36.6500' W; running northwesterly to a point 35° 10.8000' N - 76° 36.9170' W, running easterly to the point of beginning;
- (4) White Oak River: White Oak River Seed Oyster Management Area, within an area described by a line beginning at a point 34° 43.0774' N - 77° 06.8610' W on the White Oak River/Stevens Creek polluted area line; running northeasterly to a point 34° 43.4006' N - 77° 06.1293' W on the east shore; running southerly along the shoreline to a point 34° 43.0755' N - 77° 06.1187' W; running southwesterly to a point 34° 42.8800' N - 77° 06.7975' W on the White Oak River/Stevens Creek polluted area line; running northerly to the point of beginning;
- (5) New River area:
 - (a) Possum Bay Seed Oyster Management Area, within an area described by a line beginning at a point 34° 32.1256' N - 77° 21.3781' W; running northeasterly to a point 34° 32.2773' N - 77° 21.1194' W; running northwesterly to a point 34° 32.3365' N - 77° 21.1720' W; running southwesterly to a point 34° 32.2068' N - 77° 21.3958' W; running south to the point of beginning; and
 - (b) Swan Point Seed Oyster Management Area, within an area described by a line beginning at a point 34° 32.9488' N - 77° 21.6843' W; running southerly to a point 34° 32.9040' N - 77° 21.6704' W; running northeasterly to a point 34° 33.0376' N - 77° 21.5339' W; running northwesterly to a point 34° 33.0693' N - 77° 21.5923' W; running southwesterly to the point of beginning; and
- (6) Topsail Sound and tributaries:
 - (a) Virginia Creek Seed Oyster Management Area, within an area described by a line beginning at a

point 34° 25.4620' N - 77° 36.0074' W on the north shore; running southerly to a point 34° 25.1346' N - 77° 36.0640' W on the south shore; running easterly and southerly along the shoreline to a point 34° 24.9438' N - 77° 35.5325' W on Sloop Point; running northeasterly to a point 34° 25.0988' N - 77° 35.2920' W on the north shore; running northwesterly along the shoreline to the point of beginning; and

- (b) Topsail Sound Seed Oyster Management Area, within an area described by a line beginning at a point 34° 24.6555' N - 77° 35.6012' W across the IWW from Sloop Point; running southeasterly to a point 34° 24.3677' N - 77° 35.2015' W; running northeasterly to a point 34° 24.5260' N - 77° 35.1070' W; running northwesterly to a point 34° 24.8690' N - 77° 35.2872' W; running southwesterly to the point of beginning.

History Note: Authority G.S. 113-134; 113-182; 113-203; 143B-289.52;

Eff. October 1, 2008;

Amended Eff. April 1, 2014.

15A NCAC 03R .0118 EXEMPTED CRAB POT ESCAPE RING AREAS

The areas referenced in 15A NCAC 03J .0301(g) are delineated in the following coastal fishing waters:

- (1) Pamlico Sound - within the area described by a line beginning at a point 35° 43.7457' N - 75° 30.7014' W on the south shore of Eagles Nest Bay on Pea Island; running westerly to a point 35° 42.9500' N - 75° 34.1500' W; running southerly to a point 35° 39.3500' N - 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N - 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N - 75° 31.5825' W on Gull Island; running southwesterly to a point 35° 22.8671' N - 75° 33.5851' W in Avon Channel near Beacon "1AV"; running southwesterly to a point 35° 18.9603' N - 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point 35° 16.7588' N - 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwesterly to a point 35° 14.0337' N - 75° 45.9643' W southwest of Oliver Reef near the quick-flashing beacon; running westerly to a point 35° 09.3650' N - 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwesterly to a point 35° 08.4523'

N - 76° 02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35° 07.1000' N - 76° 06.9000' W; running southwesterly to a point 35° 01.4985' N - 76° 11.4353' W near Beacon "HL"; running southwesterly to a point 35° 00.2728' N - 76° 12.1903' W near Beacon "1CS"; running southerly to a point 34° 59.5027' N - 76° 12.3204' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running southwesterly to a point 34° 59.3610' N - 76° 12.6040' W on Wainwright Island; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks; running easterly and northerly along the shoreline across the inlets following the COLREGS Demarcation line up the Outer Banks to the point of beginning.

- (2) Newport River, from April 1 through June 15 - within the area described by a line beginning at a point 34° 49.5080' N - 76° 41.4440' W; running westerly along the south side of the Highway 101 Bridge over Core Creek to a point on the west shore 34° 49.5260' N - 76° 41.5130' W; running along the shoreline of Newport River and its tributaries to a point 34° 49.3050' N - 76° 44.2350' W; running westerly along the south side of the Highway 101 Bridge over Harlowe Canal to a point on the west shore 34° 49.2980' N - 76° 44.2610' W; running along the shoreline of Newport River and its tributaries to a point 34° 45.2478' N - 76° 46.4479' W; running southerly along the Inland-Coastal Waters boundary line to a point 34° 45.1840' N - 76° 46.4488' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.2520' N - 76° 41.6840' W; running easterly along the north side of the Highway 70 Bridge over Newport River to a point 34° 43.2840' N - 76° 41.2200' W; running along the shoreline of Newport River and its tributaries to a point 34° 43.3530' N - 76° 40.2080' W; running easterly across Gallant Channel to a point 34° 43.3521' N - 76° 40.0871' W; running along the shoreline of Newport River and its tributaries back to the point of beginning.

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

Eff. April 1, 2014.

15A NCAC 10F .0313 HYDE COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Hyde County:

- (1) Swan Quarter Canal near the Town of Swan Quarter beginning at its entrance at point at

- (2) 35.40215 N, 76.34033 W in Swanquarter Bay and extending the entire length of the canal;
- (2) Carawan Canal near the Town of Swan Quarter beginning at its entrance at a point at 35.39758 N, 76.33312 W in Swanquarter Bay and extending the entire length of the canal;
- (3) The waters within 50 yards of all public boat launching areas providing access to Pamlico Sound;
- (4) That portion of Far Creek in the Town of Engelhard shore to shore, beginning at a point at 35.51061 N, 75.98699 W and ending at the Roper Lane bridge at 35.50869 N, 76.00229 W;
- (5) Fodrey Canal. That portion of Fodrey Canal shore to shore, beginning in Swanquarter Bay at a point at 35.40345 N, 76.34175 W and extending inland 300 yards ending at a point at 35.40469 N, 76.33944 W;
- (6) Silver Lake in Ocracoke, harbor-wide;
- (7) The entire waters of the Hydeland Canal beginning at the Hydeland Canal Access Area (35.42131 N, 76.20915 W) and ending at the end of SR 1122 (35.40873 N, 76.21185 W);
- (8) The waters of Gray Ditch beginning near the SR 1110 bridge at the intersection of Great Ditch Road and Nebraska Road, at 35.45926 N, 76.07527 W and ending at 35.45027 N, 76.06862 W; and
- (9) A portion of Main Canal off of Mattamuskeet Lake in the vicinity of Mattamuskeet Lodge, beginning in East Main Canal at 35.45226 N, 76.17359 W, and extending to a point in West Main Canal at 35.45174 N, 76.18132 W, and that portion of Central Canal beginning at its intersection with Main Canal and extending northward to 35.45687 N, 76.1751 W.

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

(c) Placement and Maintenance of Markers. The Board of Commissioners of Hyde County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15;

Eff. February 1, 1976;

Amended Eff. February 1, 2014; January 1, 2012; December 1, 2010; October 1, 1995; March 1, 1993; January 1, 1989; March 29, 1981.

15A NCAC 10F .0352 CAMDEN COUNTY

(a) Regulated Areas. This Rule applies to the waters described below:

- (1) Edgewater Canal running parallel with and along the south shore of Camden Point in Camden County and the connecting channels to Albemarle Sound;

- (2) That portion of Turner's Cut (South Mills Shore Canal) for a distance of approximately 1000 feet, south of a line from a point on the east shore at 36.41129 N, 76.30598 W to a point on the west shore at 36.41096 N, 76.30654 W and north of a line from a point on the east shore at 36.40912 N, 76.30402 W to a point on the west shore at 36.40880 N, 76.30462 W;
- (3) The canals of Whitehall Shores subdivision on the Pasquotank River; and
- (4) The cove south of Sawyers Creek on the east side of the Pasquotank River in the town of Camden, east of a line from a point on the north shore at 36.32383 N, 76.18087 W to a point on the south shore at 36.32254 N, 76.18017 W.

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

(c) Placement and Maintenance of Markers. The Board of Commissioners of Camden County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15;

Eff. June 1, 1987;

Amended Eff. January 1, 1989;

Temporary Amendment Eff. March 15, 2003;

Temporary Amendment Expired October 12, 2003;

Amended Eff. February 1, 2014; May 1, 2013; May 1, 2004.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 38 – BOARD OF OCCUPATIONAL THERAPY

21 NCAC 38 .0301 LICENSE NUMBER: DISPLAY OF LICENSE AND IDENTIFICATION BADGE

(a) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number shall not be reissued. The license and current renewal card must be available for inspection at the licensee's principal place of business.

(b) Persons licensed under this Chapter shall be required to comply with the provisions of G.S. 90-640.

(c) A licensed person shall be exempted from the requirement in Paragraph (b) of this Rule if such person notifies the Board in writing, at the address set forth in Rule .0102 of this Chapter, that the person's safety or some therapeutic concern requires that only a first name and level of licensure be displayed.

History Note: Authority G.S. 90-270.69(4); 90-270.73; 90-640;

Eff. July 1, 1985;

Amended Eff. February 1, 2014; July 1, 2007; May 1, 1989.

21 NCAC 38 .0802 CONTINUING COMPETENCE REQUIREMENTS FOR LICENSURE

(a) Licensed occupational therapists and occupational therapy assistants applying for license renewal shall document having earned a minimum of 15 points for approved continuing competence activities between June 1 of the preceding licensure period and May 31 of the current licensure period. Documentation of each continuing competence activity shall comply with Rule .0805.

(b) For each renewal period, each licensee shall document completion of at least one contact hour of a qualified activity for maintaining continuing competence related to ethics in the practice of occupational therapy, which shall be included in the total points for the year. Continuing competence activities in ethics shall be related to developing the licensee's ability to reflect on, determine, and act on the moral aspects of practice as required by Rule .0308 of this Chapter.

(c) Continuing competence contact hours exceeding the total needed for renewal shall not be carried forward to the next renewal period.

(d) Continuing competence activities shall not include new employee orientation or annual training required by the employer.

(e) Licensees shall not receive credit for completing the same continuing competence activity more than once during a renewal period.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007; Amended Eff. February 1, 2014.

CHAPTER 57 – APPRAISAL BOARD**21 NCAC 57A .0202 FITNESS FOR REGISTRATION, LICENSURE, OR CERTIFICATION**

(a) The Appraisal Board shall consider the fitness for registration, licensure, or certification of each applicant. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for registration or certification at a hearing before the Board.

(c) The inquiry into fitness for registration, licensure, or certification may include consideration of whether the applicant has:

- (1) had disciplinary action taken against any professional license in North Carolina or any other state;
- (2) committed or done any act that, if committed or done by any real estate trainee or appraiser, would be grounds pursuant to the North Carolina Appraiser's Act for disciplinary action including the suspension or revocation of registration, licensure, or certification; or
- (3) been convicted of or pleaded guilty to any criminal act, or whether any such actions or charges are pending.

(d) All applicants for registration, licensure, or certification shall obtain a criminal records check that is satisfactory to the Board. This records check must have been performed within 60 days of the date the completed application for registration, licensure, or certification is received by the Board. Applicants shall pay the vendor directly for the cost of these reports.

(e) In order to be satisfactory to the Board, the criminal records check must contain all of the following:

- (1) a state court felony and misdemeanor criminal records search for each state lived in for at least the last seven years;
- (2) a state probation and incarceration check for each state lived in for at least the last seven years;
- (3) a federal court felony and misdemeanor criminal records check;
- (4) a state sex offender search for each state lived in for at least the last seven years;
- (5) a federal sex offender search; and
- (6) an address trace on the applicant's Social Security number.

(f) Notice to the applicant that his or her competency or fitness for registration, licensure, or certification is in question shall be sent by the Board in writing, by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time constitutes a waiver of the applicant's right to a hearing on his or her application for registration, licensure, or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration, licensure, or certification.

History Note: Authority G.S. 93E-1-6; 93E-1-10; Eff. July 1, 1994;

Amended Eff. February 1, 2014; January 1, 2013; September 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on March 20, 2014 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 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Margaret Currin (Chair)
Jeff Hyde
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (1st Vice Chair)
Stefanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Amanda Reeder (919)431-3079
Abigail Hammond (919)431-3076

RULES REVIEW COMMISSION MEETING DATES

March 20, 2014 April 17, 2014
May 15, 2014 June 19, 2014

AGENDA

RULES REVIEW COMMISSION

Thursday, March 20, 2014 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters:
 - A. NC Rural Electrification Authority – 04 NCAC 08 .0101, .0109, .0313 (Reeder)
 - B. Commission for Mental Health – 10A NCAC 27G .0504 (Hammond)
 - C. State Board of Education – 16 NCAC 06C .0701 (Hammond)
 - D. Cemetery Commission – 21 NCAC 07A .0101, .0103, .0104, .0106, .0201, .0202, .0203, .0204, .0205; 07B .0103, .0104, .0105; 07C .0103, .0104, .0105; 07D .0101, .0102, .0104, .0105, .0201, .0202, .0203 (Reeder)
 - E. Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors – 21 NCAC 50 .0301 (Reeder)
 - F. State Human Resources Commission – 25 NCAC 01B .0350, .0413, .0414, .0429, .0430; 01C .0311, .0403, .0404, .0411, .0412; 01D .0201; 01E .0901; 01H .0901, .0902, .0904, .0905, .1001, .1003, .1004, .1005; 01I .2002; 01J .0603, .0610, .0615, .0616, .1101, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1301, .1302, .1304, .1305, .1306, .1307, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1322, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409, .1410, .1411, .1412 (DeLuca)
 - G. Building Code Council – 2015 NC Existing Building Code (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between January 22, 2014 and February 20, 2014
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. G.S. 150B-19.1 Certification

VII. Commission Business

- Public Hearing: RRC Proposed Rules 26 NCAC 05 .0105, .0106, .0211
 - Next meeting: April 17, 2014
-

Commission Review
Log of Permanent Rule Filings
January 22, 2014 through February 20, 2014

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18C are water supply rules including their protection and location (.0100-.0200), submission of plans, etc. (.0300), design criteria (.0400-.0500), raw surface water facilities (.0600), surface water treatment facilities (.0700), hydropneumatic storage tanks (.0800), distribution systems (.0900), disinfection (.1000), protection of unfiltered and filtered supplies (.1100-.1200), variances (.1300), fluoridation (.1400), water quality standards and variances (.1500-.1600), systems grants (.1700), local plan approval (.1800), administrative penalties (.1900), filtration and disinfection (.2000); operating permits (.2100); and ground water systems (.2200).

<u>Definitions</u>	15A NCAC 18C .0102
Amend/*	
<u>Surface Supplies for Public Water Systems</u>	15A NCAC 18C .0201
Amend/*	
<u>Removal of Dissolved Matter and Suspended Matter</u>	15A NCAC 18C .0202
Amend/*	
<u>Submittals</u>	15A NCAC 18C .0302
Amend/*	
<u>Minimum Requirements</u>	15A NCAC 18C .0401
Amend/*	
<u>Water Supply Wells</u>	15A NCAC 18C .0402
Amend/	
<u>Storage of Finished Water</u>	15A NCAC 18C .0405
Amend/*	
<u>Distribution Systems</u>	15A NCAC 18C .0406
Amend/*	
<u>Sedimentation Basin</u>	15A NCAC 18C .0706
Amend/*	
<u>Other Design Standards</u>	15A NCAC 18C .0715
Amend/*	
<u>Capacities: Determining Peak Demand</u>	15A NCAC 18C .0802
Amend/*	
<u>Capacities: Elevated Storage</u>	15A NCAC 18C .0805
Amend/*	
<u>Valves</u>	15A NCAC 18C .0907
Amend/*	
<u>Fishing</u>	15A NCAC 18C .1204
Amend/*	
<u>Control of Treatment Process</u>	15A NCAC 18C .1406
Amend/*	
<u>Turbidity Sampling and Analysis</u>	15A NCAC 18C .1505

<u>Amend/*</u>	
<u>Maximum Contaminant Levels for Turbidity</u>	15A NCAC 18C .1506
<u>Amend/*</u>	
<u>Corrosion Control and Lead and Copper Monitoring</u>	15A NCAC 18C .1507
<u>Amend/*</u>	
<u>Inorganic Chemical Sampling and Analysis</u>	15A NCAC 18C .1508
<u>Amend/*</u>	
<u>Special Monitoring for Sodium</u>	15A NCAC 18C .1509
<u>Amend/*</u>	
<u>Maximum Contaminant Levels for Inorganic Chemicals</u>	15A NCAC 18C .1510
<u>Amend/*</u>	
<u>Organic Chemicals Other than TTHM, Sampling and Analysis</u>	15A NCAC 18C .1515
<u>Amend/*</u>	
<u>Special Monitoring for Inorganic and Organic Chemicals</u>	15A NCAC 18C .1516
<u>Amend/*</u>	
<u>Maximum Contaminant Levels for Organic Chemicals</u>	15A NCAC 18C .1517
<u>Amend/*</u>	
<u>Maximum Contaminant Levels for Organic Contaminants</u>	15A NCAC 18C .1518
<u>Amend/*</u>	
<u>Monitoring Frequency for Radioactivity</u>	15A NCAC 18C .1519
<u>Amend/*</u>	
<u>Maximum Contaminant Levels for Radionuclides</u>	15A NCAC 18C .1520
<u>Amend/*</u>	
<u>Maximum Contaminant Level Gas for Radionuclides</u>	15A NCAC 18C .1521
<u>Amend/*</u>	
<u>Analytical Methods for Radioactivity</u>	15A NCAC 18C .1522
<u>Amend/*</u>	
<u>Public Notification Requirements</u>	15A NCAC 18C .1523
<u>Amend/*</u>	
<u>Reporting Requirements</u>	15A NCAC 18C .1525
<u>Amend/*</u>	
<u>Record Maintenance</u>	15A NCAC 18C .1526
<u>Amend/*</u>	
<u>Coliform Sampling</u>	15A NCAC 18C .1534
<u>Amend/*</u>	
<u>Treatment Techniques</u>	15A NCAC 18C .1536
<u>Amend/*</u>	
<u>Drinking Water Additives</u>	15A NCAC 18C .1537
<u>Amend/*</u>	
<u>Consumer Confidence Report</u>	15A NCAC 18C .1538
<u>Amend/*</u>	
<u>Public Hearings on Variances and Schedules</u>	15A NCAC 18C .1605
<u>Amend/*</u>	
<u>Variances and Exemptions for Chemicals, Lead and Copper, ...</u>	15A NCAC 18C .1607
<u>Amend/*</u>	
<u>Public Hearings on Exemption Schedules</u>	15A NCAC 18C .1612
<u>Amend/*</u>	
<u>Bottled Water and Point-of-Use Devices</u>	15A NCAC 18C .1614
<u>Amend/*</u>	
<u>Purpose</u>	15A NCAC 18C .1701
<u>Amend/*</u>	
<u>Grant Commitments from Current Allocation</u>	15A NCAC 18C .1702

Amend/*	
<u>County Allocations Committed Before Statewide Allocation</u>	15A NCAC 18C .1703
Amend/*	
<u>Reference Rule</u>	15A NCAC 18C .1704
Amend/*	
<u>Application for Certification</u>	15A NCAC 18C .1802
Amend/*	
<u>Administrative Penalties</u>	15A NCAC 18C .1902
Amend/*	
<u>Considerations in Assessing Administrative Penalties</u>	15A NCAC 18C .1906
Amend/*	
<u>Disinfection</u>	15A NCAC 18C .2002
Amend/*	
<u>Filter Backwash Recycling Rule</u>	15A NCAC 18C .2003
Amend/*	
<u>Analytical and Monitoring Requirements</u>	15A NCAC 18C .2004
Amend/*	
<u>Reporting and Record Keeping Requirements</u>	15A NCAC 18C .2006
Amend/*	
<u>Enhanced Filtration and Disinfection</u>	15A NCAC 18C .2007
Amend/*	
<u>Disinfectants and Disinfection Byproducts</u>	15A NCAC 18C .2008
Amend/*	
<u>Application for Permit</u>	15A NCAC 18C .2102
Amend/*	
<u>Ground Water Rule</u>	15A NCAC 18C .2202
Amend/*	

EDUCATION, STATE BOARD OF

The rules in Subchapter 6D cover instruction including curriculum (.0100), textbooks (.0200), testing programs (.0300), and accountability standards and graduation requirements (.0500).

<u>NC General Assembly's Read to Achieve Program</u>	16 NCAC 06D .0508
Adopt/*	

The rules in Subchapter 6G relate to education agency relations including rules about the school-based management and accountability program (.0300) and charter schools (.0500).

<u>High School Accreditation Framework</u>	16 NCAC 06G .0203
Adopt/*	

GENERAL CONTRACTORS, LICENSING BOARD FOR

The rules of the Licensing Board for General Contractors include the board's organization (.0100); licensing requirements (.0200); application procedures (.0300); examinations (.0400); licenses (.0500); disciplinary procedures (.0700); contested cases (.0800); and home-owners recovery fund (.0900).

<u>Structure of the Board</u>	21 NCAC 12 .0103
Amend/*	
<u>Classification</u>	21 NCAC 12 .0202
Amend/*	
<u>Eligibility</u>	21 NCAC 12 .0204

Amend/*			
<u>Filing Deadline/App Seeking Qual/Emp/Another</u>	21	NCAC 12	.0205
Amend/*			
<u>Application</u>	21	NCAC 12	.0209
Amend/*			
<u>Licensure for Military-Trained Applicant; Licensure for M...</u>	21	NCAC 12	.0309
Adopt/*			
<u>Renewal of License</u>	21	NCAC 12	.0503
Amend/*			
<u>Improper Practice</u>	21	NCAC 12	.0701
Amend/*			
<u>Unlawful Practice</u>	21	NCAC 12	.0702
Amend/*			
<u>Fee for Submittal of Bad Check</u>	21	NCAC 12	.0703
Amend/*			
<u>Definitions</u>	21	NCAC 12	.0901
Amend/*			
<u>Processing of Application</u>	21	NCAC 12	.0906
Amend/*			

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16N concern rule-making and administrative hearing procedures including petitions for rulemaking (.0100); notice of rule-making hearings (.0200); rule-making hearings (.0300); declaratory rulings (.0400); administrative hearing procedures (.0500); and administrative hearings, decisions, related rights and procedures (.0600).

<u>Request to Participate</u>	21	NCAC 16N	.0301
Repeal/*			
<u>Content of Request: General Time Limitations</u>	21	NCAC 16N	.0302
Amend/*			
<u>Receipt of Request: Specific Time Limits</u>	21	NCAC 16N	.0303
Repeal/*			

The rules in Subchapter 16T concern patient records.

<u>Transfer of Records Upon Request</u>	21	NCAC 16T	.0102
Amend/*			

HEARING AID DEALERS AND FITTERS BOARD

The rules in Subchapter 22F concern general examination and license provisions.

<u>Qualifications to Register for Exam</u>	21	NCAC 22F	.0104
Amend/*			
<u>Passing Examination</u>	21	NCAC 22F	.0105
Amend/*			
<u>Apprenticeship Requirements</u>	21	NCAC 22F	.0113
Repeal/*			
<u>Training and Supervision</u>	21	NCAC 22F	.0114
Repeal/*			
<u>Sponsors' Duties</u>	21	NCAC 22F	.0115
Repeal/*			

<u>Separation of Apprentice and Sponsor</u> Repeal/*	21	NCAC 22F .0116
<u>Apprenticeship Requirements</u> Adopt/*	21	NCAC 22F .0301
<u>Sponsors' Duties</u> Adopt/*	21	NCAC 22F .0302
<u>Certificate Expiration</u> Adopt/*	21	NCAC 22F .0303
<u>Separation of Apprentice and Sponsor</u> Adopt/*	21	NCAC 22F .0304
<u>Report of Apprenticeship Experience</u> Adopt/*	21	NCAC 22F .0305
<u>Apprentice Discipline</u> Adopt/*	21	NCAC 22F .0306

ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

The rules in Chapter 39 are from the Onsite Wastewater Contractors and Inspectors Certification Board and include definitions (.0100); certification of onsite wastewater contractors or inspectors (.0200); onsite wastewater contractor or inspector fees (.0300); certification by examination (.0400); certification renewal (.0500); continuing education requirements (.0600); and procedures for disciplinary actions (.0700).

<u>Licensure for Military-Trained Applicant; Licensure for M...</u> Adopt/*	21	NCAC 39 .0405
<u>Minimum On-Site Wastewater System Inspection</u> Amend/*	21	NCAC 39 .1006

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100), mediated settlement conferences (.0200), and expedited hearing procedures for complex contested cases (.0300).

<u>Medicaid Hearing Procedures Rules</u> Amend/*	26	NCAC 03 .0401
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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

J. Randolph Ward
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Craig Croom

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
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	
ABC Commission v. Fat Cats Grill and Oyster Bar Inc, T/A Fat Cats Grill and Oyster Bar	12 ABC 08988	12/19/12	
ABC Commission v. Wachdi Khamis Awad T/A Brothers in the Hood	12 ABC 09188	03/06/13	
ABC Commission v. Double Zero, LLC, T/A Bad Dog	12 ABC 11398	04/08/13	
ABC Commission v. Soledad Lopez de Avilez T/A Tienda Avilez	13 ABC 00002	06/06/13	
ABC Commission v. Two Brothers Food Market, Inc., T/A Circle Mart	13 ABC 10356	07/11/13	
Rio Sports Restaurant and Lounge Inc. v. ABC Commission	13 ABC 11233	08/02/13	28:13 NCR 1573
ABC Commission v. Grandmas Pizza LLC T/A Grandmas Pizza	13 ABC 11401	08/13/13	
Hector Diaz v. ABC Commission	13 ABC 13071	11/08/13	
ABC Commission v. Ola Celestine Morris T/A Nitty Gritty Soul Cafe	13 ABC 14197	10/09/13	
ABC Commission v. Alvin Boyd Turner T/A Community Store	13 ABC 15827	11/20/13	
Two Brothers Food Market Inc., Circle Mart, Kenneth Kirkman v. ABC Commission	13 ABC 16233	09/30/13	
ABC Commission v. Art in a Pickle, LLC T/A Neal's Deli	13 ABC 17128	12/03/13	
<u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u>			
Maggie Yvonne Graham v. Victims Compensation Commission	09 CPS 05287	04/09/13	
Vivian Davis Armstrong v. The NC Crime Victims Compensation Commission	11 CPS 10539	12/06/13	
Brian J. Johnson v. Department of Public Safety Victim Services	12 CPS 01664	12/21/12	
George H. Jagers, III v. Crime Victims Compensation Commission	12 CPS 01693	11/01/12	
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	

CONTESTED CASE DECISIONS

Jacqueline M Davis victim-Antonio T Davis v. Dept. of Public Safety	12 CPS 05919	11/06/12	
Demario J. Livingston v. Dept. of Public Safety Victim Services	12 CPS 06245	10/19/12	
Shirley Ann Robinson v. NC Crime Victims Compensation Commission	12 CPS 07601	12/07/12	
Harold Eugene Merritt v. State Highway Patrol	12 CPS 07852	05/24/13	
Vanda Lawanda Johnson v. Office of Victim Compensation	12 CPS 09709	04/25/13	
Latoya Nicole Ritter v. Crime Victim Compensation Commission, Janice Carmichael	12 CPS 10572	04/25/13	
Ruffin J. Hyman v. Department of Public Safety, Division of Victim Compensation Services	13 CPS 01570	11/19/13	
Teresa f. Williams v. Crime Victims Compensation Commission	13 CPS 09790	07/11/13	
Angela Clendenin King v. Office of Administrative Hearings NC Crime Victims Comp Commission	13 CPS 11239	08/02/13	
Matthew B. McGee v. NC Victims Compensation Commission	13 CPS 12133	08/26/13	
DEPARTMENT OF HEALTH AND HUMAN SERVICES			
Stonestrow Group Home Medicaid Provider #6603018 Owned by Alberta Professional Services Inc v. DHHS, Division of Mental Health/Development Disabilities/ Substance Abuse, and DMA	09 DHR 05790	01/11/13	
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Robert T. Wilson v. DHHS, DHSR	10 DHR 07700	01/29/13	
Daniel J. Harrison v. DHHS Division of Health Service Regulation	10 DHR 07883	04/12/13	28:02 NCR 73
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Comprehensive PT Center v. DHHS, Division of Medical Assistance	11 DHR 9197	08/14/12	27:12 NCR 1204
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Leslie Taylor v. DHHS, Division of Health Regulation	11 DHR 10404	10/19/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Carlos Kendrick Hamilton v. DHHS, Division of Social Services	11 DHR 11161	10/16/12	27:16 NCR 1679
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	
Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12	
Brenda Brewer v. DHHS, Division of Child Development	11 DHR 12064	08/03/12	27:12 NCR 1210
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	
Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486
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Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission	11 DOJ 4829	04/27/12	
Steven Davis Boone v. Sheriffs' Education and Training Standards Commission	11 DOJ 06781	06/18/13	28:10 NCR 1062
Dillan Nathaniel Hymes v. Criminal Justice Education and Training Standards Commission	11 DOJ 10315	07/23/12	27:06 NCR 661
Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission	11 DOJ 10316	04/25/12	
Robert Kendrick Mewborn v. Criminal Justice Education and Training Standards Commission	11 DOJ 10318	04/23/12	
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Charlesene Cotton v. Criminal Justice Education and Training Standards Commission	11 DOJ 13159	06/05/12	27:04 NCR 538
William James Becker v. Criminal Justice Education and Training Standards Commission	11 DOJ 13160	08/16/12	
Steve Michael Galloway, Jr, Private Protective Services Board	11 DOJ 14434	04/23/12	
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Rodney Lyndolph Bland v. Criminal Justice Education and Training Standards Commission	12 DOJ 03839	01/11/13	
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Barry Louis Christopher, Jr v. Private Protective Services Board	12 DOJ 05041	08/27/12	27:15 NCR 1570
Bettina Hedwig Vredenburg v. Sheriffs' Education and Training Standards Commission	12 DOJ 05140	11/09/12	27:21 NCR 2002
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Clinton Weatherbee Jr v. Criminal Justice Education and Training Standards Commission	12 DOJ 10206	03/25/13	
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Tony Lynn Cannon v. Sheriffs' Education and Training Standards Commission	13 DOJ 09567	10/22/13	
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Jesse Alan Tyner v. NC Alarm Systems Licensing Board	13 DOJ 09863	08/09/13	28:15 NCR 1837
Marcus Teer Benson v. Private Protective Services Board	13 DOJ 09974	05/15/13	28:10 NCR 1155
Steven Wesley Jones v. Sheriffs' Education and Training Standards Commission	13 DOJ 11188	10/22/13	
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Ella Joyner v. Department of State Treasurer Retirement System Division	11 DST 02437	07/12/12	27:07 NCR 758
William R. Tate v. Department of Treasurer, Retirement System Division	11 DST 04675	09/07/12	27:15 NCR 1574
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Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
ALCHEM Inc., v. NCDENR	10 EHR 05463	02/05/13	
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Friends of the Green Swamp and Blue Ridge Environmental Defense League, Inc v. DENR Division of Waste Management and Waste Management of the Carolinas, Inc., d/b/a Waste Management of Wilmington	11 EHR 12185	08/08/12	27:12 NCR 1224
Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section (Re: LQS 11-018)	11 EHR 13208	06/29/12	27:07 NCR 774
Ik Kim IT and K Enterprise v. DENR	11 EHR 13910	11/06/12	
Edward Dale Parker v. DENR	11 EHR 14390	02/22/13	
Janezic Building Group LLC v. Orange County	12 EHR 01104	12/03/12	27:21 NCR 2008
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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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Jan Fjelsted v. NC State Health Plan	12 INS 04763	01/16/13	28:07 NCR 706
Susan E. Montgomery Lee v. State Health Plan; Blue Cross Blue Shield	12 INS 10145	03/25/13	
Lori Matney v. Blue Cross Blue Shield of NC, State Health Plan	12 INS 10790	08/20/13	
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David L. Smith v. NC Innocence Inquiry Commission	13 MIS 12404	06/19/13	28:10 NCR 1160
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Stephen R. West v. The University of North Carolina at Chapel Hill	10 OSP 01567	11/26/12	27:21 NCR 1959
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Teresa J. Barrett v. DENR	10 OSP 04754	10/22/12	27:16 NCR 1726

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Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
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Barry G. Eriksen v. NC State University	11 OSP 4968	12/16/13	
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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
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Maria Isabel Prudencio-Arias v. UNC at Chapel Hill	11 OSP 09374	03/28/13	28:02 NCR 99
Gerald Price v. Department of Agriculture & Consumer Services, Standards Division	11 OSP 09588	02/27/13	28:02 NCR 139
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	
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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
Thomas W. Wheeler v. NC Department of Transportation	11 OSP 13440	12/03/13	
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Vera Ricks v. NC Department of Public Safety	12 OSP 00246	03/28/13	28:07 NCR 714
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Ladeana Z. Farmer v. Department of Public Safety	12 OSP 00460	04/10/13	28:06 NCR 564
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John Medina v. Department of Public Safety	12 OSP 01940	01/30/13	28:08 NCR 783
Jeffrey L Wardick, v. Employment Securities Commission of NC	12 OSP 02027	07/17/12	
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Larry C. Goldston v. UNC-Chapel Hill	12 OSP 02222	09/26/12	27:16 NCR 1754
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Donnette J Amaro v. Onslow County Department of Social Services	12 OSP 02578	11/21/12	
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Kimberly Hinton v. DOT	12 OSP 02848	10/05/12	
James B. Bushardt III v. DENR, Division of Water Quality	12 OSP 02872	02/19/13	
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Jaymar v. Department of Corrections, Central Prison	12 OSP 03381	07/20/12	
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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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	
Darrion Smith v. Murdock Developmental Center and the NC DHHS; Ricky Bass v. NC DHHS; Darrion Smith v. NC DHHS	12 OSP 06780	07/24/13	28:12 NCR 1472
Phillip W Smith v. Department of Commerce, Division of Employment Security	12 OSP 06821	09/20/12	
Asia T. Bush v. DOT	12 OSP 06980	04/23/13	28:03 NCR 293
David W. Morgan v. Department of Public Safety, NC Highway Patrol	12 OSP 07543	08/29/13	28:17 NCR 2149
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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	
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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FILED
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 8007

Kevin Lee Hullett,
Petitioner,

v.

North Carolina Criminal Justice Education and
Training Standards Commission,
Respondent.

OFFICE OF
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

THIS MATTER was heard before Administrative Law Judge Selina M. Brooks on February 5, 2013, in Charlotte, North Carolina.

APPEARANCES

For Petitioner: Shawn A. Copeland
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For Respondent: Lauren D. Tally
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N.C. Department of Justice
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ADMINISTRATIVE HEARINGS

ISSUE

Whether Respondent has sufficient cause to deny Petitioner's application for continuous certification as a law enforcement officer?

RULES AT ISSUE

12 N.C. ADMIN. CODE 9G.0102 (9)(cc)
12 N.C. ADMIN. CODE 9G.0504 (b)(3)
12 N.C. ADMIN. CODE 9G.0505 (b)(1)
N.C. GEN. STAT. § 14-223

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

- Petitioner's Exhibit #1

For Respondent:

- Respondent's Exhibits #1, 2, 3, 4, 5, 6, 7 (admitted for limited purposes), 7A and 8

WITNESSES

Richard Nelson Squires, Investigator, Criminal Justice Standards Division
Jeffrey Scott Eller, Detective, Buncombe County Sheriff's Office
Stephen Vashon Ingram, Detective, Davidson Police Department
Marty Poole, Sergeant, Davidson Police Department
Jeanne Anne Miller, Chief of Police, Davidson Police Department
Dave Jason Johnson, Lieutenant, Charlotte-Mecklenburg Police Department
Nicole Eliza Walton, Friend of Petitioner
Kevin Lee Hullett, Petitioner

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the administrative hearing, those exhibits that were admitted into evidence by express stipulation of the parties on the record or the ruling of the Undersigned on the record, the undersigned Administrative Law Judge makes the following FINDINGS OF FACT.

The Undersigned has weighed all of the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity to see, hear, know or remember the facts or occurrences about which the witness testified and whether the testimony of the witness was reasonable.

The Undersigned considered whether the testimony is consistent with the witnesses' prior statement or statements, and whether the testimony is consistent with all other believable evidence in the case.

The Proposed Decision was submitted by Petitioner. Respondent did not submit comments for consideration. The Undersigned has reviewed the Proposed Decision and where she is in agreement she has incorporated it into the following:

FINDINGS OF FACT

1. Petitioner's father died when he was in the ninth grade and he graduated from East Lincoln High School in 2005. Petitioner worked at various jobs until November 2009 when he was an "early hire" for the Charlotte-Mecklenburg Police Department (CMPD). At CMPD, he worked in property control until he entered the police academy in February 2010. He graduated from the police academy and was sworn in as a law enforcement officer on July 2, 2010. T. 186-88.

2. Petitioner received his probationary certification from the North Carolina Criminal Justice Education And Training Standards Commission (the "Commission") as a law enforcement officer on June 30, 2010. R. Ex. 2.

3. Petitioner worked as a patrol officer in the CMPD's North Division under the direct supervision of Lieutenant Dave Johnson ("Lt. Johnson"). T. 135-36, 188.

4. Lt. Johnson had known Petitioner as "pretty reserved on the shift, very humble, soft-spoken, very mild-mannered, maintained a positive attitude even though ... [he received] good natured teasing and ribbing in roll call." T. 139.

5. On January 22, 2011 (and into the early morning hours of January 23, 2011), Petitioner was present at the Homestead Suites at 88 Tunnel Road in Asheville, North Carolina (the "Hotel"). He was accompanied by three others: his then-girlfriend, Nicole Walton ("Ms. Walton"); a fellow CMPD police officer, Jonathan C. Campbell ("Officer Campbell"); and Officer Campbell's fiancée, Kristin Lane ("Ms. Lane") (collectively, Officer Hullett, Ms. Walton, Officer Campbell, and Ms. Lane may be at times herein referred to as the "Guests").

6. When they checked in to the hotel, Officer Campbell informed the hotel staff that he and Petitioner were police officers. T. 211.

7. Each of the Guests had been consuming alcohol throughout the day and were intoxicated on the night in question. T. 146-47.

8. An off-duty Buncombe County Sheriff's Office deputy, Detective Jeff Eller ("Det. Eller"), was working "secondary employment" carrying out security duties on behalf of hotel management. T. 49. Det. Eller was wearing what he described as a "soft uniform" of "5.11

Tactical” brand tan-colored pants, a black “polo-type shirt” stitched with the Sheriff’s Office logo, a duty belt with his service weapon, handcuffs, handheld radio and a plain, non-uniform, black fleece jacket. T. 49, 50 & 61. The jacket did not have any Sheriff’s logo, badge, or other markings on it. T. 94.

9. Det. Eller first observed Petitioner when he and the other guests arrived at the hotel by the shuttle bus, and walked through the lobby talking loudly. It was clear that the Guests had been drinking. T. 52-54.

10. Petitioner testified that he was “very intoxicated” when he returned to the Hotel. T. 192.

11. About an hour later, Officer Campbell and Ms. Lane came down to the lobby arguing and talking loudly. Petitioner came into the lobby as well. When Det. Eller approached the Petitioner and asked the Guests to be quiet, Petitioner informed Det. Eller that he was a police officer from Charlotte. The incident in the lobby was resolved peaceably and the Guests returned to their room. T. 54-57.

12. Shortly after the encounter in the lobby, hotel management received a noise complaint regarding loud voices in the room shared by the Guests. T. 58, 79.

13. After waiting outside the door to the Guests’ room and listening to ongoing loud talking, Det. Eller knocked on the door to the room. Officer Campbell answered the door, and was belligerent and argumentative toward Det. Eller even after Det. Eller made it clear that he worked for the Sheriff’s Office. T. 59-60, 64-65.

14. Det. Eller then advised the Guests that they were no longer permitted to spend the night at the Hotel. T. 63. Det. Eller exercised the authority allowed by the hotel management to direct the Guests to vacate the room. T. 82.

15. After Det. Eller directed the Guests to pack their belongings and leave the premises, Petitioner demanded Det. Eller’s badge number which Det. Eller declined to provide. When Det. Eller demanded Petitioner’s identification, Petitioner likewise refused. T. 64, 201.

16. Petitioner testified that he pleaded with Det. Eller to reconsider and allow the Guests to stay the night at the Hotel because they were from Charlotte, had nowhere else to go, the weather was cold, and they were intoxicated. When Det. Eller refused, Petitioner then asked Det. Eller: “Does this make you feel like a man?” T. 201; R. Ex. 7A .

17. Officer Campbell and Petitioner each explicitly refused to grant consent for Det. Eller to enter their room. T. 91. Both Petitioner and Officer Campbell protested that Det. Eller was “breaking the law” by entering the Guests’ room without permission when he entered the living room area. T. 64.

18. The layout of the Guests' suite at the Hotel contains an interior bedroom that is separated from the rest of the living area by a pair of double doors. *See* Petitioner's Exhibit 1.

19. Petitioner, Officer Campbell, and Ms. Walton entered the bedroom (Ms. Lane was not in the hotel room at this point). Ms. Walton closed the bedroom doors because the luggage was behind the doors and began packing. T. 65, 157.

20. Det. Eller called out multiple times for someone to open the door, but received no response. T. 66, 89.

21. Neither Petitioner nor Ms. Walton heard Det. Eller calling to them. T. 68, 89-91.

22. Det. Eller knew that Petitioner and Officer Campbell were law enforcement officers and that many law enforcement officers carry firearms when they are off-duty. Because they had been argumentative, were intoxicated, and not responding to his commands, Det. Eller radioed for assistance from on-duty officers. T. 66, 89.

23. Sergeant Stiles of the Buncombe County Sheriff's Office and a couple of Sheriff's deputies responded to the call for back-up. T. 68. The officers entered the bedroom and placed Petitioner and Officer Campbell in handcuffs. T. 68-69. The bedroom door had not been locked. T. 94.

24. Officers with the Asheville Police Department also responded to Det. Eller's call for back-up and arrived on the scene. T. 70.

25. Det. Eller explained to Petitioner that they were placed in handcuffs because they refused to leave, refused to cooperate and were argumentative. T. 69. At that point, Petitioner "turned completely", and became "cooperative, "apologetic" and "agreed he would leave." T. 70.

26. While the Guests were in handcuffs, Det. Eller inquired whether anybody had brought a firearm. T. 70.

27. Officer Campbell said that he had given his service weapon to his fiancée, Ms. Lane, for safekeeping. Ms. Lane later panicked and hid the weapon (which was unloaded) underneath the ice machine in a public area in the hallway of the hotel. No other weapon was found. T. 71.

28. Petitioner had not brought his own service weapon on this trip and there was no evidence to suggest that he was involved in or even aware of the carelessness with Officer Campbell's service weapon. T. 190.

29. Petitioner apologized to Det. Eller after he turned in the hotel room key to the receptionist. T. 70 & 204.

30. Det. Eller and the other officers considered charges against Petitioner and Officer Campbell, specifically resist, delay and obstruction because: they refused to leave when asked by Det. Eller; refused to show identification when requested; and went into the bedroom, closed the door and did not respond to commands. T. 72-73.

31. Det. Eller did not arrest or press charges against either Petitioner or Officer Campbell. T. 74.

32. Det. Eller telephoned the CMPD to report the incident. He spoke to several people in the CMPD chain of command because he wanted CMPD to handle their own officers even though the responding officers from the Buncombe County Sheriff's Office and the Asheville Police Department wanted to arrest Petitioner and Officer Campbell and take them to jail. T. 74.

33. Lt. Johnson "was shocked" when he heard about the incident in Asheville because he "had never known [Petitioner] to portray any negative traits whatsoever." T. 139.

34. Even after hearing about the incident in Asheville, Lt. Johnson testified that he would "welcome" Petitioner "being in [Lt. Johnson's] command" at CMPD. T. 139-40.

35. Following an internal affairs investigation into this incident, Petitioner was involuntarily separated from the CMPD on March 15, 2011. R. Ex. 3.

36. Subsequently, Petitioner applied for a position with the Davidson Police Department. Detective Stephen Ingram ("Det. Ingram") was involved in screening Petitioner's application. T. 110. He discussed it with his supervisor, Sergeant Marty Poole ("Sgt. Poole"), and they conducted a background investigation concerning Petitioner's termination from the CMPD. T. 111-16, 119. The purpose of a background investigation is to eliminate candidates, to determine if there is evidence of anything that would be a continuing problem if a candidate is hired. T. 121.

37. Det. Ingram thoroughly discussed the application with Petitioner who "seemed truthful" about the incident in Asheville and who acknowledged that "his actions were foolish" and resulted in his termination from the CMPD. T. 112.

38. Det. Ingram made a recommendation to Sgt. Poole and Chief of Police Jeanne Miller ("Chief Miller") to hire Petitioner because in the investigation there was nothing that should exclude Petitioner from being a police officer, including his criminal record history, and that it was the Petitioner's probationary status at the time of the incident that resulted in his termination from the CMPD. T. 113-16.

39. The investigation did not reveal anything that concerned Sgt. Poole about offering a position to Petitioner. T. 121-22.

40. Sgt. Poole's investigation of Petitioner did not suggest that Petitioner had been less

than truthful concerning the incident in Asheville. T. 122-23.

41. The Davidson Police Department became fully accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) in 2011 under the leadership of Chief Miller. T. 126.

42. Chief Miller testified that the Davidson Police Department seeks to hire police officers who have integrity and tries to “operate in a culture that emphasizes professionalism, ethics, accountability and teamwork.” T. 128.

43. An applicant’s employment history, particularly in law enforcement, is considered and whether any prior disciplinary action was taken. Following the best practice standards for CALEA, a progressive discipline theory is followed, where factors such as the severity of the infraction, the penalty imposed, and the litigiousness of the infraction, are among the considerations. T. 129-30.

44. Chief Miller considers the age and experience of an applicant at the time of the infraction: “Don’t tell me what the boy did, tell me what the man has accomplished.” T. 130 Whether the applicant was intoxicated at the time of the infraction is considered, as well as: “what occurs during the incident, what is their conduct during the incident and what is their conduct after the incident?” T. 131.

45. According to Chief Miller, there “was a host of reasons” why Petitioner was offered employment at the Davidson Police Department even though she was aware of the incident in Asheville: Petitioner “was not criminally charged” and “[t]here was no contact on Mr. Hullett’s part towards any – towards any of the officers that arrived. He was arrested, he – my understanding was he did not resist. He never verbally threatened and never indicated any threat. That was very important to me. Consistently throughout our process, even when it was most detrimental to him and most painful, he was honest about what had occurred.” T. 132.

46. Based on the background investigation, and Sgt. Poole’s and Det. Ingram’s conversations with CMPD, Chief Miller felt that the Davidson Police Department would be a good opportunity for Petitioner and one that he would appreciate. The small size of the Davidson Police Department meant that Petitioner would be closely supervised:

A : We are in a very small environment and – and he’s closely supervised. So I felt that you know, I could very quickly make a decision. And he and I had that conversation. I mean, I looked him right in the face and said, one thing, one bad thing, one incident, and he’s gone.

Q: What was his response to that?

A: He said he understood, that there wouldn’t be any one thing, and that he would show us that he could be professional.

–7–

T. 133

47. Det. Ingram's investigation did not reveal any reason why Petitioner would need to be excluded from hiring by the Davidson Police Department. T. 115.

48. Sergeant Poole's investigation did not reveal any reason that would make him hesitate about hiring Petitioner. T. 122.

49. Chief Miller testified that she would "absolutely" hire Petitioner if his certification was reissued. T. 133.

50. In March 2012, Petitioner was offered a position as a full-time law enforcement officer with the Davidson Police Department. T. 132; R. Ex. 2.

51. On March 9, 2012, the Criminal Justice Standards Division received a Report of Appointment/Application For Certification, Form F-5A, dated March 7, 2012 (the "Application") from the Davidson Police Department, requesting that certification be re-issued to Petitioner as a full-time law enforcement officer. R. Ex. 5. A copy of the Charlotte-Mecklenburg Police Department Internal Affairs Bureau's investigation, Case #SI-11-0131, was included with Petitioner's application for certification. R. Ex. 6.

52. As a result of the information submitted along with the Application, the Petitioner's case was referred to Richard Squires, an Investigator with the Commission who "conducts administrative investigations regarding certifications and allegations of rule violations" and presented his written report to the members of the Probable Cause Committee of the Commission (the "PCC") on April 24, 2012. T. 19-20; R. Ex. 1.

53. Investigator Squires requested and received a written statement from Petitioner concerning the reasons he left the CMPD. T. 25; R. Ex. 7A.

54. Investigator Squires testified that Petitioner appeared to be "completely truthful" in the written statement and that Petitioner was "forthcoming" and "very professional" when he testified at the PCC hearing. T. 45-47.

55. The PCC held that there was probable cause to deny/suspend Petitioner's certification, based upon a finding that he committed the Class B misdemeanor, "Resisting Officers," when he "resisted the commands of Det. Eller with the Buncombe County Sheriff's Office who was discharging the duties of his office, while working at the hotel. You refused to leave the hotel when ordered to do so by the deputy prompting the deputy to call for reinforcements from the Buncombe County Sheriff's office and the Asheville Police Department." R. 8.

56. Following the PCC's decision, Petitioner requested a contested case hearing.

57. At the contested case hearing, the Undersigned had questions of her own for Petitioner. T. 215-20. The following are some of Petitioner's responses:

- "being a police officer to me now means more than anything in the world."
- Petitioner has an uncle and an older brother who are police officers.
- Petitioner desires to help others.
- Petitioner believes that police officers deserve respect from the community and should be held to a higher standard.
- Petitioner was frustrated during the incident in Asheville and did not show Detective Eller respect.
- Petitioner was 25 years old at the time of the hearing.

T. 216-19.

58. There was further exchange with the Undersigned:

THE COURT: What do you think you should do now to show that you've learned something here?

THE WITNESS: Honestly, ma'am, I would – I would be willing to do whatever it – you know, whatever it took. You know, if you – if I needed to do classes or anything like that I would be more than happy to –

THE COURT: Based on this experience, what kind of classes do you think would be helpful?

THE WITNESS: Probably some type of, you know, alcohol classes, how alcohol was a problem in this situation. Maybe, you know, offering me to do something with the police department to work alongside police officers to show them that I do show them respect and, you know, I'm sorry for even, you know – go sit with Detective Eller and tell him how sorry I am.

T. 219.

59. The Undersigned finds as fact that Petitioner's statements on the night of January 22-23, 2011 and the written and oral statements he has given since then have been consistent.

60. The Undersigned finds as fact that Petitioner's statements are consistent with all of the believable evidence in this contested case.

61. After observing the demeanor of the Petitioner, the reasonableness of his testimony and the consistency of his statements, the Undersigned finds the Petitioner to be credible.

62. The Undersigned finds as fact that every law enforcement professional who testified at the contested case hearing holds the opinion that Petitioner accepts responsibility for his actions and is remorseful.

63. The Undersigned finds as fact that Lt. Dave Johnson, Charlotte-Mecklenburg Police Department; Det. Steve Ingram, Davidson Police Department; Sgt. Marty Poole, Davidson Police Department; and Chief Jeanne Miller, Davidson Police Department, support Petitioner's application for certification as a law enforcement officer employed by the Davidson Police Department.

64. The Undersigned finds as fact that Petitioner's actions were less than prudent and certainly disrespectful toward Det. Eller and the other officers from the Buncombe County Sheriff's Office and the Asheville Police Department on the night of January 22-23, 2011.

65. The Undersigned finds as fact that Petitioner is remorseful over his conduct, that he accepts full responsibility for his actions, and that he is willing to comply with any conditions the Commission may impose to ensure that such conduct does not repeat itself in the future if his application for law enforcement officer certification is granted.

CONCLUSIONS OF LAW

1. Both parties are properly before this Administrative Law Judge in that jurisdiction is proper and both parties received notice of the hearing.

2. The North Carolina Criminal Justice Education And Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 9, to certify law enforcement officers and to deny, revoke, or suspend such certification.

3. 12 N.C. ADMIN. CODE 09A .0204(b)(3)(A) allows the Commission to suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of a criminal offense or unlawful act defined as a Class B misdemeanor.

4. The criminal offense of Resisting Officers, in violation of N.C. GEN. STAT. § 14-223, constitutes a Class B misdemeanor pursuant to 12 N.C. ADMIN. CODE 09G.0102(9)(cc) of the Commission's Administrative Rules, and the Class B Misdemeanor Manual as published by the North Carolina Department of Justice.

5. The North Carolina Supreme Court has considered what actions are a violation of N.C. GEN. STAT. § 150B-34 and held that:

The general rule is that merely remonstrating with an officer in behalf of another, or criticizing or questioning an officer while he is performing his duty, when done in an orderly manner, does not amount to obstructing or delaying an officer in the performance of his duties.

State v. Leigh, 278 N.C. 243, 251 (2009)).

6. Unlike a criminal proceeding where the burden of proof is beyond a reasonable doubt, in a contested case hearing the burden of proof is preponderance of the evidence. N.C. GEN. STAT. § 150B-34.

7. The weight of the evidence showed that Petitioner's conduct toward Det. Eller and the other responding law enforcement officers was mere remonstrance and that Petitioner did not resist, delay or obstruct any of them in the performance of their duties.

8. The preponderance of the evidence shows that Petitioner did not commit the criminal offense of Resisting Officers. N.C. GEN. STAT. § 14-223.

9. Accordingly, the Petitioner has met his burden of proving by a preponderance of the evidence that the Commission had insufficient grounds pursuant to 12 N.C. ADMIN. CODE 9G .0102 (9)(cc), 12 N.C. ADMIN. CODE 9G .0504 (b)(3), and 12 N.C. ADMIN. CODE 9G .0505 (b)(1), to deny Petitioner's application for law enforcement officer certification.

BASED UPON the above Findings of Fact and Conclusions of Law, the Undersigned makes the following:

PROPOSAL FOR DECISION

It is hereby proposed that Petitioner's application for certification as a law enforcement officer be granted, but that the Petitioner be placed on probationary status for a period not to exceed two years. The Undersigned further proposes that the Commission consider imposing additional conditions on Petitioner such as those suggested by the Petitioner in his testimony at the contested case hearing.


NOTICE

The agency making the Final Decision in this contested case is required to give each party an opportunity to file exceptions to this Recommended Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C. GEN. STAT. § 150B-40(e). The agency is required by Section 150B-36(b) of the General Statutes to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative

Hearings.

The agency that will make the final decision in this contested case is the North Carolina Criminal Justice Education and Training Standards Commission.

This the 10th day of September, 2013.




Hon. Selina M. Brooks
Administrative Law Judge

A copy of the foregoing was sent to:

Shawn D. Copeland
Copeland Cook & Richards PLLC
20509 N Main St
Cornelius, NC 28031
ATTORNEY FOR PETITIONER

Lauren D Talley
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 10 day of September, 2013.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, N.C. 27699-6714
Tel: (919) 431-3000
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2013 SEP 30 AM 11: 15

COUNTY OF DURHAM

Office of
Administrative Hearings

Petitioner,

V.

Respondent.

PROPOSAL FOR DECISION

APPEARANCES

For Respondent: Matthew L. Boyatt, Assistant Attorney General
Attorney for Respondent
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

1

because it is alleged that Petitioner committed a Class B misdemeanor, Assault Inflicting Serious Injury, which occurred after the date of initial certification.

Whether probable cause exists to deny Petitioner's certification indefinitely pursuant to Rule .0204 of Chapter 10B of Title 12 of the North Carolina Administrative Code, because Petitioner does not have good moral character.

EXHIBITS

Respondent's Exhibits 1-7, 9 and 10 were introduced and admitted.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

FINDINGS OF FACT

1. Petitioner was certified with the Criminal Justice Commission through the Durham Police Department from 2005 - 2008.
2. Petitioner was working for the Durham Police Department in his official capacity as a police officer on November 1, 2007.
3. Petitioner was dispatched to a disturbance at 1601 Morehead Avenue, Durham, NC, 27701, on November 1, 2007. Upon arrival on scene and after observing several people in a physical struggle, Petitioner requested another officer (back-up) to come to the scene.
4. Petitioner was able to separate the parties and became aware that a Hispanic male, who had nunchaku (nun chucks or chain sticks), had committed the crimes of aggravated assault, larceny, and possession of drug paraphernalia. The Hispanic male was bleeding from the head upon Petitioner's arrival on scene. The Hispanic male was belligerent, acting irrational, and admitted to being under the influence of "crack", and was placed under arrest and handcuffed behind his back.

5. The actual identity of the Hispanic male, who is the subject of the arrest and alleged assault, has never been verified. Because he remained belligerent, Petitioner's supervisor could not interview the suspect. Moreover, once at the jail, the suspect produced a different identification with a different name, and the magistrate informed the officers that since the warrant had the wrong name, the suspect had to be released. No one has been able to locate the Hispanic male again.

6. Three Emergency Medical Services (EMS) persons were called to the scene to treat the Hispanic Male. They included Matthew Baker, Grant Newport, and Elizabeth Aronin.

7. All three EMS personnel began to observe and treat the Hispanic Male. At this time, Petitioner had a hold of the Hispanic Male's arm while EMS Grant Newport and Elizabeth Aronin were beginning to treat the head wound from behind the Hispanic male. Without provocation, the Hispanic male became violent towards Grant Newport and Elizabeth Aronin, and attempted to assault them by head-butting them and hitting them with his shoulder. As the Hispanic male attempted to assault the EMS workers, he wrestled himself out of the grasp of the Petitioner.

8. EMS Grant Newport and Elizabeth Aronin were so frightened that each of them ran away from the Hispanic male and back to the ambulance.

9. The Hispanic male then took up a fighting stance and squared up with the Petitioner. At this time, EMS Baker felt that the Hispanic Male "needed to be taken down", and even considered going "hands-on" with the Hispanic male himself.

10. Almost immediately, Petitioner perceiving a threat against himself and the EMS workers, hit the Hispanic male with a punch to the face. Though staggering, the Hispanic male was not down so Petitioner kicked him forcing the Hispanic male to fall on to the ground, which was a concrete sidewalk, and land on his stomach and face.

11. Petitioner immediately got on top of the Hispanic male and laid on him to insure that he stayed down. Petitioner called for a supervisor to come to the scene. At this time, Petitioner was still the only police officer on scene.

12. The Petitioner swore under oath that he did not throw nor land any more punches when the Hispanic male was on the ground.

13. EMS Baker is the only party who has alleged that after the Hispanic male was on the ground that Petitioner then straddled the Hispanic male and punched him at least ten times in the face.

14. EMS Baker did not write down or otherwise record the events that occurred on November 1, 2007.

15. EMS Baker admitted that he may have “mis-remembered” some of the events of November 1, 2007.

16. Respondent presented no visual evidence of the Hispanic male’s injuries at the hearing.

17. Other than bleeding from the nose and mouth, there was no medical evidence of injuries by a licensed medical doctor. Respondent presented no medical evidence by a doctor diagnosing the Hispanic male with fractures of any kind at the hearing.

18. Sergeant Scott Pennica of the Durham Police Department performed an internal affairs investigation into the events of November 1, 2007. Sergeant Pennica concluded that the Petitioner punched the Hispanic male in the face and then kicked the Hispanic Male in the face, while he was in handcuffs.

19. Sergeant Scott Pennica only found one person alleging the Petitioner punched the Hispanic male after he was on the ground, that person was EMS Baker. Sergeant Pennica did not conclude that Petitioner punched the Hispanic male in the face after the Hispanic Male fell to the ground.

20. Petitioner has been taught not to become complacent with individuals in handcuffs. He and other officers have been attacked by persons who were handcuffed. Petitioner has admitted that his kick to the face of the Hispanic male was excessive. Petitioner has no criminal history, and has never been charged with a crime in connection with the events of November 1, 2007.

21. Other than the events which occurred on November 1, 2007, Respondent did not offer any other evidence suggesting Petitioner lacks good moral character.

22. Deputy Director of the North Carolina Sheriffs’ Education and Training Standards Commission, Diane Konopka, admitted the Respondent’s finding of probable cause to believe that Petitioner does not possess the good moral character to become a Justice Officer is solely based on the events surrounding November 1, 2007.

23. Petitioner has been employed with the Durham County Sheriff’s Office for the past two years, working as a detention officer in the jail. Petitioner, as a detention officer, works almost exclusively with prisoners in handcuffs and has never had a single complaint of use of excessive force.

24. Durham County Staff Sergeant Justin Ellerbee has worked with, supervised, and observed Petitioner for the past two years. Staff Sergeant Ellerbee has had many instances where “hands-on” physical force was needed to subdue unruly prisoners in and out of handcuffs. Staff Sergeant Ellerbee admitted that Petitioner is the first officer he seeks out to help because of Petitioner’s self-control under such stressful situations. Staff Sergeant Ellerbee has found Petitioner to be of excellent moral character and honest.

25. Petitioner's former colleague and friend, Angela Kelley, admitted that she has known Petitioner since 2008, in a professional and friendly manner. Angela Kelley testified that she observed Petitioner in high stress situations and found Petitioner to be under control and of excellent moral character and truthful.

26. Petitioner has been a member, in good standing and without incident, of the Armed Forces since 2002, and has served his country overseas, and is a current member of the National Guard.

27. Since the events of November 1, 2007, Petitioner has shown that he possesses good moral character by maintaining a good standing in the Armed Forces, by maintaining employment with the Durham County Sheriff's Office as a correction officer and without incidents, and by being truthful and forthright in his application for certification by the NC Sheriffs' Education and Training Standards Commission, and by being truthful in his applications for law enforcement employment at other agencies.

BASED UPON the foregoing FINDINGS OF FACT and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

2. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed a crime or unlawful act defined in 12 NCAC 10B. 0103(10)(b) as Class B Misdemeanor and which occurred after the day of initial certification.

3. Petitioner was neither convicted of assault inflicting serious injury in a court of law nor was he otherwise found civilly liable for such in a court of law.

4. To find that Petitioner “committed” the offense of assault inflicting serious injury Petitioner must have “performed the acts necessary to satisfy the elements of a specified criminal offense.” *Britt v. Commission*, 348 N.C. 573, 501 S.E2d 75 (1998)

5. The North Carolina Supreme Court “generally defines the common law offense of assault as ‘an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.’” The common law rule regarding assault followed by the North Carolina courts places “emphasis on the intent or state of mind of the person accused.” *State v. Roberts*, 270 N.C. 655, 155 S.E.2d 303 (1967)

6. In this case, the preponderance of the evidence does not show that willful and calculated intent by Petitioner required of assault. Given the situation that Petitioner was in, his excess force was immediate and done in part to protect others, though it did reveal a lack of professional judgment. However, the evidence in this case cannot and does not support a finding that Petitioner committed the Class B Misdemeanor offense of Assault Inflicting Serious Injury.

7. In licensing those who desire to engage in professions or occupations as may be proper subjects of such regulation, the Legislature may confer upon executive officers or bodies of power of granting or refusing to license persons to enter such trades or professions only when it has prescribed a sufficient standard for their guidance. See *In re Willis*, 215 S.E.2d 771, 779 (N.C. 1975) (quoting *State v. Harris*, 6 S.E.2d 854, 860 (N.C. 1940).

8. The Petitioner has the burden of proof, by a preponderance of evidence to show that Petitioner is of good moral character, as described in 12 NCAC 10B .0301(a)(8), which states: “Every Justice Officer employed or certified in North Carolina must . . . be of good moral character as defined in: *In re Willis*, 299 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 976 (1975) ;*State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny”.

9. “The initial burden of showing good character rests with the applicant. If the Board relies on specific acts of misconduct to rebut this *prima facie* showing, and such acts are denied by the applicant, then the Board must establish the specific acts by the greater weight of the evidence.” *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989).

10. The term ‘good moral character’ is unusually ambiguous and it can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences and prejudices of the definer. See *id.* at 776 (citing *Konigsberg v. State Bar of California*, 353 U.S. 252, 262-63 (1957).

11. In the case of *In re Dillingham*, 124 S.E. 130, 131 (N.C. 1924), the applicant admitted that one year prior to his application to North Carolina Bar he had broken the law

including, obtaining goods by false pretense, larceny, forgery, conspiracy, extortion and others; all involving moral turpitude. In denying the applicant's application, the *Dillingham* Court noted that, "[W]hen one seeks to establish restoration of a character which has been deservedly forfeited, the question becomes essentially one 'of time and growth.'" See *Willis*, 215 S.E.2d at 778 (citing *Dillingham*, 124 S.E. at 132); see also *In re Applicants for License*, 131 S.E. 661, 663 (N.C. 1926) (reaffirming that a man's character can be restored where there is a showing of time and growth); but see *In re Legg*, 386 S.E.2d 174, 183 (N.C. 1989) (denying applicants application to the North Carolina Bar because evidence showed a "systematic pattern of carelessness, neglect, inattention to detail and lack of candor") (emphasis added).

12. "When the defendant in his sentencing hearing produces evidence of his good character in order to take advantage of that particular mitigating circumstance . . . character is 'a direct issue in the case' and thus not limited to the traditional methods of proof but may be proved by specific acts as well as by reputation and by the opinions of others." *State v. Benbow*, 308 S.E.2d 647, 652-53 (N.C. 1983).

13. Pursuant to *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989), Petitioner has shown by a preponderance of evidence that he possesses good moral character by introducing evidence of Petitioner's good moral character by way of Petitioner's own admission of the events of November 1, 2007, his good standing in the Armed Forces, and his good standing at the Durham County Sheriff's Office for the past two years; as well as the testimony of Petitioner's honesty and good moral character by Durham County Staff Sergeant Justin Ellerby, and Angela Kelley's testimony concerning Petitioner's good moral character, and Petitioner's candor in his application with Respondent and several other law enforcement agencies regarding the events of November 1, 2007.

14. Pursuant to Respondent's standard, as set forth in 12 NCAC 10B .0301(a)(8), which states: "Every Justice Officer employed or certified in North Carolina must . . . be of good moral character as defined in: *In re Willis*, 299 N.C. 1, 215 S.E.2d 771 appeal dismissed 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny", Petitioner has shown that what occurred nearly six years ago was an isolated incident for which time and growth have allowed Petitioner's character to be restored, as established in *In re Willis*, supra. Petitioner offered evidence of his employment in situations involving prisoners in handcuffs and acting unruly, yet Petitioner, as testified to by Staff Sergeant Ellerby, has had no instances of misconduct as a Durham County corrections officer.

15. Respondent has not shown a systematic pattern of bad acts by the Petitioner, as set forth in *In re Legg*, supra, nor were any alleged. In fact, Respondent, through Diane Konopka admitted the sole reason for finding probable cause to deny Petitioner's certification for lack of good moral character was based on the events of November 1, 2007; and nothing more.

16. Probable cause does not exist to show Petitioner lacks good moral character as defined by the Respondent.

17. Petitioner has satisfied his initial burden of showing good character, and because the Board is relying on specific acts of misconduct to rebut this *prima facie* showing, and such acts have been denied by the Petitioner, then the Board must establish the specific acts by the greater weight of the evidence.” See *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989). Respondent has failed to establish, by the greater weight of the evidence, that Petitioner currently lacks good moral character pursuant to *In re Dillingham* and *In re Willis*.

18. Moreover and in addition to the above, Respondent’s probable cause finding that there was a belief that Petitioner did not possess the good moral character required of justice officers is founded solely on the allegation that Petitioner committed the Class B Misdemeanor offense of Assault Inflicting Serious Injury. Having found that not to be the case, no other evidence was presented that would call into question Petitioner’s moral character.

19. Insufficient evidence exists to show Petitioner currently lacks the good moral character required of all justice officers. In fact, the evidence points to the fact that Petitioner is a person of good moral character. Although Petitioner’s actions were indicative of poor professional and personal judgment, they are not indicative of bad character. Petitioner was truthful and cooperative during all investigations, and is employed in good standing with the Durham County Sheriff’s Office. Petitioner has maintained his good name as a consequence. See generally *In re Farmer*, 191 N.C. 235, 130 S.E. 661 (1926). The circumstances of this hearing lead to the conclusion that the Petitioner is that type of individual suited for law enforcement.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on those conclusions and the facts in this case, Respondent’s determination that probable cause existed that Petitioner committed the Class B Misdemeanor offense of Assault Inflicting Serious Injury and/or that Petitioner lacked the moral character required of justice officers cannot be and is not supported by the testimony and evidence in this case. As such, Petitioner Gregory Paul Kelly’s detention officer certification through the Durham County Sheriff’s Office should be granted.

NOTICE

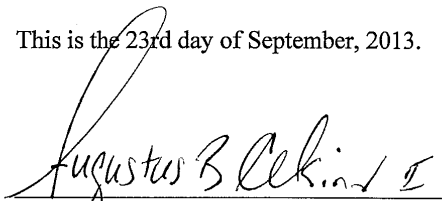
The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 23rd day of September, 2013.

A handwritten signature in cursive script, reading "Augustus B. Elkins II", is written over a horizontal line.

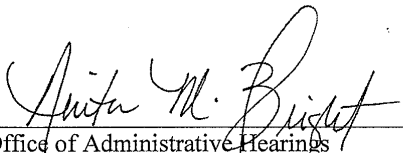
Augustus B. Elkins II
Administrative Law Judge

On this date mailed to:

SHEA B. MALISZEWSKI, ESQ
ATTORNEY AT LAW
2212 HOLLOWAY STREET
DURHAM, NC 27703
PETITIONER'S ATTORNEY

MATTHEW L BOYATT
ASSISTANT ATTORNEY GENERAL, NC DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
ATTORNEY FOR RESPONDENT

This the 30th day of September, 2013.



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Filed

STATE OF NORTH CAROLINA
COUNTY OF DUPLIN

2013 APR 29 PM 2:54

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12OSP07543

Office of
Administrative Hearings

David W Morgan, Petitioner, v. North Carolina Department of Public Safety; North Carolina Highway Patrol, Respondent.	FINAL DECISION
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APPEARANCES

PETITIONER: M. Travis Payne
EDELSTEIN & PAYNE
Post Office Box 28186
Raleigh, NC 27611

RESPONDENT: Tamara S. Zmuda
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
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ISSUE

Whether Respondent had just cause to dismiss Petitioner from the North Carolina State Highway Patrol.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to, the demeanor of the witness; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the

testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Prior to his termination, Petitioner was employed as a Trooper with the North Carolina State Highway Patrol for approximately five years. (T. p. 9)
3. On June 15, 2010, Petitioner was dismissed from the North Carolina State Highway Patrol for engaging in an acts constituting unacceptable personal conduct. (R. Ex. 18) The unacceptable personal conduct consisted of violating Respondent's policy on Truthfulness, Neglect of Duty, and Unbecoming Conduct.

4. The State Highway Patrol's written policy on Truthfulness states:

Members shall be truthful and complete in all written and oral communications, reports, and testimony. No member shall willfully report any inaccurate, false, improper, or misleading information. (R. Ex. 3)

5. There are no exceptions to the Highway Patrol's Truthfulness policy. (T. p. 222)

6. The State Highway Patrol's written policy on Unbecoming Conduct states:

Members shall conduct themselves, both on and off duty, in such a manner as to reflect most favorably upon the Highway Patrol and in keeping with the high standards of professional law enforcement. Unbecoming conduct shall include any conduct that constitutes unacceptable personal conduct pursuant to State Personnel Policy and any conduct which tends to bring the Patrol into disrepute, or which reflects discredit upon any member(s) of the Patrol, or which tend to impair the operation and efficiency of the Patrol or of a member, or which violates Patrol policy. (R. Ex. 3)

7. The State Highway Patrol's written policy on Neglect of Duty states:

Members shall not be inattentive to duty nor neglect their duties. Members shall not engage in any activities or personal business which would cause them to neglect or be inattentive to duty or which would impair their ability to perform such duty. (R. Ex. 3)

A supervisor's failure to take such appropriate action when he/she has personal knowledge of violations of the Rules of Professional Conduct and

Job Performance by subordinates shall be considered serious neglect of duty.

8. The incident for which Petitioner was dismissed arose from a handoff of a DWI traffic stop of Donnie Scholar from Duplin County Sheriff's Deputy Justin Smith. (T. p. 17)
9. It is common practice for smaller municipalities to hand over driving while impaired ("DWT") traffic stops to State Troopers. In this case, there was an unwritten understanding that the Duplin County Sheriff's Department would hand off all DWI stops to the Troopers, and, in exchange, the Duplin County Sheriff's Office would serve all the warrants. (T. pp. 17, 150)
10. Troopers, in general, are provided with a significant amount of training in DWI enforcement. Specifically, Petitioner had a significant amount of training in DWI enforcement. (T. p. 17) Petitioner was trained in DWI enforcement during his Basic Law Enforcement Training and in continuing legal education classes. (T. p. 18) Petitioner was also sensor- and intoximeter-certified.
11. On October 7, 2011, Jason Brock was employed as a Sergeant with the Duplin County Sheriff's Office. (T. p. 142) Sergeant Brock was Deputy Smith's direct supervisor. (T. p. 143) On October 7, 2011, Sergeant Brock received a telephone call that he was needed to help investigate a possible meth lab. (T. p. 143) Sergeant Brock received instructions that he and Deputy Smith were to sit at a remote location near the suspected meth lab and wait for further instructions. (T. p. 143) Sergeant Brock and Deputy Smith, each in their own patrol vehicles, sat in a church parking lot at the intersection of NC 50 and Cypress Road. While waiting at the intersection, Sergeant Brock and Deputy Smith observed a white Ford F250 truck come to the intersection and stop. When the Ford truck moved through the intersection, it spun its tires and made a left turn, driving left of center into on-coming traffic. (T. p. 144) There was some sand and gravel at the intersection. (T. p. 173) Deputy Smith pulled out to pursue the vehicle, and Sergeant Brock followed to back him up. (T. p. 145)
12. Lacey Rae Ward is employed as an Officer with the Warsaw Police Department. (T. p. 119) Detective Ben Parrish was employed with the Duplin County Sheriff's Office. (T. p. 131) On October 7, 2011, at approximately 5:30 p.m., Officer Ward and Detective Parrish were working undercover assisting the Duplin County Sheriff's Office with a narcotics case. (T. pp. 119, 132) Officer Ward and Detective Parrish were together in a patrol vehicle at the intersection of NC 50 and Cypress Road waiting for further instruction on the narcotics case. They were parked in the same church parking lot where Sergeant Brock and Deputy Smith were parked. (T. pp. 120, 131) While Officer Ward and Detective Parrish were waiting for instruction, they saw a white truck approach the intersection. The white truck made a loud screeching sound and spun its tires as it made a left turn into the lane to the left of centerline of NC 50 into on-coming traffic. (T. pp. 121-22, 132-33) Officer Ward saw Deputy Smith and Sergeant Brock pull out to pursue the white truck. (T. pp. 122-23, 134) Subsequently, a call for "shots fired" was received over the radio. Sergeant Brock then requested Officer Ward and Detective Parrish to

back up Deputy Smith at the traffic stop. (T. pp. 123, 134) Officer Ward and Detective Parrish went to the scene of the traffic stop.

13. When Donnie Scholar got out of the white Ford truck, his pants were down below his genitals, and he was hanging on to the door of the vehicle for support. (T. p. 146) Donnie Scholar explained that he had a hip replacement, and he showed Sergeant Brock a hydrocodone patch on his left arm. (T. p. 147) Sergeant Brock smelled a moderate odor of alcohol coming from Donnie Scholar. (R. Ex. 9; T. p. 149) Donnie Scholar was unsteady on his feet, had slurred speech, and had extreme mood swings.
14. Because of Donnie Scholar's slurred speech, unsteadiness on his feet, irate and boisterous demeanor, the portable breath test results, and the medication, Sergeant Brock formed the opinion that Donnie Scholar was impaired. (T. pp. 153-54)
15. Donnie Scholar told Detective Parrish that he was on medication. (T. p. 139) Detective Parrish determined that Donnie Scholar was impaired because of his speech, demeanor, and belligerence. (T. pp. 136-37) Officer Ward, after observing Donnie Scholar, based on her training and experience as a law enforcement officer, believed that Donnie Scholar was impaired. Approximately 30 minutes later, Petitioner arrived on the scene.
16. On October 7, 2011, Petitioner was called to the scene of a traffic stop by Elizabethtown communication. (T. p. 19) The traffic stop involved Donnie Scholar.
17. On the way to the call for shots fired, Sergeant Brock called Petitioner. (T. p. 19) During that telephone call, Sergeant Brock informed Petitioner that he and Deputy Smith had pulled Donnie Scholar over for suspicion of DWI. Sergeant Brock described the situation at the Donnie Scholar traffic stop and informed Petitioner that although Donnie Scholar had some health conditions, it should be left to the Magistrate to determine whether he should be released for his health conditions. (T. pp. 20, 151)
18. Sergeant Brock, Petitioner, Donnie Scholar, and Ivey Scholar, Donnie's brother, went to high school together. (T. p. 152) At the time of the stop, Petitioner knew Ivey Scholar personally. (T. pp. 59, 67)
19. On the way to the scene of the traffic stop, Petitioner did not know the direction from which Donnie Scholar had been traveling. (T. p. 69)
20. It took Petitioner approximately 45 minutes from the time he was called by Elizabethtown communications to arrive at the scene of the traffic stop. (T. p. 21) When Petitioner arrived at the scene of the traffic stop, Donnie Scholar was out of the vehicle. (T. p. 21)
21. When Petitioner arrived at the scene, he did not know how long Donnie Scholar had been out of his vehicle or where Donnie Scholar had been since the stop of the vehicle. (T. p. 22)

22. When Petitioner arrived at the scene of the traffic stop, Donnie Scholar, Glenda Scholar, Ivey Scholar, Deputy Smith, Officer Ward, and Detective Parrish were at the scene. (T. p. 22)
23. Once Petitioner arrived on the scene, Detective Parrish spoke to Petitioner and explained what he observed regarding the spinning of wheels and Donnie Scholar's actions. (T. pp. 137-39) Thereafter, Officer Ward and Detective Parrish left the scene. (T. p. 126)
24. Petitioner talked to Deputy Smith when he arrived at the scene. Deputy Smith explained to Petitioner that Donnie Scholar was pulled over for peeling out at a stop sign, creating tire smoke, and driving left of center into oncoming traffic. (T. pp. 23-4) That was the first time that Petitioner was informed of these reasons for the Donnie Scholar stop. Neither Elizabethtown communication nor Sergeant Brock had informed Petitioner of these exact reasons. (T. p. 24)
25. Deputy Smith also informed Petitioner that he had performed portable breath tests on Donnie Scholar. The results of the tests were .12 and .11. (T. p. 24)
26. On the scene of the traffic stop, Petitioner saw Donnie Scholar leaning against a trampoline. Donnie Scholar never walked around; he remained leaning on the trampoline. (T. p. 29) When Petitioner talked to Donnie Scholar, he smelled alcohol on his breath. (T. p. 27) Petitioner stated that Donnie Scholar was "emotionally a mess." Donnie Scholar would go from crying to sobbing to cursing. Donnie Scholar was belligerent. (T. p. 27)
27. Donnie Scholar admitted to Petitioner that he had been drinking at his mom's house prior to driving to his present location and that he was on medication for a recent hip replacement. (T. pp. 27-8, 30) While Petitioner was at the scene, Donnie Scholar had a red cup with him at the trampoline. Donnie Scholar informed Petitioner that it was a punch mixed drink. (T. p. 29) Petitioner did not smell or otherwise check the contents of the red cup and never saw Donnie Scholar drink from the cup.
28. After observing Donnie Scholar, Petitioner decided to perform his own portable breath test on Donnie Scholar. (T. p. 30) Petitioner always performs his own portable breath test on a subject because he knows that he properly calibrates his alco sensor, and he trusts the reading of his own alco sensor. (T. p. 30) Donnie Scholar registered a .10 and .09 on Petitioner's portable breath tests. (T. p. 31)
29. After obtaining the readings from his own portable breath tests on Donnie Scholar, Petitioner formed the opinion that Donnie Scholar was impaired. (T. pp. 31, 47)
30. Although Petitioner was trained in field sobriety tests, he did not perform any field sobriety tests on Donnie Scholar. (T. p. 32)

31. At the scene of the traffic stop, Petitioner was informed that if Donnie Scholar were charged with DWI for this stop, it would be a habitual DWI charge for Donnie Scholar because of numerous prior convictions for DWI. (T. p. 71)
32. Petitioner informed Deputy Smith that he was not going to arrest Donnie Scholar because by the time he took him to the jail and did the paperwork, Donnie Scholar would blow a .08, and Petitioner said that he never had won a .08 DWI case in Duplin County. (T. pp. 32-3) Petitioner also indicated that he was not going to arrest Donnie Scholar because he was bleeding from his ankle and Petitioner did not want blood in his patrol car. (T. p. 72)
33. Petitioner did not ask Officer Ward or Detective Parrish if they saw Donnie Scholar spin tires or drive left of center into oncoming traffic. (T. p. 65)
34. Petitioner did not ask Sergeant Brock if he saw Donnie Scholar spin tires or drive left of center into oncoming traffic, even though Petitioner was aware that Sergeant Brock was at the scene of the incident. (T. p. 65)
35. Four different law enforcement officers witnessed Donnie Scholar spin tires at the intersection and drive left of center into oncoming traffic: Deputy Smith, Sergeant Brock, Officer Ward, and Detective Parrish. (T. p. 65) These law enforcement officers were from two different law enforcement agencies. (T. p. 235)
36. Law enforcement officers are taught that a traffic violation constitutes reasonable suspicion to pull a vehicle over. (T. p. 233) Driving left of center is a traffic violation.
37. After learning the reason for the stop, Petitioner did not go back to the intersection to observe the road. (T. p. 33)
38. While Petitioner did not charge Donnie Scholar with DWI, he did charge him with Driving While License Revoked and Consuming a Malt Beverage While Driving. (T. p. 34) The charges for driving while license revoked ("DWLR") and consuming a malt beverage while driving are based on the same reasonable suspicion as the DWI. (T. p. 63)
39. In order to charge Donnie Scholar with consuming a malt beverage, Petitioner had to have probable cause. (T. p. 51) Petitioner also would have had to rely on other Officers' testimonies regarding reasonable suspicion and regarding the element of driving in order to convict Donnie Scholar for DWLR and consuming a malt beverage while driving. (T. p. 227)
40. Petitioner never asked anyone if Donnie Scholar had the red cup in his hand when he exited the vehicle. Petitioner did not ask Donnie Scholar if he was drinking while driving. Petitioner did not search the vehicle Donnie Scholar was driving. Petitioner never saw Donnie Scholar drink from the red cup and never saw him move or pick up the cup. Petitioner never picked up the cup or smelled the liquid in the cup. (T. pp. 52-54)

41. The only evidence Petitioner had that alcohol was in the cup was Donnie Scholar's statement that it was a punch mixed drink. (T. p. 54)
42. Highway Patrol Troopers have been taught always to corroborate a suspect's admission with independent evidence. (T. p. 252)
43. Although Petitioner relied on Deputy Smith's printout of Donnie Scholar's driving record because he had a tendency to believe Deputy Smith, he also ran Donnie Scholar's name on his in-car computer to confirm. Deputy Smith's printout revealed eight (8) prior DWI charges against Donnie Scholar. (T. p. 35)
44. After leaving the Scholar stop scene, Petitioner saw Deputy Smith parked down the road and stopped for a conversation with him. Deputy Smith also had earlier departed the Scholar stop location. During that conversation, a call came over the radio regarding a four-wheeler. Deputy Smith said he would take the call for Petitioner because Petitioner was supposed to meet his wife for dinner. (T. pp. 57-58)
45. During his interview with Internal Affairs, Petitioner stated that he did not stop down the road and have a conversation with Deputy Smith. (T. p. 55) After being questioned at a later date by Internal Affairs, Petitioner admitted that he may have stopped down the road and had a conversation with Deputy Smith. (T. p. 57)
46. At the end of his shift that night, Sergeant Brock called Deputy Smith to find out how the rest of the stop went with Donnie Scholar. (T. p. 156) Deputy Smith informed Sergeant Brock that Petitioner did not charge Donnie Scholar with DWI, but with other charges. (T. p. 156)
47. The following night, October 8, 2011, Sergeant Brock called Petitioner to ask him why he did not arrest Donnie Scholar for DWI. (T. p. 38) Petitioner told Sergeant Brock that he did not charge or arrest Donnie Scholar for DWI because by the time he would have gotten him down to the station, Donnie Scholar would have blown a .08, and he had never won a .08 DWI case in Duplin County. (T. p. 38) Petitioner also said he did not arrest him because of his medical conditions. (T. p. 156) During this telephone conversation, Petitioner never stated anything about not believing Deputy Smith's reasonable suspicion for the stop. (T. pp. 156-57)
48. Petitioner admitted that his actions at the scene of the stop became the subject of much discussion among law enforcement officers in and around Duplin County. (T. p. 66) Petitioner was concerned that this incident affected his reputation and the Highway Patrol's reputation with members of the Duplin County Sheriff's Office. (T. p. 66)
49. Sergeant Brock became aware that Petitioner's actions at the stop of Donnie Scholar were becoming a topic of much discussion between and among members of the Duplin County Sheriff's Office and the Highway Patrol. Because of the amount of attention the stop was getting from law enforcement, on October 10, 2011, Sergeant Brock went to the Highway Patrol office to talk to Petitioner's direct supervisor, Sergeant Cavanaugh. (T. pp. 157-59,

- 173) Sergeant Brock explained to Sergeant Cavanaugh what happened at the stop, that Petitioner did not charge Donnie Scholar with DWI, and that the situation was becoming a topic of discussion between the Departments. (T. pp. 158-59, 176-77)
50. A few hours later, Sergeant Cavanaugh approached Petitioner and asked him why he did not arrest Donnie Scholar on October 7, 2011. (T. pp. 38-9) Petitioner told Sergeant Cavanaugh that by the time he would have gotten Donnie Scholar to the Magistrate's office, Donnie Scholar would have blown a .08, and Petitioner had never won a .08 DWI case in Duplin County. (T. p. 39) He also told Sergeant Cavanaugh that Donnie Scholar had blood on his leg, and he did not want the blood in his car. (T. p. 178)
51. When a subject blows a .08 or above, Troopers are trained to place them under arrest and transport them to the Magistrate's office. (T. p. 179)
52. A few days later, Sergeant Cavanaugh and First Sergeant Thurston met with Petitioner regarding the stop of Donnie Scholar. (T. p. 180) During this meeting, Petitioner gave a different reason for not arresting Donnie Scholar: Petitioner told his supervisors that he did not charge Donnie Scholar with DWI because he did not believe Deputy Smith's reasons for reasonable suspicion to make the stop. Sergeant Cavanaugh asked Petitioner why he did not tell him that the first time he asked Petitioner why he did not charge Donnie Scholar. Petitioner said that he did not want problems with the Sheriff's Department. (T. p. 180) Petitioner never explained why he was untruthful with his own Sergeants.
53. Several days later, Petitioner called Sergeant Brock and asked to speak to him in person. Petitioner went to Sergeant Brock's residence. Petitioner asked Sergeant Brock why he did not talk to him about the stop before going to Sergeant Cavanaugh. Sergeant Brock informed Petitioner that he had talked to him prior to going to Sergeant Cavanaugh. Then Petitioner changed his story and informed Sergeant Brock that he did not arrest Donnie Scholar for DWI because he did not believe Deputy Smith's recitation of reasonable suspicion for the stop. (T. pp. 160-61) Sergeant Brock was confused and asked Petitioner why he had charged Donnie Scholar with Driving While License Revoked and Consuming from an Open Container of Alcohol if he did not think the stop was proper.
54. Later, Petitioner called Sergeant Brock again and requested to meet with him and Deputy Smith. They met at the Highway Patrol Office. At the meeting, Petitioner apologized for his actions during the stop of Donnie Scholar and stated that he should have done his job. (T. pp. 161-62)
55. Petitioner told Internal Affairs that had he made the stop, Donnie Scholar would have been arrested for DWI. (T. p. 47)
56. Had Petitioner charged Donnie Scholar with DWI, Deputy Smith, Sergeant Brock, Officer Ward, and Detective Parrish could have been called to testify in court as to the evidence constituting reasonable suspicion for the stop by law enforcement. (T. p. 46)

57. In his first interview with Internal Affairs on November 17, 2011, Petitioner stated that he did not perform enough tests or have enough of a visual to determine if Donnie Scholar was impaired. (R. Ex. 9; T. p. 48) In his second interview with Internal Affairs, however, Petitioner admitted that Donnie Scholar was impaired. (R. Ex. 9; T. p. 49)
58. Petitioner was willfully untruthful with investigators of Internal Affairs when he told them that he did not perform enough tests or have enough of a visual to determine if Donnie Scholar was impaired.
59. Sergeant Brock testified that Deputy Smith was one of his best officers, and he thought that Deputy Smith was very honest. Sergeant Brock never had any reason to question Deputy Smith's credibility. (T. p. 162)
60. Petitioner admitted that he has no knowledge of credibility issues with Deputy Smith's courtroom testimony. (T. p. 60)
61. Deputy Smith looked up to Petitioner as a role model. (T. p. 167)
62. On November 17, 2011, Petitioner received a notification that a complaint had been filed against him. (T. p. 7; R. Ex. 2) Along with the notification, Petitioner was provided with a copy of Highway Patrol policies H.01 and H.02. (T. pp. 8-9; R. Exs. 3, 4)
63. The Internal Affairs Section of the Highway Patrol conducted an investigation into the complaint filed against Petitioner. As part of the investigation, Petitioner was interviewed once on November 17, 2011, and again on March 12, 2012. Those interviews were recorded and transcribed. The transcriptions of the interviews were admitted into evidence as R. Ex. 9.
64. On May 11, 2006, Petitioner was sworn in as a law enforcement officer. At that time Petitioner became a member of the Patrol and was provided with a Highway Patrol Policy Manual. Petitioner was required to read the manual and sign and date it indicating that he had read and understood it. Petitioner signed and dated the document indicating that he read and understood it and would abide by it. (T. p. 10)
65. The truthfulness policy is a part of the Highway Patrol Manual. Petitioner was informed of the truthfulness policy when he became a Trooper. The truthfulness policy had been stressed to Petitioner throughout his career with the Highway Patrol. Petitioner was made aware early in his career that violating the truthfulness policy was a serious violation and could result in discipline, up to and including dismissal. (T. pp. 10-11)
66. Petitioner made a judicial admission at this hearing, and it is found as a fact, that he was untruthful to Deputy Smith, Sergeant Brock, and Sergeant Cavanaugh in his explanation as to why he did not charge Donnie Scholar with DWI. (T. p. 113)
67. Petitioner admitted that he was untruthful to Deputy Smith when he told him that the reason he did not arrest Donnie Scholar for DWI was because by the time he arrested

him, completed the paperwork, and transported him to the jail, Donnie Scholar would have blown a .08 on a breathalyzer and that he never had won a .08 DWI case in Duplin County. (T. pp. 42-43)

68. Petitioner admitted that he was untruthful to Sergeant Brock when he told him that the reason he did not arrest Donnie Scholar for DWI was because by the time he arrested him, completed the paperwork, and transported him to the jail, Donnie Scholar would blow a .08 and that he never had won a .08 DWI case in Duplin County. (T. p. 42)
69. Petitioner admitted that he was untruthful when he told Sergeant Cavanaugh that the reason he did not arrest Donnie Scholar for DWI was because by the time he arrested him, completed the paperwork, and transported him to the jail, Donnie Scholar would have blown a .08 and that he never had won a .08 DWI case in Duplin County. (T. p. 44)
70. Petitioner admitted that he was untruthful when he told Sergeant Brock and Sergeant Cavanaugh that he never had won a .08 DWI case in Duplin County. Petitioner has won "plenty" of .08 DWI cases in Duplin County. (T. pp. 58, 84)
71. It is widely known in the Patrol that truthfulness is taken very seriously and that the policy must be followed. (T. pp. 321, 337) Truthfulness is paramount to the official duties of a law enforcement officer. If a law enforcement officer loses his credibility, his ability to effectively perform the functions of his job are deeply diminished.
72. By being untruthful, Petitioner compromised his integrity and undercut the confidence that members of the Duplin County Sheriff's Office had in the Highway Patrol. (T. p. 258)
73. Not wanting to hurt someone's feeling is not an acceptable excuse for being untruthful in the performance of the duties of a law enforcement officer. (T. p. 260)
74. Patrol policy requires that Troopers charge people and make arrests for clear cut and substantial violations of the law. (T. p. 221)
75. N.C.G.S. 20-138.1 includes a two-prong test for violations of DWI. A person can violate the law by having a .08 or higher blood alcohol content at any time relevant to driving or be appreciably impaired. (T. p. 221)
76. Blowing between a .09 and .12 on a portable breath test is probable cause for the charge and arrest for a clear cut and substantial violation of N.C.G.S. § 138.1.
77. Donnie Scholar, based on the multiple readings of the portable breath tests, was in violation of the DWI statute under the .08 prong, if not both prongs. (T. p. 222)
78. Michael Gilchrist was the Commander of the Highway Patrol in October 2011. (T. p. 200) As Commander of the Patrol, Colonel Gilchrist was responsible for rendering discipline to employees. (T. pp. 200-01)

79. After the complaint against Petitioner was investigated by Internal Affairs, the file was sent to the Director of Professional Standards, Major Jennifer Harris. On June 7, 2012, Major Harris wrote a memorandum to Colonel Gilchrist indicating that based on the facts of this case, her recommendation was that Petitioner should be dismissed from the Highway Patrol. (T. pp. 203-04; R. Ex. 12)
80. Colonel Gilchrist received the entire Internal Affairs file in this case, including Respondent's Exhibits 1 – 12, and considered those documents in determining that he was considering dismissing Petitioner from employment.
81. Based on his initial consideration, Colonel Gilchrist ordered that a pre-disciplinary conference take place. (R. Ex. 13)
82. On June 8, 2012, Petitioner was provided with notification that a pre-disciplinary conference would be conducted on June 13, 2012 at 10:00 a.m. Along with this notification, Petitioner was provided with a copy of the Report of Investigation and supporting documents. (R. Ex. 14) Petitioner also was provided with a Charge Sheet, which indicated the actions for which discipline was being considered. (R. Ex. 18)
83. Prior to Petitioner's dismissal, he was provided with a pre-disciplinary conference. (T. p. 15) At the pre-disciplinary conference, Petitioner was provided with an opportunity to present any information he wanted considered by Colonel Gilchrist before the decision regarding discipline was made. Petitioner's pre-disciplinary conference was recorded and transcribed. The transcription was entered into evidence as Respondent's Exhibit 15. At the pre-disciplinary conference, Petitioner provided documentation that he wanted considered by Colonel Gilchrist. Those documents were introduced into evidence as Respondent's Exhibit 16. (T. p. 15)
84. Colonel Gilchrist received, reviewed, and considered the documents provided by Petitioner at his pre-disciplinary conference prior to rendering a final decision regarding discipline. (T. p. 211)
85. Colonel Gilchrist considered many factors in determining that dismissal was the appropriate discipline in this case. Those factors include, but are not limited to, Petitioner's good employment history, that all troopers with substantiated violation of truthfulness have been dismissed, that Petitioner's explanations to the Internal Affairs investigators were contradictory and not credible, that Petitioner was not truthful during the investigation into this matter, the importance and necessity of truthfulness in a law enforcement position, and the impact Petitioner's actions would have on his ability to effectively perform his job duties.
86. In weighing and balancing the relevant factors, the aggravating factors, particularly the importance of truthfulness and how it affects a law enforcement officer's ability to effectively perform his job requirements, outweighed Petitioner's good work history.

87. After reviewing and considering all the documents in Petitioner's investigation file, the documents presented at Petitioner pre-disciplinary hearing, and Petitioner's performance appraisals, Colonel Gilchrist considered lesser forms of discipline but determined that dismissal was the appropriate level of discipline. (T. p. 212)
88. The Highway Patrol spends a significant amount of time, energy, and money to train Troopers and to ensure that they employ trustworthy individuals who can perform with a minimal amount of supervision. (T. p. 213) Given the nature of a Trooper's job, it is required that Troopers be trustworthy and dependable. Troopers are informed about the importance of truthfulness throughout their careers, starting from when they are cadets in Basic Law Enforcement Training. (T. p. 215) Troopers often work alone and frequently have to testify in court. Truthfulness and credibility are essential requirements of the job. (T. p. 216)
89. On June 18, 2012, Petitioner appealed his dismissal to the Secretary of the Department of Public Safety, Reuben Young. (T. p. 16; R. Ex. 19)
90. On July 23, 2012, Secretary Young upheld the dismissal of Petitioner from the Patrol. (R. Ex. 20; T. p. 16)
91. N.C.G.S. § 126-35(a) provides that "[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause." Although the statute does not define "just cause," the words are to be accorded their ordinary meaning. Amanini v. Dep't of Human Resources, 114 N.C. App. 668, 443 S.E.2d 114 (1994) (defining "just cause" as, among other things, good or adequate reason).
92. While just cause is not susceptible of precise definition, our courts have held that it is "a flexible concept, embodying notions of equity and fairness, that can only be determined upon an examination of the facts and circumstances of each individual case." NC DENR v. Carroll, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004).
93. In Warren v. N.C. Dep't of Crime Control & Public Safety, N.C. Highway Patrol, __ N.C. App. __, 726 S.E.2d 920(2012), the Court of Appeals established a three-part test to determine whether just cause exists for discipline in personnel cases. First, it must be determined whether the employee engaged in the conduct the employer alleged. Id. at __, 726 S.E.2d at 14. Second, it must be determined whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Id. Third, if the employee's conduct qualifies as a type of unacceptable personal conduct, it must be determined whether the conduct amounted to just cause for the disciplinary action taken. Id.
94. The definition of unacceptable personal conduct includes: conduct for which no reasonable person should expect to receive prior warning; the willful violation of known or written work rules; or conduct unbecoming a State employee that is detrimental to State service. 25 N.C.A.C. 1J.0614.

95. The State Personnel Manual advises that an employing agency should consider a number of factors when deciding the appropriate type of discipline to render. State Personnel Manual, Section 7, page 11. Among the factors are: 1) Whether the supervisor should recommend disciplinary action based on the facts; 2) Whether more investigation is needed to make a recommendation; 3) The type and degree of disciplinary action to be taken; 4) The employee's work history; 5) Disciplinary actions received by other employees within the agency/work unit for comparable performance or behavior; and 6) other relevant factors. Id.
96. A Career State Employee can be disciplined for a single act of unacceptable personal conduct up to and including dismissal. 25 N.C.A.C. 1J.0608.

CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings. To the extent that the Findings of Fact contain Conclusions of Law or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. Petitioner was a career State employee at the time of his dismissal and, therefore, entitled to the protections of the North Carolina State Personnel Act (N.C. Gen. Stat. § 126-1 et seq.), and specifically the just cause provision of N.C.G.S. §126-35.
3. Under N.C.G.S. § 126-35(d), in an appeal of a disciplinary action, the employer bears the burden of proving that "just cause" existed for the disciplinary action.
4. Respondent met its burden in proving that Petitioner was untruthful to Sergeant Cavanaugh when Petitioner said that he never had won a .08 DWI case in Duplin County. This untruthfulness was a willful violation of Respondent's written policy and, therefore, constitutes unacceptable personal conduct under the North Carolina Administrative Code.
5. Respondent has met its burden in proving that Petitioner was untruthful to Sergeant Cavanaugh and First Sergeant Thurston when he told them that he did not arrest Donnie Scholar for DWI because he did not think it was a good stop. This untruthfulness was a willful violation of Respondent's written policy and, therefore, constitutes unacceptable personal conduct under the North Carolina Administrative Code.
6. Respondent has met its burden in proving that Petitioner was untruthful when he told Internal Affairs investigators that he did not perform enough tests or have enough of a visual to form an opinion satisfactory to himself as to whether Donnie Scholar was impaired on October 7, 2011. This untruthfulness was a willful violation of Respondent's written policy and, therefore, constitutes unacceptable personal conduct under the North Carolina Administrative Code.
7. Respondent has met its burden in proving that Petitioner engaged in neglect of duty by failing to arrest Donnie Scholar for DWI when he had ample probable cause to do so.

The undersigned finds that this violation amounts to unsatisfactory job performance as defined by the North Carolina Administrative Code.

8. Respondent has met its burden in proving that Petitioner engaged in neglect of duty by failing to gather the evidence necessary to properly support a charge for operating a motor vehicle while consuming an alcoholic beverage in violation of NCGS 18B-401. The undersigned finds that this violation amounts to unsatisfactory job performance as defined by the North Carolina Administrative Code.
9. Respondent failed to meet its burden by proving: (1) That Petitioner was untruthful to Deputy Smith when he said that he never would get a conviction for a .08 DWI case in Duplin County; (2) that Petitioner was untruthful to Sergeant Brock when he said that he did not arrest Donnie Scholar because he would have had to charge him with habitual DWI; (3) that Petitioner was untruthful to Internal Affairs when he said that, while en route to the location of the stop, he checked the intersection for tire impressions and there were none there; and (4) that Petitioner was untruthful to Internal Affairs investigators when he said he did not stop down the road and have a conversation with Deputy Smith, that he did not receive a 10-85 call from the Communications Center, that Deputy Smith did not take the 10-85 call for him, and that he left the scene and went to another call.
10. Respondent has met its burden in proving that Petitioner engaged in unsatisfactory performance of duties when Petitioner failed to charge Donnie Scholar with DWI, despite ample evidence of the violation, and informing law enforcement personnel that the reason he did not arrest Donnie Scholar was because it would have been a waste of time because he never would win a .08 DWI case in Duplin County. The undersigned finds that this violation amounts to unsatisfactory job performance as defined by the North Carolina Administrative Code.
11. Petitioner engaged in the willful violation of Respondent's known work rule on Truthfulness by not being truthful and complete in his oral communications with Sergeants Brock and Cavanaugh and by being untruthful to Internal Affairs investigators when he originally told them that he did not perform enough tests to determine if Donnie Scholar was impaired.
12. Respondent considered all relevant and appropriate factors in determining that dismissal was appropriate in the present case.
13. Col. Gilchrist was not arbitrary and capricious in dismissing Petitioner, and he exercised appropriate discretion in making that determination.
14. Respondent had just cause to discipline Petitioner in the form of dismissal.
15. All procedural requirements for terminating Petitioner were followed under the provisions of the North Carolina General Statutes, the North Carolina Administrative Code, the North Carolina State Personnel Manual, the rules and policies of the North

Carolina Department of Crime Control and Public Safety, and the North Carolina Highway Patrol.

FINAL DECISION

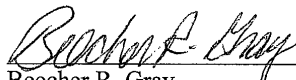
Based on the foregoing Findings of Fact and Conclusions of Law, I find that Respondent's decision to dismiss Petitioner from its employment for unacceptable personal conduct and unsatisfactory performance of duties is supported by a preponderance of the evidence and is AFFIRMED.

It is ordered that Petitioner is not entitled to recover reasonable attorney's fees and costs associated with the filing and prosecution of this contested case.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 29 day of August, 2013.


Beecher R. Gray
Administrative Law Judge

On this date mailed to:

M TRAVIS PAYNE
Edelstein and Payne, Attorneys at Law
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Attorney For Petitioner

Tamara S Zmuda
Assistant Attorney General,
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Attorney For Respondent

This the 30th day of August, 2013.



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9/3/2013 10:52 AM

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ01924

SCOTT DOUGLAS NEUDECKER PETITIONER, V. NC CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION RESPONDENT.	PROPOSAL FOR DECISION
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On May 30, 2013, this contested case was heard before J. Randall May, Administrative Law Judge, in the High Point Courthouse, Guilford County, North Carolina. Without objection, Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: William L. Hill, Attorney at Law
Respondent: Lauren Talley Earnhardt, Assistant Attorney General

ISSUES

Given the totality of the circumstances, does substantial evidence exist to deny Petitioner's application for certification as a law enforcement officer?

EXHIBITS ADMITTED

1. Deposition of Steven Walton.
2. Statement of Non-Tobacco Use Form signed by Petitioner.
3. Probable Cause Committee Memorandum and Attachments.
4. Denial of Certification Letter.
5. Letters from Diane Konopka to Sheriff B. J. Barnes regarding Probable Cause Hearing.

6. Letter from Shena Evans to Sheriff B. J. Barnes regarding finding of no probable cause.

STIPULATIONS

1. Petitioner Scott Neudecker was appointed as a Deputy with the Guilford County Sheriff's Office and was certified as such with the North Carolina Sheriffs Education and Training Standards Commission.

2. On December 13, 2011, the North Carolina Sheriffs Education and Training Standards Commission notified Guilford County Sheriff B. J. Barnes that the Probable Cause Committee of the Sheriffs Standards Commission had met and found that no probable cause existed to believe that Petitioner was disqualified for certification.

3. On or about December 7, 2012, Petitioner was notified that his application for certification as a law enforcement officer was denied by the North Carolina Department of Justice, Criminal Justice Standards Division, because the Commission's Probable Cause Committee found that probable cause existed to believe that Petitioner committed the felony offense of attempt to obtain property by false pretense.

4. Petitioner timely requested an Administrative Hearing, and the Commission thereafter requested the assignment of an Administrative Law Judge to hear the contested case.

5. The Office of Administrative Hearings has jurisdiction over the subject matter and over both parties in this case, and venue is proper.

6. When the Commission revokes or denies the certification of a criminal justice officer, the period of the sanction shall be permanent for a felony offense. 12 N.C.A.C. 09A .0205.

7. At the Hearing in this matter, Petitioner and Respondent may present such evidence as may be admissible and relevant to the issues in the contested case. 26 N.C.A.C. 03 .0122(1).

8. Additionally, the parties stipulate to the following circumstances relevant to the denial of Petitioner's application for certification as a law enforcement officer:

- a. Petitioner began his employment at the Guilford County Sheriff's Office in 2011.
- b. On July 19, 2011, Petitioner signed a Statement of Non-Tobacco Use form. The form states that the individual signing the form is not currently using tobacco products of any form, has not used any tobacco products within 90 days of making the selection, and will not use tobacco products during 2011.
- c. Petitioner was using tobacco products at the time he signed the Statement of Non-Tobacco Use form.

- d. On August 1, 2011, Petitioner's employment with the Guilford County Sheriff's Office was terminated.
- e. On December 13, 2011, the North Carolina Sheriffs Education and Training Standards Commission notified Guilford County Sheriff B. J. Barnes that the Probable Cause Committee of the Sheriffs Standards Commission had met and found that no probable cause existed to believe that Petitioner was disqualified for certification.
- f. On December 7, 2012, the North Carolina Department of Justice, Criminal Justice Standards Division, notified Petitioner that his application for certification as a law enforcement officer was denied as the Probable Cause Committee found that probable cause existed to believe that Petitioner committed the felony offense of attempt to obtain property by false pretense.
- g. Petitioner has not been charged with, or convicted of, the felony offense of attempt to obtain property by false pretense, nor has Petitioner been charged with or committed any other criminal offense.
- h. Based upon the foregoing stipulations, the admitted documentary evidence, the testimony of witnesses, including the determination of witness credibility, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was appointed on December 17, 2007 as a full time deputy with the Guilford County Sheriff's Office. He separated from this position on January 28, 2008. On July 19, 2010, he was certified with the Guilford County Sheriff's office.
2. On July 19, 2011, Petitioner, along with two other Guilford County Sheriff's Deputies, Daniel Hendrix and Stephen Walton, attended an information session for new County employees. The three Deputies were given a Statement of Non-Tobacco Use form by Sonja Thomas, an employee with the Human Resources Department of Guilford County. The Statement of Non-Tobacco Use form offered a ten dollar bi-weekly discount off of the employees' 2011 Guilford County health insurance plan premium if the employee was not currently using tobacco products of any form; had not used any tobacco products within 90 days of making the selection; and if the employee agreed to not use tobacco products during 2011. Petitioner and Deputies Walton and Hendricks all signed the Statement of Non-Tobacco Use forms on July 19, 2011.
3. Ms. Thomas testified there was some discussion around the form during the July 19, 2011 class. She was asked by one of the new hires whether Guilford County tests for tobacco use. Ms. Thomas answered that Guilford County does not currently test for tobacco use but could start testing at any time. She was also asked by a new hire if you quit using tobacco products, can you sign the form at a later date. Ms. Thomas explained that if a new hire quits using tobacco, and does not use it for 90 days preceding the open enrollment period in October,

he or she can then sign the "Non-Tobacco Use Form" during the October 2011 open enrollment period, and will get the reduced health premium starting the following year. It was this parole evidence that apparently led to the confusion as to the execution of the form.

4. When Ms. Thomas finished her portion of the presentation, none of the new hires had signed the "Non-Tobacco Use Form". Another co-worker continued teaching the new hires about Guilford County Policy and gathered all completed forms. Later in the day, Ms. Thomas realized Petitioner had signed his "Non-Tobacco Use Form". Based on the questions during the presentation, Ms. Thomas brought this to the attention of her manager, who then notified the Guilford County Sheriff's office.

5. An internal investigation by the Sheriff's Office was initiated when Guilford County Human Resource employees Sonja Thomas and Brenda Keplinger informed the Sheriff's Office that they believed the Deputies were currently using tobacco products and were not in compliance with the Statement of Non-Tobacco Use form. Following the investigation, Petitioner's employment with the Guilford County Sheriff's Office was terminated on August 12, 2011.

6. The North Carolina Sheriffs Education and Training Standards Commission reviewed the report of separation regarding Petitioner and found that **no probable cause** existed to believe that Petitioner was disqualified for certification with the Sheriffs' Standards Commission. The Sheriffs' Commission did so in December 2011.

7. Respondent received a Report of Appointment/Application for Certification Law Enforcement Officer Form F-5A, from Gibsonville Police Department, on behalf of Petitioner seeking certification as a patrol officer on July 25, 2012.

8. Upon receipt of the Report for Appointment from Gibsonville Police Department, Richard Squires (hereinafter Squires), an investigator for Respondent testified he investigated why Petitioner was dismissed from Guilford County Sheriff's office. Squires learned Petitioner was terminated from employment with Guilford County after he, during a County human resources orientation, signed a form stating he was not using tobacco products in order to receive reduced medical insurance premiums when, in fact, he was currently using tobacco. Guilford County had a policy to provide non-tobacco users a ten (10) dollar discount from their health insurance premium, taken off each pay check, twice a month.

9. In December 2012, The North Carolina Department of Justice, Criminal Justice Standards Division denied Petitioner's application for certification as a law enforcement officer as the Probable Cause Committee for same found that **probable cause** existed to believe that Petitioner committed the felony offense of attempt to obtain property by false pretense in violation of N.C. Gen. Stat. § 14-100 and North Carolina Common Law.

10. Sonja Thomas of the Guilford County Human Resources Office testified at the Hearing on May 30, 2013 explaining the Tobacco Use policy, that there was confusion among the three Deputies regarding the language of the policy, and that it was her first time teaching this orientation class.

11. Captain Kenneth Whitesell, a Captain and veteran with the Guilford County Sheriff's Office, testified in support of Petitioner. He testified to Petitioner's excellent character and that Petitioner, Hendricks, and Walton had all completed their Basic Law Enforcement Training and field training as volunteers. Whitesell testified that no monetary gain was made by Petitioner and further that it would take 30 years for Petitioner, Hendricks, or Walton to give back the money from serving as volunteer(s) in total discounts, if they received any tobacco waiver, which they did not. Whitesell further testified he would gladly serve as alongside Petitioner and re-hire him if he could.

12. Daniel Hendricks, who has been certified and is currently a Sheriff's Deputy with the Randolph County Sheriff's Office, testified that it was his understanding if the deputies stopped using tobacco during the time period prior to the policy coming into effect, that their signing the form was permissible, meaning if they quit within 90 days. Hendricks testified that he had decided to use his employment with the Guilford County Sheriff's Office as a reason to quit using tobacco. Hendricks further testified that he routinely answered calls with Asheboro and other agencies licensed by Criminal Justice making the different commission outcomes confusing.

13. Deputy Hendricks, Petitioner, and Ms. Thomas presented as credible witnesses.

14. As previously indicated, Squires, an Investigator with the Criminal Justice Standards Division, testified at the hearing regarding his investigation.

15. The deposition of Stephen Walton, who was unavailable to testify at the hearing due to military service, was offered as an exhibit. Walton's deposition provided testimony that he, like Hendricks and Petitioner, were under the impression it was acceptable to sign the form if he intended to quit using tobacco products. Walton was using nicotine patches upon his return from active duty in Afghanistan.

16. Petitioner testified at the hearing that he, likewise, felt it was permissible to sign the form if he intended to quit within 90 days. Further he had been assigned to the bailiff's office where tobacco was prohibited so he had to quit using tobacco.

17. None of the three received any monetary benefit, nor had the 90 day period preceding open enrollment commenced, upon their execution of the form.

BASED ON the foregoing Stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case.

2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Title 12 of the North Carolina Administrative Code, Chapter 9B to certify law enforcement officers and to deny, revoke or suspend such certification.

3. Pursuant to 12 N.C.A.C. 9A .0204(b), the Commission may suspend, revoke or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification has failed to meet or maintain one or more of the minimum employment standards required by 12 N.C.A.C. 9B .0101 and 12 N.C.A.C. 9B .0111 for the category of officer certification.

4. Pursuant to 12 N.C.A.C. 9B .0111(1), an applicant for certification as a law enforcement officer may not have committed or been convicted of a felony.

5. Pursuant to 12 N.C.A.C. 9A .0103(4), commission of an offense means a finding by the North Carolina Criminal Justice Education Training and Standards Commission or an administrative body that the person performed the acts necessary to satisfy the elements of a specified criminal offense.

6. Pursuant to N.C. Gen. Stat. § 14-100, the criminal offense of attempt to obtain property by false pretense constitutes a felony.

7. Pursuant to N.C. Gen. Stat. § 14-100(a), the criminal offense of obtaining property by false pretenses is defined as “when any person **knowingly and designedly** (emphasis added) by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment of event, obtain or attempt to obtain from any person within the state any money, goods, property, services, chose in action or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value.”

8. Our courts have consistently held that in statutory crimes, such as Obtaining Property by False Pretense, more is required than a reasonable belief to prove knowledge. In its attempt to define knowledge our Supreme Court has ruled that, “Knowledge connotes a more certain and definite mental attitude than reasonable belief...” *State v. Miller*, 212 N.C. 361,363 (1937).

9. In the case *sub judice*, it is suggested that the Commission should consider two primary components, *inter alia*, which are discussed as follows:

- a. First, is the act of the former Guilford County deputy and the sanction rendered. It is imperative that consideration be given to the totality of the facts in this case to determine whether a preponderance of substantial evidence exists to believe Petitioner had sufficient knowledge of the consequences of his act, and that he had the specific intent to attempt to defraud the alleged victim. There is no doubt that Petitioner should not have signed the form, and there is no attempt to excuse that conduct; however, other than the act itself, there is little to show his intent at the time. After hearing Ms. Thomas’ testimony, which was credible, and that of

the witnesses for Petitioner, which was also credible, it has been shown that there was confusion as to the timing of the execution of the form and the understanding of the 90 day period. Basically there was an insufficient showing that there was a specific intent to attempt to obtain property by false pretense by knowledge and design, and that Petitioner has successfully refuted this allegation by the greater weight of the evidence.

- b. The second component is basically a question of the lack of good moral conduct, or simply put, character. Consideration of this trait, and the question of what is acceptable, is universal. Without knowing what evidence was heard by the two commissions, it is impossible to offer an opinion as to why they differed; however, once our governing bodies have heard similar evidence, they should have a singleness of mind, heart, and purpose to determine the meddle of candidates.

PROPOSAL FOR DECISION

The undersigned concludes that based upon the Findings of Fact and Conclusions of Law, there is insufficient evidence to rule that probable cause exists to believe that Petitioner committed the felony offense of the attempt to obtain property by false pretense (N.C. Gen. Stat. § 14-100). If the Commission accepts this proposal, it will moot the further inquiry of good moral character.

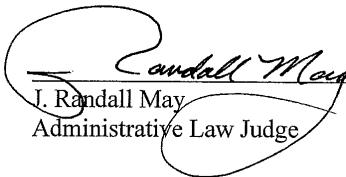
Further, it is the recommendation of the undersigned that Respondent should certify Petitioner as a law enforcement officer.

NOTICE AND ORDER

The North Carolina Criminal Justice Education Training and Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 3rd day of September, 2013.

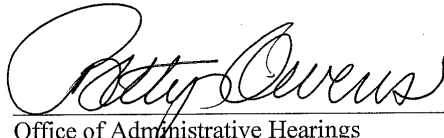

J. Randall May
Administrative Law Judge

On this date mailed to:

WILLIAM L HILL, ESQ.
ATTORNEY AT LAW
500 WEST FRIENDLY AVE SUITE 100
GREENSBORO, NC 27402
ATTORNEY FOR PETITIONER

LAUREN TALLY EARNHARDT
ASSISTANT ATTORNEY GENERAL
NC DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
ATTORNEY FOR RESPONDENT

This the 3rd day of September, 2013.



Office of Administrative Hearings
6714 Mail Service Center
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Fax: 919/431-3100

Filed

STATE OF NORTH CAROLINA OCT -1 AM 9:53 IN THE OFFICE OF
COUNTY OF HERTFORD Office of ADMINISTRATIVE HEARINGS
Administrative Hearings 13DOJ09570

<p>TRUDY LANE HARRIS, Petitioner,</p> <p>v.</p> <p>NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION, Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On August 21, 2013, Administrative Law Judge Beecher R. Gray heard this case in Winton, North Carolina. This case was heard after Respondent requested, under N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: *Pro Se*
Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUES

Has Petitioner committed or been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer to the North Carolina Sheriffs' Education and Training Standards Commission?

FINDINGS OF FACT

- Both parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each party stipulated on the record that notice was proper. Petitioner received by U.S. Postal Service Mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on January 2, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.
3. Petitioner is an applicant for justice officer certification through the Bertie County Sheriff's Office.
4. 12 NCAC 10B.0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:
 - (5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.
5. Further, 12 NCAC 10B.0204(c)(1) and (2) states that The Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:
 - (1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
 - (2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

Worthless Check Convictions

6. Petitioner was appointed as a telecommunication officer through the Bertie County Sheriff's Office on January 3, 2012.
7. Petitioner testified at the administrative hearing and does not dispute that she has been convicted of eight (8) misdemeanor worthless check offenses, as set out in greater detail below.
8. On February 19, 1990, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 in Hertford County, North Carolina; Case No. 1990 CR 000603. (R. Ex. 2)

9. On October 2, 1997, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Bertie County, North Carolina; Case No. 1997 CR 002672. (R. Ex. 2)
10. On August 13, 2001, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Hertford County, North Carolina; Case No. 2001 CR 002452. (R. Ex. 2)
11. On March 12, 2001, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Gates County, North Carolina; Case No. 2000 CR 50233. (R. Ex. 2)
12. On February 12, 2001, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Hertford County, North Carolina; Case No. 2001 CR 050025. (R. Ex. 2)
13. On May 22, 2006, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Hertford County, North Carolina; Case No. 2006 CR 050213. (R. Ex. 2)
14. On September 5, 2007, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Nash County, North Carolina; Case No. 2007 CR 051498. (R. Ex. 2)
15. On January 20, 2010, Petitioner was convicted of misdemeanor worthless check in violation of North Carolina General Statute § 14-107 (d)(1) in Bertie County, North Carolina; Case No. 2009 CR 51333. (R. Ex. 2)
16. Under 12 NCAC 10B .0103 (10)(a), Petitioner's first three (3) worthless check convictions constitute Class A misdemeanor convictions under the Commission's Rules. However, under North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), a fourth (4th) and all subsequent convictions for misdemeanor worthless check under N.C.G.S. § 14-107 constitute Class B misdemeanors as set forth in the Class B Misdemeanor Manual adopted by the Commission.
17. Therefore, Petitioner's remaining five (5) worthless check convictions constitute five (5) separate Class B misdemeanor convictions under the Commission's Rules.
18. Based on the evidence presented at the administrative hearing, including Petitioner's sworn testimony and the exhibits introduced into the record, the Undersigned finds that Petitioner has been convicted of the following three (3) Class A misdemeanors: 1) misdemeanor worthless check, Case No. 1990 CR 000603; 2) misdemeanor worthless check, Case No. 1997 CR 002672; and 3) misdemeanor worthless check, Case No. 2001 CR 050025.

The Undersigned further finds that Petitioner has been convicted of the following five (5) Class B misdemeanors: 1) misdemeanor worthless check, Case No. 2000 CR 50233; 2) misdemeanor worthless check, Case No. 2001 CR 002452; 3) misdemeanor worthless check, Case No. 2006 CR 050213; 4) misdemeanor worthless check, Case No. 2007 CR 051498; and 5) misdemeanor worthless check, Case No. 2009 CR 51333.

19. Petitioner testified at the administrative hearing regarding her worthless check offenses. Petitioner does not dispute the above-referenced convictions appearing on her criminal record. Many of the above-referenced worthless check convictions occurred while Petitioner was raising her six (6) children. At that time, Petitioner was getting little to no support from her ex-husband and therefore was struggling financially. Petitioner's children are now grown and Petitioner is not subject to the same financial stress that she was when raising her children. Further, Petitioner no longer maintains a checkbook in order to avoid the possibility of writing a check without the necessary funds. Petitioner instead uses a debit card.

Material Misrepresentation

20. Petitioner completed a Personal History Statement (Form F-3), on or about July 9, 2010, as part of her original employment application with the Bertie County Sheriff's Office, and in order to obtain certification as a justice officer through the Sheriffs' Commission. *See* R. Ex. 3.
21. Question No. 39 of the Sheriffs' Commission Form F-3 asked the applicant to disclose whether or not she had ever used illegal drugs, to include marijuana, and if so, to describe the circumstances. The instructions for this question advised Petitioner that "use" included "one time use and experimentation." When Petitioner completed Question No. 39, she answered "No," indicating that she had never used marijuana or any other illegal drugs.
22. Petitioner subsequently completed another Personal History Statement (Form F-3) on or about November 21, 2011, as part of her re-employment application with the Bertie County Sheriff's Office, and in order to obtain certification as a justice officer through the Sheriffs' Commission. *See* R. Ex. 4.
23. Question No. 39 of the second F-3 form Petitioner completed asked Petitioner to disclose whether or not she had ever used illegal drugs, to include marijuana, and if so, to describe the circumstances. The instructions for this question advised Petitioner that "use" included "one time use and experimentation." When Petitioner completed Question No. 39 for the second time, Petitioner answered "Yes," indicating that she had used marijuana. Petitioner explained on the F-3 Form that she "experimented" with marijuana in high school.
24. Petitioner testified at the administrative hearing regarding the discrepancy in her two (2) F-3 Personal History Statements. Petitioner stated that while she was in high school, she attended a party where she was given some brownies laced with marijuana. The brownies

were given to Petitioner and others at the party as a joke. At the time Petitioner ate the brownies, she was unaware they contained marijuana. After feeling the effects of the brownies, Petitioner later came to learn that people who attended the party were given marijuana brownies.

25. Petitioner does not believe that she experimented with marijuana because she was an unknowing participant and did not intend to consume any illegal substances while at the above-referenced party. Petitioner disclosed the marijuana in her second F-3 Personal History Statement out of an abundance of caution. Petitioner realizes now that she should have listed her exposure to marijuana in her first F-3 Personal History Statement. In addition, Petitioner understands that she should have been more descriptive in the F-3 Form in terms of explaining all of the circumstances surrounding her exposure to marijuana. However, Petitioner's omission was not intentional and was not made in order to deceive the Commission or her employer, the Bertie County Sheriff's Office.

CONCLUSIONS OF LAW

1. The parties properly are before the undersigned Administrative Law Judge and jurisdiction and venue are proper.
2. 12 NCAC 10B.0204(c)(1) and (2) states that the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has:
 - (1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or
 - (2) knowingly and designedly by any means of false pretense, deception, defraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.
3. For the reasons set out above, Petitioner did not make a knowing misrepresentation of information required for certification by omitting her exposure to marijuana in her 2010 F-3 Personal History Statement. In addition, Petitioner has not attempted to obtain certification from the Commission through any means of false pretense or cheating. Petitioner's failure to disclose her exposure to marijuana in her 2010 Personal History Statement was an oversight by Petitioner.
4. Under 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

- (5) Any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.
5. Under 12 NCAC 10B .0103(2), “convicted” or “conviction” means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.
 6. Under 12 NCAC 10B .0205(3)(d), when the Commission denies the certification of a justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(5).
 7. 12 NCAC 10B .0103 (10)(a), provides that Petitioner’s first three (3) worthless check convictions constitute Class A misdemeanor convictions pursuant to the Commission’s Rules.
 8. North Carolina General Statute § 14-104 (d)(1), and more specifically 12 NCAC 10B .0103 (10)(b), provides that a fourth (4th) and all subsequent convictions for misdemeanor worthless check under N.C.G.S. § 14-107 constitute Class B misdemeanor convictions as set forth in the Class B Misdemeanor Manual adopted by the Commission. Therefore, Petitioner’s remaining five (5) worthless check convictions constitute five (5) separate Class B misdemeanor convictions.
 9. Petitioner has been convicted of a combination of 4 or more offenses classified as either Class A or Class B misdemeanors. In total, Petitioner has eight (8) misdemeanor convictions on her record: three (3) class A misdemeanor convictions and five (5) class B misdemeanor convictions. All of these convictions were worthless check offenses in violation of N.C.G.S. 14-107 (d)(1). Petitioner’s application for certification is therefore subject to denial pursuant to 12 NCAC 10B .0204(d)(5).
 10. Under 12 NCAC 10B .0205, the Respondent may, in its discretion, reduce or suspend the period of sanction imposed for Petitioner’s record of a combination of four or more Class A or Class B misdemeanor convictions when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Respondent issue Petitioner’s justice officer certification notwithstanding Petitioner’s three (3) Class A and five (5) Class B misdemeanor worthless check convictions. The majority of these convictions occurred while Petitioner was a single parent


struggling to support her six (6) children. Petitioner has since taken steps to ensure that she will not issue additional worthless checks. The undersigned therefore recommends that the Commission issue Petitioner's justice officer certification.

NOTICE AND ORDER

The North Carolina Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 01 day of October, 2013.




Beecher R. Gray
Administrative Law Judge

On this date mailed to:

TRUDY LANE HARRIS
204 D T ROAD
AHOSKIE, NC 27910
Petitioner

Matthew L Boyatt
Assistant Attorney General,
NC Department of Justice
9001 MAIL SERVICE CENTER
RALEIGH, NC 27699
Attorney For Respondent

This the 1st day of October, 2013.



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