

NORTH CAROLINA REGISTER

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June 2, 2014

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

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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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

April 17, 2014

EXECUTIVE ORDER 49

GOVERNOR'S WORKING GROUP ON VETERANS, SERVICE MEMBER AND THEIR FAMILIES

WHEREAS, supporting those North Carolina citizens who have served or are serving their country and state in the United States Armed Forces, Reserves and National Guard and their families is among the highest priorities of government; and

WHEREAS, North Carolina is home to nearly 800,000 veterans and the third largest active military force in the nation with nearly 120,000 active duty personnel and another 12,000 members of the North Carolina National Guard; and

WHEREAS, these veterans, service members, their families, and their communities have shouldered a heavy burden exemplified by the repeated combat deployments for their nation in the War on Terror; and

WHEREAS, meeting the needs of service members and their families is not the sole responsibility of one agency or entity, but a collective responsibility of the entire state and nation that requires a high level of collaboration and cooperation; and

WHEREAS, it is my expectation that interagency cooperation be taken beyond the existing efforts to a new level of performance and accountability and that barriers are eliminated that may limit or lessen the effectiveness of Federal, State and Local entities that serve our veterans.

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

Section 1. Established

The Governor's Working Group on Veterans, Service Members and their Families (hereinafter the "Working Group") is hereby established.

The Working Group is charged with developing interagency solutions to make North Carolina a more veteran friendly state. The Working Group will achieve the goal of "making North Carolina the state of choice for veterans" by facilitating a heightened level of collaboration and coordination within the system of care to effectively and responsively meet the needs of veterans, service members, and their families.

In performing these duties, the Working Group shall conduct regular meetings to raise awareness of the veteran-related efforts of all participating agencies and organizations in order to facilitate information sharing, joint planning, implementation, and evaluation of activities among federal, state, and local organizations and agencies.

The Working Group will build upon the gains of previous interagency efforts such as the "Governor's Focus on Service Members, Veterans and their Families" by expanding the scope beyond the realm of behavioral and physical wellness into all the territories in which the veteran interacts with the state and his or her community such as employment, job training, education, licensure transferability, personal finance, home ownership, legal services, recreation, etc.

Section 2. Membership

All members of the Working Group shall serve at the pleasure of the Governor. The Working Group shall be comprised of up to 35 members appointed by the Governor from state agencies and private interests that are in frequent contact with veterans and that operate programs to support veterans, service members and their families.

All members shall be appointed for a term of two (2) years and shall serve at the pleasure of the Governor. A vacancy occurring during a term of appointment shall be filled by the Governor for the balance of the unexpired term.

Section 3. Leadership Team

The Governor shall appoint a Leadership Team to direct the activities of the Working Group. The Leadership Team shall be composed of a chair and four (4) vice-chairs appointed by the Governor and serving at the pleasure of the Governor. The Leadership Team shall be composed of the following persons:

- a. The Governor's Military Affairs Advisor, shall serve as chair;
- b. The Secretary of the Department of Health and Human Services, or her designee, shall serve as a vice-chair;
- c. The Secretary of the Department of Administration, or his designee, shall serve as a vice-chair;
- d. The Secretary of Commerce, or her designee, shall serve as a vice-chair;
- e. A representative from outside of State government who has exhibited a history and passion for veteran's issues, shall serve as a vice-chair.

Section 4. Meetings

Meetings shall be held quarterly or upon the call of the Governor or the chair. Meetings of the Working Group shall address the following issues:

Transition, Integration, and Social Support: (1) education, (2) employment, (3) housing, (4) family, (5) recreation, (6) financial management, and (7) legal/criminal justice;

Wellness Issues: (1) physical and behavioral health (including Post Traumatic Stress, Traumatic Brain Injury, substance abuse, combat and operational stress injury) and (2) spiritual wellness (including faith, grief and moral injury); and

Military Service and Benefits: (1) Active Duty, (2) members of Reserve Units, (3) National Guard, (4) Unit Associations, (5) Family Readiness Groups, and (6) Veteran Service Officers and Service Organizations.

Section 5. Duties

- a. The Working Group shall advise the Governor on issues related to veterans, service members and their families.
- b. The Working Group shall identify areas for better inter- and intra- agency cooperation and implement those ideas in accordance with their capabilities.

- c. The Working Group may convene cross-functional groups of representatives from various branches and eras of the Active, Reserve and Guard components and their families as well as the Veteran Service Organizations that operate at the federal state and local level to elicit information which aids the Working Group in its mission.
- d. The Working Group shall submit an annual statement to the Governor, the Secretary of the Department of Health and Human Services, and the Secretary of the Department of Administration, and the Department of Commerce by November 1, on its recommendations.
- e. The Working Group will hold an annual Veterans Day Summit (to be held annually November) in which key stakeholders will present their progress to the Governor, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Administration and the Secretary of Commerce.

Section 7. Administration

The Department of Administration and the Department of Health and Human Services' Division of Mental Health, Developmental Disabilities and Substance Abuse Services shall provide administrative and staff support services required by the Working Group. The Governor's Office and remaining cabinet agencies may provide staff support as needed. Member costs will be borne by the participating individuals and/or their sponsoring agencies.

Section 8. Effect and Duration

This Executive Order is effective immediately and shall remain in effect until December 31, 2017, pursuant to N.C. Gen. Stat. § 147-16.2(b).

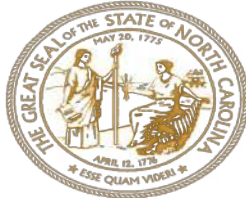
IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this seventeenth day of April in the year of our Lord two thousand and fourteen, and of the Independence of the United States of America the two hundred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


Pat McCrory
Governor

ATTEST:


Elaine F. Marshall
Chief Deputy Secretary of State





State of North Carolina

PAT McCrORY
GOVERNOR

April 28, 2014

EXECUTIVE ORDER NO. 50

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

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 impact of tornadoes and severe weather on April 25, 2014. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is Beaufort, Chowan, Pasquotank and Perquimans counties.

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 the Department 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 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.

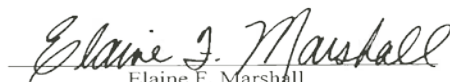
Section 9.

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 28th day of April 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



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

Statutory reference: G.S. 150B-21.2.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02H .1030 and amend the rules cited as 15A NCAC 02T .0113, .1001, .1501; 02U .0113.

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

- ☒ **OSBM certified on:** May 23, 2014
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/wq/rules>

Proposed Effective Date: Pending legislative approval

Public Hearing:

Date: July 1, 2014

Time: 6:00 p.m.

Location: Dennis A. Wicker Civic Center, 1801 Nash Street, Sanford, NC 27330

Reason for Proposed Action: Session Law 2012-143 directed the Environmental Management Commission (EMC) to adopt rules for stormwater control for sites on which oil and gas exploration and development activities are conducted. It also directed the EMC to adopt rules "For matters within its jurisdiction that allow for and regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development." Following a review of the EMC's rules for water quality protection, the mandate in S.L. 2012-143, as well as information about the operation and potential environmental impacts of modern oil and gas exploration and production activities, the EMC is proposing to adopt a new rule for stormwater management at sites where oil and gas exploration and development activities are conducted and to make minor revisions to four other water quality rules in order to appropriately regulate horizontal drilling and hydraulic fracturing for the purpose of oil and gas exploration and development.

Please know that this rulemaking is separate from, and much more limited in scope than, the more comprehensive rulemaking actions of the Mining and Energy Commission.

Comments may be submitted to: Evan Kane, Groundwater Planning and Environmental Review Branch Chief, NC Division of Water Resources, 1611 Mail Service Center, Raleigh, NC 27699-1611; email Stormwater_and_LandApp_Rules@lists.ncmail.net

Comment period ends: August 1, 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**

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT
COMMISSION**

**SUBCHAPTER 02H – PROCEDURES FOR PERMITS:
APPROVALS**

SECTION .1000 – STORMWATER MANAGEMENT

**15A NCAC 02H .1030 STORMWATER
REQUIREMENTS: OIL AND GAS EXPLORATION
AND PRODUCTION**

(a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production activities shall manage stormwater runoff in accordance with the provisions of this Rule.

- (1) Such persons shall submit a permit application to the Division of Energy, Mineral, and Land Resources (Division) in accordance with the requirements of this Section.
- (2) Such persons shall obtain a permit from the Division prior to any on-site activities other than land surveying, and surface soil testing

of hydraulic conductivity and engineering properties.

(3) This Rule authorizes the Division to issue a stormwater-only permit. The Division shall not authorize by permit the discharge to surface waters of stormwater commingled with any other fluid.

(4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may incorporate stormwater permit conditions into an environmental protection permit encompassing multiple regulatory programs.

(b) Permit Application Requirements.

(1) Notwithstanding the qualifying provisions of Rule .1003(b)(1),(2), and (3) of this Section, a complete permit application and a permit are required for oil and gas exploration, development, and production activity regardless of whether the activity also requires a CAMA major development permit or an Erosion and Sedimentation Control Plan; and regardless of whether the development is located in the 20 coastal counties, or drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters (HQW).

(2) The Division shall treat each stormwater permit application for oil and gas exploration, development, and production activities as a High Density Project application as provided for in Rule .1003(d)(2), and shall only grant permit coverage if the application itself and the proposed development meet the requirements of this Rule.

(3) The permit application for oil and gas exploration, development, and production activities shall be submitted to the Division at the Raleigh Central Office.

(4) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this Section. In addition, the application shall include the following information;

(A) all North Carolina classifications and supplemental classifications (if any) assigned to the receiving water;

(B) the location of all stormwater discharge points, both by latitude and longitude coordinates and by graphic representation at a scale sufficient for the Division's review;

(C) the graphic representation of the location and delineation of wetlands and regulated buffers on the site, adjacent to the site, or between the site and the receiving

water at a scale sufficient for the Division's review;

(D) a statement that there are no threatened or endangered species identified for the receiving water or for downstream receiving waters. Alternatively, the application shall identify the threatened and endangered species and their reported locations in the receiving water and downstream receiving waters;

(E) a design narrative that explains the assumptions and calculations for the engineering design of the stormwater control systems proposed and that individually identifies how the design complies with each specific requirement of this Section;

(F) Final Site Close Out Plan: the graphic representation, at a scale sufficient for the Division's review, of the final site grade and site conditions that will be implemented in support of a future request to rescind the stormwater permit or comprehensive environmental permit based on the final close out and the end of the permit holder's commercial interest in the site.

(c) Stormwater Management Requirements.

(1) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows.

(A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall be managed (operated, maintained, stored, handled, cleaned up, and disposed of) to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.

(B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent introduction into stormwater runoff, and in accordance with label restrictions and the Federal Insecticide, Fungicide, and Rodenticide Act.

(C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes shall be

- managed to prevent introduction into stormwater runoff. Dedicated management areas shall be established for these materials a minimum of 50 feet away from surface waters and discrete stormwater conveyances.
- (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away from surface waters and stormwater conveyances and shall be managed to prevent runoff transport of the stockpiled materials to the surface waters of North Carolina.
- (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
- (2) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows.
- (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or permanent ground cover stabilization as soon as practical, but in every case within seven calendar days from the last land disturbing activity.
- (B) All other disturbed areas shall be provided temporary or permanent ground cover stabilization as soon as practical, but in every case within 14 calendar days from the last land disturbing activity.
- (C) Time extensions may be granted by the Division based on weather or site-specific conditions. The Division may also deny requests for such extensions.
- (D) Treatment measure requirements.
- (i) All sediment basins and traps with a contributing drainage area of one acre or greater must utilize outlet structures that withdraw water from the surface.
- (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals must be routed through sediment traps, filters, and/or other settling devices to ensure removal prior to discharge to surface waters. Only chemicals that have been approved by the Division may be used.
- (3) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, and prior to the full demobilization of the site preparation equipment and forces, and prior to any mobilization to the site of any equipment or material intended to support subsurface activities, the individual designing the stormwater control system identified in Rule .1008(j) of this Section must certify in writing to the Division in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy is provided or required by other authority, no additional mobilization to the site shall take place until the Division accepts the designer's certification in writing. The Division may withhold acceptance of the designer's certification pending a favorable site inspection by the Regional Office.
- (4) After completion of the surface site preparation activity, and beginning with the surface activity in direct support of well drilling and continuing thereafter, the permittee shall manage site conditions, materials, activities, and stormwater as follows.
- (A) Stormwater control measures shall control and treat the runoff from the one-inch rainfall; or, stormwater control measures shall control and treat the difference in runoff for pre-development and post-development conditions for the 90th percentile rainfall event.
- (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-development discharge rate for the 1-year, 24-hour storm.
- (C) Stormwater control measures shall be designed in accordance with the provisions of Rule .1008 of this Section, with options and guidance

provided by the version of the Division's Stormwater Best Management Practices Manual current at the time of permit application or permit revision request.

(D) In addition to the measures identified in Rule .1008(a) of this Section, measures appearing in the Division's Stormwater Best Management Practices Manual shall be approved where individually, or in combination, the measures achieve 85 percent average annual removal of Total Suspended Solids, and upon the Division's review and conclusion of appropriate design and suitability for the anticipated site conditions.

(E) All stormwater control measures shall be equipped with underflow baffles or other effective means to prevent the discharge of hydrocarbons and floating pollutants.

(5) The Division shall establish record-keeping, self-inspection, and self-reporting permit requirements to insure effective site management attention, response actions, and control of the potential for polluted stormwater.

(d) Coordination with other water quality regulations.

(1) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the requirements of Rule .1006 of this Section. However, the Division may require more stringent measures for development activities draining to HQW waters as provided in Rule .1006 of this Section.

(2) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, the Division may require more stringent measures for development activities draining to ORW waters as provided in Rule .1007 of this Section.

(3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other provision of law. The requirements of this Rule are in addition to the requirements of any other rule, regulation, or other provision of law. Where any requirement of this Rule imposes restrictions different from those imposed by any other rule, regulation, or other provision of law, whichever requirement is more restrictive or imposes higher protective standards for human or

environmental health, safety, and welfare shall control. This includes, but is not limited to, Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B .0300 whether administered by the State or by a local unit of government.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 113-391(a3)(1).

SUBCHAPTER 02T – WASTE NOT DISCHARGED TO SURFACE WATERS

SECTION .0100 – GENERAL REQUIREMENTS

15A NCAC 02T .0113 PERMITTING BY REGULATION

(a) The following disposal systems as well as those in Permitting By Regulation rules in this Subchapter (i.e., Rules .0203, .0303, .0403, .1003, .1103, .1203, .1303, .1403, and .1503) are deemed to be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following disposal systems provided the system does not result in any violations of surface water or groundwater standards, there is no direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, and filter backwash from commercial or residential water features such as garden ponds or fish ~~ponds~~ ponds, that is discharged to the land surface;
- (2) Backwash from raw water intake screening devices that is discharged to the land surface;
- (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface;
- (4) Discharges to the land surface from individual non-commercial car washing operations;
- (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines;
- (6) Street wash water that is discharged to the land surface;
- (7) Discharges to the land surface from fire fighting activities;
- (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;

- (9) Discharges to the land surface associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following criteria:
 - (A) the volume produced by the decontamination activity is too large to be contained onsite;
 - (B) the Division is informed prior to commencement of the decontamination activity; and
 - (C) the wastewater is not radiologically contaminated or classified as hazardous waste;
- (10) Drilling muds, cuttings and well water from the development of wells or from other construction activities including directional ~~boring~~; boring, except such wastes generated in the construction and development of oil and gas wells regulated by Article 27 of G.S. 113;
- (11) Purge water from groundwater monitoring wells;
- (12) Composting facilities for dead animals, if the construction and operation of the facilities is approved by the North Carolina Department of Agriculture and Consumer Services; the facilities are constructed on an impervious, weight-bearing foundation, operated under a roof; and the facilities are approved by the State Veterinarian pursuant to G.S. 106-403;
- (13) Overflow from elevated potable water storage facilities;
- (14) Mobile carwashes if:
 - (A) all detergents used are biodegradable;
 - (B) no steam cleaning, engine or parts cleaning is being conducted;
 - (C) notification is made prior to operation by the owner to the municipality or if not in a municipality then the county where the cleaning service is being provided; and
 - (D) all non-recyclable washwater is collected and discharged into a sanitary sewer or wastewater treatment facility upon approval of the facility's owner;
- (15) Mine tailings where no chemicals are used in the mining process;
- (16) Mine dewatering where no chemicals are used in the mining process; and

- (17) Wastewater created from the washing of produce, with no further processing on-site, on farms where the wastewater is irrigated onto fields so as not to create runoff or cause a discharge.
 - (b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation shall be considered a violation of a condition of a permit. Further, nothing in this Rule shall be deemed to apply to or permit disposal systems for which a state NPDES permit is otherwise required.
 - (c) Any violation of this Rule or discharge to surface waters from the disposal systems listed in Paragraph (a) of this Rule or the activities listed in other Permitted By Regulation rules in this Subchapter shall be reported in accordance with 15A NCAC 02B .0506.
 - (d) Disposal systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with the criteria established in this Rule.
 - (e) The Director may determine that a disposal system should not be deemed to be permitted in accordance with this Rule or other Permitted By Regulation rules in this Subchapter and require the disposal system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule or other Permitted By Regulation rules in this Subchapter, and the compliance history of the facility owner.

Authority G.S. 130A-300; 143-215.1(a); 143-215.1(b)(4)(e); 143-215.3(a).

SECTION .1000 – CLOSED-LOOP RECYCLE SYSTEMS

15A NCAC 02T .1001 SCOPE

This Section applies to closed-loop recycle systems in which nondomestic wastewater is repeatedly recycled back through the process in which the waste was generated. The following systems are not regulated by this Section:

- (1) the reuse or return of wastewater from a permitted animal waste lagoon facility for waste flushing ~~cover~~ covered by Section .1300 of this Subchapter;
- (2) the recycling of wastewater from groundwater remediation systems through an Injection Well or Infiltration Gallery ~~specifically~~ covered by Section .1600 of this Subchapter; ~~and~~
- (3) the reuse of wastewater through treatment and distribution as reclaimed water ~~specifically~~ covered by Section .0900 of this Subchapter. Subchapter; and

- (4) the recycling of wastewater or well drilling fluids for well construction, well development, well stimulation, or well rehabilitation.

Authority G.S. 143-215.1; 143-215.3(a).

SECTION .1500 – SOIL REMEDIATION

15A NCAC 02T .1501 SCOPE

The rules in this Section apply to the Disposal or Treatment of Soils Containing Petroleum Products or other Contaminated Soil by Land Application, Storage, or Containment and Treatment. These Rules do not apply to:

- (1) hazardous waste as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b), 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a), and North Carolina General Statute ~~130A-290; or 130A-290;~~
- (2) soil contaminated with hazardous waste or hazardous waste constituents as defined in 40 CFR 260.10 as adopted by reference in 15A NCAC 13A .0102(b) and 40 CFR 261.3 as adopted by reference in 15A NCAC 13A .0106(a) from Hazardous Waste Management Units or Solid Waste Management Units as defined in 40 CFR 260.10 as adopted by reference in ~~15A NCAC 13A .0102(b);~~ 15A NCAC 13A .0102(b); or
- (3) cuttings and other wastes generated in the construction and development of oil and gas wells regulated by Article 27 of G.S. 113.

Authority G.S. 143-215.1; 143-215.3(a).

SUBCHAPTER 02U – RECLAIMED WATER

SECTION .0100 – GENERAL REQUIREMENTS

15A NCAC 02U .0113 PERMITTING BY REGULATION (SEE S.L. 2011-48)

(a) The following utilizations of reclaimed water are deemed to be permitted pursuant to G.S. 143-215.1(b) and it is not necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following utilization systems provided the system does not result in any violations of surface water or groundwater standards, there is no unpermitted direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines;
- (2) Overflow from elevated reclaimed water storage facilities where no viable alternative

exists and all possible measures are taken to reduce the risk of overflow;

- (3) Any de minimus runoff from reclaimed water used during fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping, overspray on yard inlets, overspray on golf cart paths, or vehicle ~~washing provided the use is approved in a permit issued by the Division;~~ washing;
- (4) Incidental discharge to a municipal separate storm sewer system (MS4) that occurs as a result of reclaimed water utilization ~~activities provided the use is approved in a permit issued by the Division;~~ activities, and the discharge does not violate water quality standards. This does not exempt the reclaimed water user from complying with any applicable local ordinances that may prohibit such discharges;
- (5) Rehabilitation, repair, or replacement of reclaimed water lines in kind (i.e., size) with the same horizontal and vertical alignment;
- (6) In accordance with 15A NCAC 02H .0106(f)(5), flushing (including air release valve discharge) and hydrostatic testing water discharges associated with reclaimed water distribution systems provided that no water quality standards are violated;
- (7) Utilization of reclaimed water received from a reclaimed water bulk distribution program permitted under Rule .0601 of this Subchapter;
- (8) Irrigation of residential lots or commercial (non-residential) application areas less than one acre in size that are supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of Rules .0301, .0401, .0403, .0501, and .0701 of this Subchapter; Chapter 89G of the General Statutes; approved by the local building inspection department; and installed by a North Carolina Licensed Irrigation Contractor pursuant to G.S. 89G. A scaled site map showing the location of the reclaimed water irrigation system and all features necessary to show compliance with applicable setbacks in Rule .0701 of this Subchapter shall be submitted to the reclaimed water provider;
- (9) Irrigation of agricultural crops supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of this Subchapter and approved by the reclaimed water ~~provider;~~ and provider;
- (10) Drip irrigation sites supplied with reclaimed water as part of a conjunctive use reclaimed water system generated from an onsite

wastewater treatment facility meeting the criteria of this Subchapter and where the conjunctive system has been approved by the Department and is permitted under ~~48A-1900~~; 15A NCAC 18A .1900; and

- (11) Reuse of produced waters and flowback waters from oil and gas wells regulated by Article 27 of G.S. 113 for reuse in accordance with water and waste management plans approved pursuant to rules of the Mining and Energy Commission.

(b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation is a violation of a condition of a permit.

(c) The reclaimed water user shall report any violation of this Rule or discharge to surface waters from the utilization systems listed in Paragraph (a) of this Rule.

(d) Utilization systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with the criteria established in this Rule.

(e) The Director may determine that a utilization system should not be deemed to be permitted in accordance with this Rule and require the utilization system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule and the compliance history of the facility owner.

Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.1(b)(4)(e); 143-215.3(a),(d).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Cosmetic Examiners intends to amend the rules cited as 21 NCAC 14A .0104; 14H .0504-.0505; 14T .0201, .0602-.0606, and .0705 .

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.nccosmeticarts.com/uploads/board/May2014.pdf

Proposed Effective Date: *October 1, 2014*

Public Hearing:

Date: *June 17, 2014*

Time: *9:00 a.m.*

Location: *1207 Front Street Suite 110, Raleigh, NC 27609*

Reason for Proposed Action: *These rule changes fulfill a statutory change requirement, update the Board's address and eliminate mannequin requirements in order to decrease restrictions established by the Board.*

Comments may be submitted to: *Stefanie Kuzdrall, 1207 Front Street, Suite 110, Raleigh, NC 27609, email skuzdrall@nccosmeticarts.com*

Comment period ends: *August 1, 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 14A – DEPARTMENTAL RULES

SECTION .0100 – ORGANIZATION RULES

21 NCAC 14A .0104 ADDRESS

The address for the board is ~~1201-140~~1207-110 Front Street, Raleigh, North Carolina 27609.

Authority G.S. 88-23.

SUBCHAPTER 14H – SANITATION

SECTION .0500 – ENFORCEMENT, MAINTENANCE OF LICENSURE

21 NCAC 14H .0504 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in this subchapter shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

Sanitation	Point Value
Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.	2
Each licensee and student shall wear clean garments and shoes while serving patrons.	2
The cosmetic art facility shall be kept clean.	3
Waste material shall be kept in receptacles with a disposable liner. The area surrounding the waste receptacles shall be maintained in a sanitary manner.	4
All doors and windows shall be kept clean.	2
Furniture, equipment, floors, walls, ceilings and fixtures must be clean and in good repair.	3
Clean protective capes, drapes, linens and towels shall be used for each patron.	3
After a cape, drape, linen or towel has been in contact with a patron's skin it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer.	5
Any paper or nonwoven protective drape or covering shall be discarded after one use.	2
There shall be a supply of clean protective drapes, linens and towels at all times.	2
Clean drapes, capes, linens and towels shall be stored in a clean area.	5
Bathroom facilities must be kept cleaned.	3
All implements shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.	2
All implements shall be disinfected.	10
All disinfected electrical implements shall be stored in a clean area.	2
Disposable and porous implements and supplies must be discarded after use or upon completion of the service.	10
Any product that comes into contact with the patron must be discarded upon completion of the service.	3
Disinfected implements must be kept in a clean closed cabinet or clean closed container and must not be stored with any implement or item that has not been disinfected.	10
Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.	<u>21</u>
<u>The presence of animals or birds. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.</u>	<u>1</u>
All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers and dispensed in a sanitary manner. No product dispensed in portions may be returned to the container.	10
After each patron's use each whirlpool or footspa must be cleaned and disinfected.	10
The water in a vaporizer machine must be emptied daily and the unit disinfected daily.	2
The area where services are performed that come in contact with the patron's skin including chairs, tables and beds shall be disinfected between patrons.	3

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-26.

21 NCAC 14H .0505 RULE COMPLIANCE AND ENFORCEMENT MEASURES

(a) The use of or possession of the following products or equipment in a school or shop shall result in civil penalty in the amount of three hundred dollars (\$300.00) per container of product or piece of equipment:

- (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA; or
- (2) Razor-type callus shavers designed and intended to cut growths of skin including but not limited to skin tags, corns and calluses.

(b) The use of or possession of the following in a school or shop shall result in civil penalty in the amount of one hundred dollars (\$100.00) per use or possession:

- (1) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
- (2) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.

(c) The action of any student or licensee to violate the Board rules in the following manner shall result in civil penalty in the amount of one hundred dollars (\$100.00) per instance of each action:

- (1) Use of any product, implement or piece of equipment in any manner other than the product's, implement's or equipment's intended use as described or detailed by the manufacturer;
- (2) Diagnosis of any medical condition or treatment of any medical condition unless referred by a physician; or
- (3) Use of any product that will penetrate the dermis; or
- (4) Provision of any service unless trained prior to performing the service; or
- (5) Performance of services on a client if the licensee has reason to believe the client has any of the following:
 - (A) a contagious condition or disease;
 - (B) inflamed infected, broken, raised or swollen skin or nail tissue; or
 - (C) an open wound or sore in the area to be worked on; or
- (6) Alteration of or duplication of a license issued by the Board; or
- (7) Advertisement or solicitation of clients in any form of communication in a manner that is false or misleading; or
- (8) Use of any FDA rated class II device without the documented supervision of a licensed physician.

~~(d) The presence of animals or birds in a cosmetic art shop or school shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per animal or bird. Fish in an enclosure and animals trained for the purpose of accompanying disabled persons are exempt.~~

~~(e)(d)~~ The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as required by this Subchapter including the date, time, reason and name of the staff member who performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.

~~(f)(e)~~ The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this Subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.

~~(g)(f)~~ The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, and sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.

~~(h)(g)~~ The failure to maintain a sink with hot and cold running water in the clinic area, separate from restrooms, shall result in civil penalty in the amount of one hundred dollars (\$100.00).

~~(i) The failure to maintain a water supply within 20 feet of the door or 25 feet from the service table or chair shall result in civil penalty in the amount of fifty dollars (\$50.00) per inspection occurrence.~~

~~(j) The failure to maintain a water supply within 20 feet of the door or 25 feet from the service table or chair shall result in civil penalty in the amount of fifty dollars (\$50.00) per inspection occurrence.~~

~~(k)(h)~~ The failure to provide ventilation at all times in the areas where patrons are serviced in all cosmetic art shops shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

~~(l)(i)~~ The failure to effectively screen all doors and windows open for ventilation shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

~~(m)(j)~~ The failure to maintain equipment and supplies necessary to safely perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).

~~(n)(k)~~ The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).

~~(o)(l)~~ Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any one individual, shop or school shall result in a mandatory disciplinary hearing.

Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27.

SUBCHAPTER 14T – COSMETIC ART SCHOOLS

SECTION .0200 - PHYSICAL REQUIREMENTS FOR COSMETIC ART SCHOOLS

21 NCAC 14T .0201 ALL COSMETIC ART SCHOOLS

(a) Cosmetic Art schools must have the following physical departments:

- (1) Beginner Department – a minimum of 200 square feet with a table or ~~maneuvering~~ tables and or stands to accommodate at least 10 students and have at least 40 inches between each mannequin. Cosmetic art schools must provide an additional 5 square feet in the beginner department for each student over the maximum of 10. This area shall have at least one mirror of a minimum of two square feet. This area shall be dedicated to the instruction of beginner students;
- (2) Advanced Department – the clinic floor for performance of all cosmetic art services. Within the clinic area each school shall have:

- (A) 48 inches of space from the center to the center of each styling chair, esthetics table or manicuring table;
 - (B) 24 inches from the center of the chair forward;
 - (C) 48 inches from the backrest behind the chair to any other styling chair, esthetics table or manicuring table; and
 - (D) at least 30 inches of space from the back of each styling chair, esthetics table or manicuring table to the wall of the shop.
- (3) Dispensary – a room or area to organize and maintain supplies, equipment for disinfection of all implements and a sink with hot and cold running water. All cosmetic art schools must have the required equipment to carry out disinfection procedures;
- (4) Theory classroom – classroom with a minimum of 300 square feet to accommodate a maximum of 25 students. Cosmetic art schools must provide an additional 8 square feet in the theory classroom for each student over the maximum of 25;
- (5) Office – administrative office for the secure/locked facilitation of student records and files. This office must be outfitted with a minimum of one desk and one chair;
- (6) Reception area – a reception area for clients to wait prior to receiving services;
- (7) Break room for student use;
- (8) Restrooms for student/public use;
- (9) Locker/dressing room – a locker or room for students to secure/lock personal belongings throughout the day; and
- (10) All stations must be numbered numerically.
- (b) Each cosmetic art school must display a sign in a conspicuous place in the reception area. The sign cannot be smaller than 12 inches by 18 inches, with lettering at least one and one half inches in size and must read as follows: "Cosmetic Art School Work Done Exclusively by Students."
- (c) Each of the requirements listed within this Rule must be located within the same building with the exception of the theory classroom which may be located in an adjacent building or another building within 500 feet of the main cosmetic art building.
- (d) All Cosmetic Art schools must post hours of operation per cosmetic art discipline and submit this information to the Board. Any changes to the hours of operation must be posted and submitted to the Board. A school will be considered open by the Board when cosmetic art instruction, services or performances are provided.
- (e) Cosmetic art schools may not offer student hours or performances unless they are in compliance with Paragraph (a) of this Rule.
- (f) All cosmetic art schools must adhere to any federal, state and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work.
- (g) All cosmetic art schools must maintain a ventilation system in good working order with temperature control. During school operating hours the temperature must be maintained between 60 and 85 degrees Fahrenheit.
- (h) All equipment in cosmetic art schools shall be in working order; kept in safe repair; and installed in such a manner as to facilitate proper usage.
- (i) All cosmetic art school buildings shall be maintained.
- (j) All cosmetic art schools must maintain a bulletin board in plain sight of the clinic floor. The bulletin board shall be used to display at all times the Board sanitation rules and the sanitation grade card issued to the school.
- (k) All cosmetic art schools must post together the school letter of approval, the school license and all cosmetic art licenses issued to the teachers on staff.
- (l) Each room in a cosmetic art school must be labeled according to its assigned purpose.
- (m) Each theory classroom shall be equipped with desks or chairs suitable for classroom work and one chair suitable for demonstrating cosmetic art practices.
- (n) When a school and a shop are under the same ownership, separate operation of the shop and school shall be maintained and if the school and shop are located in the same building, separate entrances and visitor reception areas shall be maintained and the school and shop shall have separate public information releases, advertisements, names and advertising signs.
- (o) A cosmetic art school that enrolls no more than 10 students may use the theory and beginner rooms concurrently but must maintain equipment appropriate to both practical and theory learning including desks and chairs, and advanced station requirements at a 1:2 equipment to student ratio.

Authority G.S. 88B-2; 88B-16; 88B-17.

SECTION .0600 - CURRICULA

21 NCAC 14T .0602 COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, a cosmetologist training course must consist of 1500 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Services
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving; cutting techniques and implements including razors, clippers, thinning shears, and shears; cleansing, cutting, singeing, bleaching or coloring hair; esthetics and manicuring; and business management and salon business.	1200	

PROPOSED RULES

Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			10
Fullhead fingerwave and style		5 or	5
Fullhead pincurl and style		5 or	5
Hair styling – sets, blowdrying, thermal press/flat iron, and artificial hair		70	100
Haircuts		40	75
Chemical reformation or permanent waving and relaxers		25	40
Temporary color			2
Color application – semi, demi, permanent color and hair lightening		40	30
Multidimensional color – low/high lighting, cap, bleach		40	15
Lash and brow color			2
Nail care – manicures and pedicures			15
Artificial nails sets		5 or	5
Facials with surface manipulations			40
Makeup application			2
Hair removal			5

Theory	Hours	Services
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails.	<u>300</u>	
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving; cutting techniques and implements including razors, clippers, thinning shears, and shears, cleansing, cutting, singeing, bleaching or coloring hair; esthetics and manicuring; and business management and salon business.	<u>1200</u>	
Performance Requirements		Live Model
Scalp and hair treatments		<u>10</u>
Fullhead fingerwave and style		<u>10</u>
Fullhead pincurl and style		<u>10</u>
Hair styling - sets, blowdrying, thermal press/flat iron, and artificial hair		<u>170</u>
Haircuts		<u>85</u>
Chemical reformation or permanent waving and relaxers		<u>35</u>
Temporary color		<u>2</u>
Color application - semi, demi, permanent color and hair lightening		<u>40</u>
Multidimensional color - low/high lighting, cap, bleach		<u>35</u>
Lash and brow color		<u>2</u>
Nail care - manicures and pedicures		<u>15</u>
Artificial nails sets		<u>10</u>
Facials with surface manipulations		<u>10</u>
Makeup application		<u>2</u>
Hair removal		<u>5</u>

(b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.

(c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the Board examination.

(d) A live model may be substituted for a mannequin for any mannequin service.

- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-4; 88B-16.

21 NCAC 14T .0603 APPRENTICE COSMETOLOGY CURRICULUM

(a) To meet the approval of the Board, an apprentice cosmetologist training course must consist of 1200 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Services	
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails.	300		
Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving; cutting techniques and implements including razors, clippers, thinning shears, and shears, cleansing, cutting, singeing, bleaching or coloring hair; esthetics and manicuring; and business management and salon business.	900		
Performance Requirements		Mannequin	Live Model
Scalp and hair treatments			8
Fullhead fingerwave and style		3 or	3
Fullhead pineurl and style		3 or	3
Hair styling sets, blowdrying, thermal press/flat iron, and artificial hair		56	80
Haircuts		8	60
Chemical reformation or permanent waving and relaxers		19	8
Temporary color			1
Color application semi, demi, permanent color and hair lightening		8	11
Multidimensional color low/high lighting, cap, bleach		3	8
Lash and brow color			1
Nail care manicures and pedicures			12
Artificial nails sets		4 or	4
Facials with surface manipulations			7
Makeup application			1
Hair removal			3

Theory	Hours	Services
Beginners: Professional image, sanitation, bacteriology, disinfection, first aid, anatomy, electricity, chemistry, professional ethics, draping, shampooing, roller sets, pin curls, ridge curls with C shaping, fingerwaves, braids, artificial hair, up-styles, blowdrying brush control, blowdrying with curling iron, pressing/thermal, hair cutting, partings, perm wraps, relaxer sectioning, color application sectioning, scalp treatments, manicures, pedicures, and artificial nails.	300	

Advanced: Styles and techniques of cosmetology services including arranging, dressing, curling, waving; cutting techniques and implements including razors, clippers, thinning shears, and shears, cleansing, cutting, singeing, bleaching or coloring hair; esthetics and manicuring; and business management and salon business.	<u>900</u>	
Performance Requirements		Live Model
Scalp and hair treatments		<u>8</u>
Fullhead fingerwave and style		<u>6</u>
Fullhead pincurl and style		<u>6</u>
Hair styling - sets, blowdrying, thermal press/flat iron, and artificial hair		<u>136</u>
Haircuts		<u>68</u>
Chemical reformation or permanent waving and relaxers		<u>27</u>
Temporary color		<u>1</u>
Color application - semi, demi, permanent color and hair lightening		<u>19</u>
Multidimensional color - low/high lighting, cap, bleach		<u>8</u>
Lash and brow color		<u>1</u>
Nail care - manicures and pedicures		<u>12</u>
Artificial nails sets		<u>8</u>
Facials with surface manipulations		<u>7</u>
Makeup application		<u>1</u>
Hair removal		<u>3</u>

- (b) A minimum of 300 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the Board examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-4; 88B-16.

21 NCAC 14T .0604 ESTHETICS CURRICULUM

(a) To meet the approval of the Board, an esthetician training course must consist of at least 600 hours of instruction in theory and practical application, divided as follows:

Theory and Performance Requirements	Hours	Services	
Beginners: anatomy/physiology, hygiene, disinfection, first aid, chemistry, draping, facial/body treatment (cleansing, manipulations, masks), hair removal, basic dermatology, machines, electricity, apparatus, aromatherapy, nutrition, make up/color theory,	75		
Advanced: Styles and techniques of esthetics services including facials, makeup application, performing skin care, hair removal, eyelash extensions and applying brow and lash color; business management; and professional ethics	525		
Performance Requirements		Mannequin	Live Model
Facials Manual (skin analysis, cleansing, surface manipulations, packs and masks)		40	30
Facials Electronic (the use of electrical modalitus, including dermal lights, and electrical apparatus for facials and skin care including galvanic and faradic)			30

PROPOSED RULES

<u>Eyebrow arching</u>		5	15
<u>Hair removal (hard wax, soft wax, depilatories)</u>		5	25
<u>Makeup application (skin analysis, complete and corrective makeup)</u>		10	20
<u>Eyelash extensions</u>		5	5
<u>Brow and lash color</u>		5	5

<u>Theory and Performance Requirements</u>	<u>Hours</u>	<u>Services</u>
<u>Beginners: anatomy/physiology, hygiene, disinfection, first aid, chemistry, draping, facial/body treatment (cleansing, manipulations, masks), hair removal, basic dermatology, machines, electricity, apparatus, aromatherapy, nutrition, make-up/color theory,</u>	<u>75</u>	
<u>Advanced: Styles and techniques of esthetics services including facials, makeup application, performing skin care, hair removal, eyelash extensions and applying brow and lash color; business management; and professional ethics</u>	<u>525</u>	
<u>Performance Requirements</u>		<u>Live Model</u>
<u>Facials Manual (skin analysis, cleansing, surface manipulations, packs and masks)</u>		<u>40</u>
<u>Facials Electronic (the use of electrical modalities, including dermal lights, and electrical apparatus for facials and skin care including galvanic and faradic)</u>		<u>30</u>
<u>Eyebrow arching</u>		<u>20</u>
<u>Hair removal (hard wax, soft wax, depilatories)</u>		<u>30</u>
<u>Makeup application (skin analysis, complete and corrective makeup)</u>		<u>30</u>
<u>Eyelash extensions</u>		<u>10</u>
<u>Brow and lash color</u>		<u>10</u>

- (b) A minimum of 75 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.

Authority G.S. 88B-2; 88B-16; 88B-17.

21 NCAC 14T .0605 MANICURING CURRICULUM

(a) To meet the approval of the Board, a manicurist training course must consist of at least 300 hours of instruction in theory and practical application, divided as follows:

<u>Theory and Performance Requirements</u>	<u>Hours</u>	<u>Services</u>
<u>Beginners: Manicuring theory, disinfection, first aid, trimming, filing, shaping, decorating, arm and hand manipulation, sculptured and artificial nails; and pedicuring</u>	<u>60</u>	
<u>Advance: Styles and techniques for the care, treatment and decoration of fingernails, toenails, cuticles, nail extensions and artificial nails; electric file; business management; and professional ethics</u>	<u>240</u>	

PROPOSED RULES

Performance Requirements		Mannequin	Live Model
<u>Manicures including trimming, filing, shaping, decorating and arm and hand manipulations</u>		5	10
<u>Applications or repair of sculptured or artificial nail sets</u>		5	15
<u>Pedicures</u>			10

Theory and Performance Requirements	Hours	Services
<u>Beginners: Manicuring theory, disinfection, first aid, trimming, filing, shaping, decorating, arm and hand manipulation, sculptured and artificial nails; and pedicuring</u>	<u>60</u>	
<u>Advance: Styles and techniques for the care, treatment and decoration of fingernails, toenails, cuticles, nail extensions and artificial nails; electric file; business management; and professional ethics</u>	<u>240</u>	
Performance Requirements		Live Model
<u>Manicures including trimming, filing, shaping, decorating and arm and hand manipulations</u>		<u>15</u>
<u>Applications or repair of sculptured or artificial nail sets</u>		<u>20</u>
<u>Pedicures</u>		<u>10</u>

- (b) A minimum of 60 hours theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed.
- (i) Credit for a performance shall be given to only one student.
- (j) A nail set is one hand including all four fingers and thumb.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

21 NCAC 14T .0606 NATURAL HAIR CARE CURRICULUM

(a) To meet the approval of the Board, a natural hair care styling training course must consist of 300 hours of instruction in theory and practical application, divided as follows:

Theory	Hours	Services	
<u>Beginners: Sanitation, bacteriology, disinfection, first aid, shampooing, draping, anatomy, disorders of the hair and scalp, client consultation.</u>	<u>60</u>		
<u>Advanced: Styles and techniques of natural hair styling including twisting, wrapping, extending, locking, blowdry and thermal iron; and business management and professional ethics.</u>	<u>240</u>		
Performance Requirements		Mannequin	Live Model
<u>Braids</u>		<u>5</u>	<u>5</u>
<u>Twists</u>		<u>5</u>	<u>5</u>
<u>Knots</u>		<u>3</u>	<u>2</u>
<u>Corn rows</u>		<u>3</u>	<u>2</u>
<u>Hairlocking</u>		<u>5</u>	<u>5</u>
<u>Artificial hair and decorations</u>		<u>5</u>	<u>5</u>
<u>Blow dry and thermal iron</u>		<u>5</u>	<u>5</u>
<u>Braid Removal</u>		<u>5</u>	<u>5</u>

Theory	Hours	Services
<u>Beginners: Sanitation, bacteriology, disinfection, first aid, shampooing, draping, anatomy, disorders of the hair and scalp, client consultation.</u>	<u>60</u>	

Advanced: Styles and techniques of natural hair styling including twisting, wrapping, extending, locking, blowdry and thermal iron; and business management and professional ethics.	240	
Performance Requirements		Live Model
<u>Braids</u>		<u>10</u>
<u>Twists</u>		<u>10</u>
<u>Knots</u>		<u>5</u>
<u>Corn rows</u>		<u>5</u>
<u>Hairlocking</u>		<u>10</u>
<u>Artificial hair and decorations</u>		<u>10</u>
<u>Blow dry and thermal iron</u>		<u>10</u>
<u>Braid Removal</u>		<u>10</u>

- (b) A minimum of 60 hours of theory is required prior to conducting live model performances on the public.
- (c) Certification of live model or mannequin performance completions is required along with the graduation form and application for the Board examination.
- (d) A live model may be substituted for a mannequin for any mannequin service.
- (e) All mannequin services may be performed using a simulated product.
- (f) Simulated product is not allowed for credit for live model performance.
- (g) Mannequin services shall not be substituted for live model services.
- (h) Sharing of performance completions is not allowed unless the live model service consists of 20 or more lengths of hair.
- (i) Credit for a performance shall be given to only one student.
- (j) A performance shall consist of 10 or more lengths of hair.

Authority G.S. 88B-2; 88B-4; 88B-16.

SECTION .0700 – SCHOOL LICENSURE, OPERATIONS, CLOSING AND RELOCATING SCHOOLS

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

- (a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any ~~three~~ two year period.
- (b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.
- (c) Cosmetic art schools must provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.
- (d) School attendance policies shall give appropriate performances attendance credit for all hours attended.

(e) If a graduate meets all the financial, hours, academic, and performance requirements, the school must provide the student with the examination application.

(f) Cosmetic Art schools shall maintain current bond according to G.S. 88B-17 and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.

(g) Each school shall submit to the Board upon renewal financial records of prepaid tuition and a letter signed by an authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. Each school shall maintain and submit to the Board proof of bond in an amount of ten thousand dollars (\$10,000), or equivalent to prepaid tuition received during the previous year, whichever is greater.

Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17.

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 April 17, 2014.

REGISTER CITATION TO THE NOTICE OF TEXT

NC RURAL ELECTRIFICATION AUTHORITY

<u>Purpose</u>	04	NCAC	08	.0101*	28:04 NCR
<u>Authority Staff</u>	04	NCAC	08	.0109*	28:04 NCR

INDUSTRIAL COMMISSION

<u>Employer's Obligations Upon Notice; Denial of Liability; ...</u>	04	NCAC	10A	.0601*	n/a S.L. 2013-294
<u>Admission of Out-of-State Attorneys to Appear Before the ...</u>	04	NCAC	10E	.0103*	n/a S.L. 2013-294
<u>Secure Leave Periods for Attorneys</u>	04	NCAC	10E	.0104*	n/a S.L. 2013-294

PRIVATE PROTECTIVE SERVICES BOARD

<u>Prohibited Acts</u>	12	NCAC	07D	.0106*	28:11 NCR
<u>Experience Requirements for a Polygraph License</u>	12	NCAC	07D	.0501*	28:11 NCR
<u>Polygraph Trainee Permit Requirements</u>	12	NCAC	07D	.0502*	28:11 NCR
<u>Polygraph Examination Requirements</u>	12	NCAC	07D	.0503*	28:11 NCR
<u>Polygraph Instruments</u>	12	NCAC	07D	.0504*	28:11 NCR
<u>Required Continuing Education Hours</u>	12	NCAC	07D	.1302*	28:11 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Basic Training - Juvenile Court Counselors and Chief Cour...</u>	12	NCAC	09B	.0235*	28:06 NCR
<u>Basic Training - Juvenile Justice Officers</u>	12	NCAC	09B	.0236*	28:06 NCR
<u>Juvenile Justice Specialized Instructor Training - Restr...</u>	12	NCAC	09B	.0241*	28:04 NCR
<u>Terms and Conditions of Specialized Instructor Certification</u>	12	NCAC	09B	.0305*	28:02 NCR
<u>Terms and Conditions of School Director Certification</u>	12	NCAC	09B	.0502*	28:02 NCR
<u>Instructors: Annual In-Service Training</u>	12	NCAC	09E	.0104*	28:04 NCR
<u>Terms and Conditions of Specialized Instructor Certification</u>	12	NCAC	09G	.0311*	28:02 NCR
<u>Corrections Specialized Instructor Training - Firearms</u>	12	NCAC	09G	.0415*	28:04 NCR
<u>Corrections Specialized Instructor Training - Controls, R...</u>	12	NCAC	09G	.0416*	28:04 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Toxic Air Pollutant Guidelines</u>	15A	NCAC	02D	.1104	28:04 NCR
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APPROVED RULES

<u>Applicability</u>	15A	NCAC	02Q	.0701*	28:04	NCR
<u>Exemptions</u>	15A	NCAC	02Q	.0702*	28:04	NCR
<u>Definitions</u>	15A	NCAC	02Q	.0703*	28:04	NCR
<u>New Facilities</u>	15A	NCAC	02Q	.0704*	28:04	NCR
<u>Existing Facilities and SIC Calls</u>	15A	NCAC	02Q	.0705	28:04	NCR
<u>Modifications</u>	15A	NCAC	02Q	.0706*	28:04	NCR
<u>Demonstrations</u>	15A	NCAC	02Q	.0709*	28:04	NCR
<u>Emission Rates Requiring a Permit</u>	15A	NCAC	02Q	.0711	28:04	NCR
<u>Wastewater Treatment Systems at Pulp and Paper Mills</u>	15A	NCAC	02Q	.0714	28:04	NCR

COASTAL RESOURCES COMMISSION

<u>AECS Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304*	28:07	NCR
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WILDLIFE RESOURCES COMMISSION

<u>Funding Sources</u>	15A	NCAC	10A	.1301	28:12	NCR
<u>Offenses and Reward Amounts</u>	15A	NCAC	10A	.1302*	28:12	NCR
<u>Eligibility</u>	15A	NCAC	10A	.1303*	28:12	NCR
<u>Permitted Archery Equipment</u>	15A	NCAC	10B	.0116*	28:12	NCR
<u>Sale of Wildlife</u>	15A	NCAC	10B	.0118*	28:12	NCR
<u>Taking Deer and Bear with Handguns</u>	15A	NCAC	10B	.0120*	28:12	NCR
<u>Bear</u>	15A	NCAC	10B	.0202*	28:12	NCR
<u>Deer (White Tailed)</u>	15A	NCAC	10B	.0203*	28:12	NCR
<u>Reciprocal License Agreement</u>	15A	NCAC	10C	.0203*	28:12	NCR
<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205*	28:12	NCR
<u>Trotlines and Set-Hooks</u>	15A	NCAC	10C	.0206*	28:12	NCR
<u>Public Access for Anglers Only</u>	15A	NCAC	10C	.0217*	28:12	NCR
<u>Manner of Taking Inland Game Fishes</u>	15A	NCAC	10C	.0302*	28:12	NCR
<u>Striped Bass</u>	15A	NCAC	10C	.0314*	28:12	NCR
<u>Manner of Taking Nongame Fishes: Purchase and Sale</u>	15A	NCAC	10C	.0401*	28:12	NCR
<u>Taking Nongame Fishes for Bait or Personal Consumption</u>	15A	NCAC	10C	.0402*	28:12	NCR
<u>Special Devices</u>	15A	NCAC	10C	.0404*	28:12	NCR
<u>General Regulations Regarding Use</u>	15A	NCAC	10D	.0102*	28:12	NCR
<u>Hunting On Game Lands</u>	15A	NCAC	10D	.0103*	28:12	NCR
<u>Fishing on Game Lands</u>	15A	NCAC	10D	.0104*	28:12	NCR
<u>Application for Certificate of Vessel Number</u>	15A	NCAC	10F	.0102*	28:12	NCR
<u>Transfer of Ownership</u>	15A	NCAC	10F	.0103*	28:12	NCR
<u>Display of Vessel Numbers</u>	15A	NCAC	10F	.0106*	28:12	NCR
<u>Validation Decal</u>	15A	NCAC	10F	.0107*	28:12	NCR
<u>Pamlico County</u>	15A	NCAC	10F	.0326	28:12	NCR
<u>Northampton and Warren Counties</u>	15A	NCAC	10F	.0336	28:12	NCR
<u>Pitt County</u>	15A	NCAC	10F	.0354	28:12	NCR
<u>Totally Disabled License Eligibility</u>	15A	NCAC	10G	.0601*	28:12	NCR

TRANSPORTATION, DEPARTMENT OFDriver's License Examination

19A NCAC 03B .0201*

28:14 NCR

The following rules are subject to the next Legislative Session. (See G.S. 150B-21.3)

INDUSTRIAL COMMISSIONMedical Motions and Emergency Medical Motions

04 NCAC 10A .0609A*

n/a S.L. 2013-294

TITLE 04 – DEPARTMENT OF COMMERCE**04 NCAC 08 .0101 PURPOSE**

(a) The purpose of the North Carolina Rural Electrification Authority ("the Authority") is to secure and continue to provide dependable electric and telephone services to customers served by the electric membership corporations ("EMCs") and the telephone membership corporations ("TMCs") in predominately rural areas of the state at the lowest possible cost and on a nondiscriminatory basis, as set forth in G.S. 117-16.1. To accomplish this purpose, the Authority shall act as an agent in securing loans or grants from any agency of the United States Government. The Authority also serves as a forum to receive and investigate complaints from members of the electric cooperatives to arrive at a just and satisfactory solution to the member complaints.

(b) The Authority, pursuant to the Telecommunications Act of 1996, Pub. L.A. No. 104-104, 110 Stat. 56 (1996) ("the Act") shall establish procedural schedules for Petitions for Arbitration of interconnection agreements between TMCs and other local and wireless providers. The Authority shall render final decisions for these arbitrations based on information received from testimony, discovery and hearings. The Authority shall review and approve the interconnection agreements and their amendments in accordance with Section 252(e) of the Telecommunications Act.

(c) The Board of the Authority shall choose a Secretary, who is also the Administrator of the Authority.

History Note: Authority G.S. 117-2; 117-2(11a); 117-3.1; 117-4; 117-26; 117-31; 117-32; 47 U.S.C. 251;

Eff. February 1, 1976;

Amended Eff. May 1, 2014.

04 NCAC 08 .0109 DUTIES OF THE ADMINISTRATOR

The Administrator is responsible for directing the staff of the Authority and overseeing the functions of the office.

- (1) The Administrator shall oversee the application of the electric and telephone cooperatives rules and regulations to ensure they are administered according to the manner in which they are written.
- (2) The Administrator shall investigate and respond to complaints such as requests for deposits, meter tampering disputes, boundary

issues, disputed bills and power surges from EMC members and shall request any additional information from the cooperative needed by the Authority to respond to the complaints.

- (3) The Administrator may attend any annual meeting or Board meeting of an individual electric or telephone cooperative.

- (4) The Administrator shall review all Federal grant or loan applications from electric and telephone cooperatives, request any additional information needed for those applications, and present the grant and loan requests to the Board for review and approval.

- (5) The Administrator is responsible for reviewing interconnection agreements and amendments between the TMCs and competing local providers (CLPs) and commercial mobile radio service providers (CMRS) as defined in 47 U.S.C 252 in accordance with Section 252(e) of the Act and present those documents to the Board of the authority for approval.

- (6) In situations where the Authority is requested to arbitrate an interconnection agreement pursuant to Section 252(b)(1) of the Act or pursuant to a valid contractual agreement between a TMC and another telecommunications carrier, the Administrator is responsible for reviewing the petitions for arbitration.

History Note: Authority G.S. 117-2(10); 117-2(11a); 117-2(12); 117-3.1(a); 117-26; 117-31; 117-32; 47 U.S.C 252;

Eff. February 1, 1976;

Amended Eff. May 1, 2014.

04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND SANCTIONS

(a) Upon the employee's filing of a claim for compensation with the Commission, the Commission may order sanctions pursuant to G.S. 97-18(j) against the employer or its insurance carrier if it does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to

be from exposure to chemicals, fumes, or other materials or substances in the workplace, do one of the following:

- (1) File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the Commission and the employee in writing that the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b);
- (2) File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the employee that the employer denies the employee's right to compensation consistent with G.S. 97-18(c);
- (3) File a Form 63 Notice to Employee of Payment of Compensation Without Prejudice consistent with G.S. 97-18(d).

For purposes of this Rule, sanctions ordered pursuant to G.S. 97-18(j) shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.

Requests for extensions of time to comply with G.S. 97-18(j) shall be addressed to the Claims Administration Section.

(b) When liability in any case is denied, the employer or insurance carrier shall provide a detailed statement of the basis of denial that shall be set forth in a letter of denial or Form 61 *Denial of Workers' Compensation Claim*, and that shall be sent to the employee's attorney of record or the employee, if unrepresented, all known health care providers who have submitted bills and provided medical records to the employer or carrier, and the Commission.

History Note: Authority G.S. 97-18; 97-80(a); 97-81(a);

Eff. January 1, 1990;

Amended Eff. August 1, 2006; June 1, 2000;

Amended Eff. Pending Delayed Effective Date.

04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

(a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before the Office of the Chief Deputy Commissioner and shall be submitted electronically to medicalmotions@ic.nc.gov. Motions and responses shall be submitted simultaneously to the Commission and the opposing party and opposing party's counsel, if represented.

(b) Once notification has been received by the parties that a medical motion has been assigned to a Deputy Commissioner, subsequent filings and communication shall be submitted directly to the Deputy Commissioner assigned.

(c) Upon receipt of a medical motion, carriers, third-party administrators, and employers shall immediately send notification of the name, email address, telephone number and fax number of the attorney appearing on their behalf to medicalmotions@ic.nc.gov. An attorney who is retained by a party in any proceeding before the Commission shall also file a notice of representation with the Docket Director at dockets@ic.nc.gov and send a copy of the notice to all other counsel and all other unrepresented parties involved in the proceeding.

(d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain the following:

- (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25;
- (2) the claimant's name. If the claimant is unrepresented, claimant's email address, telephone number, and fax number. If the claimant is represented, the name, email address, telephone number and fax number of claimant's counsel;
- (3) the employer's name and employer code;
- (4) the carrier or third party administrator's name, carrier code, email address, telephone number and fax number;
- (5) the adjuster's name, email address, telephone number and fax number if counsel for the employer and carrier has not been retained;
- (6) the counsel for employer and carrier's name, email address, telephone number and fax number;
- (7) a statement of the treatment or relief requested;
- (8) a statement of the medical diagnosis of claimant and the treatment recommendation and name of the health care provider that is the basis for the motion;
- (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
- (10) a statement of the time-sensitive nature of the request;
- (11) an explanation of opinions known and in the possession of the employee of additional medical or other relevant experts, independent medical examiners, and second opinion examiners;
- (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the plaintiff has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any;
- (13) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known; and
- (14) a proposed Order.

(e) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:

- (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- (2) the claimant's name. If the claimant is unrepresented, claimant's email address, telephone number, and fax number. If the claimant is represented, the name, email

address, telephone number and fax number of claimant's counsel;

- (3) the employer's name and employer code;
- (4) the carrier or third party administrator's name, carrier code, email address, telephone number and fax number;
- (5) the adjuster's name, email address, telephone number and fax number if counsel for the employer/carrier has not been retained;
- (6) the counsel for employer/carrier's name, email address, telephone number and fax number;
- (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
- (8) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended treatment is not provided emergently;
- (9) an explanation of opinions known and in the possession of the employee of additional medical or other relevant experts, independent medical examiner, and second opinion examiners;
- (10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known;
- (11) documentation known and in the possession of the employee in support of the request, including relevant medical records; and
- (12) a proposed Order.

(f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to clarify the issues presented. During the initial informal telephonic conference each party shall be afforded an opportunity to state its position and discuss documentary evidence which shall be submitted electronically to the Deputy Commissioner prior to the initial informal telephone conference.

(g) At or prior to the initial informal telephonic conference, the parties may consent to a review of the contested issues by electronic mail submission of only relevant medical records and opinion letters.

(h) Depositions deemed necessary by the Deputy Commissioner shall be taken on the Deputy Commissioner's order within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the Commission within 40 days of the date of the filing of the motion. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown.

(i) At the initial informal telephonic conference, each party shall notify the Commission and the other party as to whether a second informal telephonic conference is necessary. This second informal telephonic conference does not extend the time for resolution of the motion.

(j) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any

time allowed for response and whether informal telephonic oral argument is necessary.

(k) A party may appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 by giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the Order from which appeal is taken. After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall indicate whether the parties may file briefs and the schedule for filing them. At the time the motion is set for informal hearing, the Chair of the Panel shall also indicate to the parties if oral arguments are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

(l) The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is unavailable to the party.

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);

Eff. January 1, 2011;

Amended Eff. Pending Legislative Review.

04 NCAC 10E .0103 ADMISSION OF OUT-OF STATE ATTORNEYS TO APPEAR BEFORE THE COMMISSION

(a) Attorneys residing in and licensed to practice law in another state who seek to be admitted to practice before the Commission to represent a client in a claim pursuant to G.S. 84-4.1 shall file a motion with the Commission that complies with the requirements of G.S. 84-4.1. The North Carolina attorney with whom the out-of-state attorney associates pursuant to G.S. 84-4.1(5) may file the motion instead as long as it complies with the requirements of G.S. 84-4.1.

(b) The motion shall be filed with the Executive Secretary of the Commission except under the following circumstances:

- (1) If the motion is filed in a claim that is set for hearing before or pending decision by a Deputy Commissioner or the Full Commission, the motion shall be filed with the Deputy Commissioner or chair of the Full Commission panel, respectively.
- (2) If the motion is filed in a claim involving a form application regarding a death claim, the motion shall be filed with the Director of Claims Administration.
- (3) If the motion is filed in a claim involving a stipulated Opinion and Award regarding a death claim, the motion shall be filed with the Chief Deputy Commissioner.

(c) A proposed Order granting *pro hac vice* admission that includes the facsimile numbers for all counsel of record shall be provided with the motion.

(d) Following review of the motion, the Commission shall issue an Order granting or denying the motion. The Commission has the discretionary authority to deny such motions even if they comply with the requirements of G.S. 84-4.1.

(e) Upon receipt of an Order granting a motion for *pro hac vice* admission, the admitted attorney or the associated North Carolina attorney shall pay the fees to the North Carolina State Bar and General Court of Justice required by G.S. 84-4.1 and file a statement with the Executive Secretary documenting payment of said fees and the submission of any *pro hac vice* admission registration statement required by the North Carolina State Bar.

History Note: Authority G.S. 84-4.1; 97-80(a); Eff. July 1, 2014.

04 NCAC 10E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS

(a) Any attorney may request one or more secure leave periods each year as provided in this Rule.

(b) During any calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed an aggregate of three weeks.

(c) To request a secure leave period an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (d) of this Rule with the Office of the Chair within the time provided in Paragraph (e). Upon such filing, the Chair shall review the request and, if the request complies with Paragraphs (d) and (e) of this Rule, issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during that secure leave period.

(d) The request shall contain the following information:

- (1) the attorney's name, address, telephone number and state bar number;
- (2) the date(s) for which secure leave is being requested;
- (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;
- (4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding; and
- (5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.

(e) To be allowed, the request shall be filed:

- (1) no later than 90 days before the beginning of the secure leave period; and
- (2) before any trial, hearing, deposition or other matter has been regularly scheduled,

peremptorily set or noticed for a time during the designated secure leave period.

An untimely request will be denied by letter. In the event that a party has been denied secure leave because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the motion shall be addressed to the Chair of the Panel before which the hearing will be held. In all other cases, the motion should be directed to the Office of the Chair.

(f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

(g) If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.

History Note: Authority G.S. 97-80(a); Eff. July 1, 2014.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 07D .0106 PROHIBITED ACTS

(a) In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74C of the General Statutes, any licensee, trainee, registrant, or firearms trainer who does any of the following may have his or her license, trainee permit, registration, or firearms trainer certificate revoked or suspended:

- (1) Displays or causes or allows to be displayed, or has in his or her possession any cancelled, revoked, suspended, fictitious, fraudulently altered license, trainee permit, registration identification card, or firearms trainer certificate, or any document simulating, purporting to be, or purporting to have been issued as a license, trainee permit, registration identification card, or firearms trainer certificate;
- (2) Lends his or her license, trainee permit, registration identification card, or firearms trainer certificate to any person or allows the use thereof by another;
- (3) Displays or represents any license, trainee permit, registration identification card, or firearms trainer certificate not issued to him as being his or her license, trainee permit,

registration identification card, or firearms trainer certificate; or

- (4) Includes in any advertisement a statement which implies official state authorized certification or approval other than this statement: "Licensed by the Private Protective Services Board of the State of North Carolina." Licensees must include their license number.

(b) In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74C of the General Statutes, it shall be grounds for application denial or license registration suspension or revocation for an applicant, licensee, trainee, registrant or trainer to make any false statement or give any false information to a third party in connection with any criminal history record check provided to the Board.

History Note: Authority G.S. 74C-5; 74C-8.1; 74C-12; 74C-16;
Eff. June 1, 1984;
Amended Eff. May 1, 2014; July 1, 1987.

12 NCAC 07D .0501 EXPERIENCE REQUIREMENTS FOR A POLYGRAPH LICENSE

(a) In addition to the requirements of 12 NCAC 07D .0200, applicants for a polygraph license shall:

- (1) pass an examination and a performance test administered by a panel of polygraph examiners designated by the Board;
- (2) successfully complete a course of instruction at any polygraph school approved by the American Polygraph Association, the American Association of Police Polygraphist or the Board; and
- (3) have either:
 - (A) one year of polygraph experience; or
 - (B) complete at least six months of training as a holder of a polygraph trainee permit, and have administered no fewer than 50 polygraph examinations; or
- (4) establish to the Board's satisfaction a military occupational specialty and two years of verifiable experience within the past five years in the U.S. Armed Forces performing polygraph examinations.

(b) In addition to the requirements of 12 NCAC 07D .0200, an applicant for a polygraph license who is the spouse of an active duty member of the U.S. Armed Forces shall establish to the Board's satisfaction:

- (1) the spouse holds a current license, certification or registration from another jurisdiction and the other jurisdiction's requirements are substantially equivalent to or exceed the Board's requirements; and
- (2) the spouse has two years of verifiable experience within the past five years performing polygraph examinations.

(c) Applicants for a polygraph license may take the examination required in Subparagraph (a)(1) of this Rule no more than twice in any calendar year. Any applicant who fails the polygraph examination four times shall retake the polygraph course of instruction required in Subparagraph (a)(2) of this Rule before taking the polygraph examination again.

(d) Polygraph operators who are duly licensed in another state may perform up to three examinations in this state without being licensed, provided that those examinations are for the purpose of an evaluation of that examiner and the Director has given authorization for this evaluation in advance.

History Note: Authority G.S. 74C-5; 93B-15.1;
Eff. June 1, 1984;
Amended Eff. May 1, 2014; October 1, 2013; July 1, 2009; December 1, 1985.

12 NCAC 07D .0502 POLYGRAPH TRAINEE PERMIT REQUIREMENTS

In addition to the requirements of, 12 NCAC 07D .0200 the following requirements shall apply to polygraph trainees:

- (1) The applicant shall successfully complete a formal course of instruction at any polygraph school approved by the American Polygraph Association, the American Association of Police Polygraphists or the Board. A list of approved schools can be found at: <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Private-Protective-Services/Licensing-Process.aspx>;
- (2) The applicant shall be directly supervised by a polygraph examiner approved by the Board and that examiner shall supervise no more than three trainees at any given time;
- (3) An individual currently enrolled in a polygraph school may conduct examinations as a part of the course curriculum provided such examinations are on school premises, under the direct one-on-one supervision of a polygraph licensee, and the school provides written notice to the client that such examinations are being conducted by students and not by licensed polygraph examiners. The school shall maintain a copy of such written notification;
- (4) Trainees who wish to apply for a license must submit an application to the Board in accordance with 12 NCAC 07D .0201. Applicants meeting license qualifications within one year of the issuance of a trainee, permit shall not be required to pay an additional application fee;
- (5) Any request for renewal of a trainee permit or for issuance of a polygraph license shall be accompanied by an evaluation report of the trainee's performance submitted by the trainee's supervisor; and
- (6) In addition to the final evaluation report, supervisors shall submit five monthly

evaluation reports over the duration of the traineeship on a checklist provided by the Board.

*History Note: Authority G.S. 74C-5;
Eff. June 1, 1984;
Amended Eff. May 1, 2014; December 1, 1985.*

12 NCAC 07D .0503 POLYGRAPH EXAMINATION REQUIREMENTS

Polygraph licensees and trainees shall:

- (1) Obtain written consent from the individual to be examined. The consent form shall be signed in the presence of the examiner and shall include a statement advising the examinee that he or she may terminate the examination at any time.
- (2) A printed or reproducible electronic copy of each chart collected, as well as documents associated with the examination such as reports, question sets, and signed consent forms, shall be retained by the examiner for a minimum of three years. The examiner shall record the following information:
 - (a) name of the examinee;
 - (b) date of the examination;
 - (c) type of examination;
 - (d) time the examination started;
 - (e) location of the examination; and
 - (f) name and license number of the examiner.

This requirement may be completed by labeling the beginning of the first printed chart by hand, or by entering the information into the electronic polygraph file.

- (3) The examiner shall give the examinee opportunity prior to concluding the examination to explain reactions on the charts.
- (4) The examiner shall not issue or permit an employee to issue an examination report which is misleading, biased, or falsified.
- (5) Each examination report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based upon the analysis of the charts.
- (6) All questions considered for chart analysis shall be documented in writing or an electronic question set and shall be reviewed with the examinee prior to any testing.
- (7) An examiner shall not make a conclusive verbal or written examination report without having administered two or more charts consisting of the same questions.
- (8) An examiner shall not inquire into the sexual conduct or preferences of a person to whom a polygraph examination is being given unless pertinent to an alleged sex-related crime, nor

shall an examiner inquire into the activities, affiliations or beliefs on religion, politics or race, except where there is specific relevancy to an investigation.

- (9) Each chart shall be signed at the end of the chart by the examinee and the examiner before the end of the recording if using an analog instrument or retaining printed and not electronic copies of the charts for the period required by Item (2) of this Rule. Retaining reproducible electronic copies of all charts noting the names of the examiner and examinee as well as the date and time of testing will also meet the requirements of this Item.
- (10) An examiner shall conduct no more than five examinations in a 24 hour period.
- (11) For adequate auditing of polygraph examiners, each examiner shall keep a daily log of examinations.

*History Note: Authority G.S. 74C-5;
Eff. June 1, 1984;
Amended Eff. May 1, 2014; December 1, 1987; July 1, 1987;
December 1, 1985.*

12 NCAC 07D .0504 POLYGRAPH INSTRUMENTS

(a) A polygraph examiner shall not conduct an examination unless the instrument used makes a simultaneous recording of at least three physiological tracings including the pneumo cardio and electrodermal changes. This recording must be in a form capable of review by another polygraph examiner and shall be available to the Board or its designated representative. This requirement shall not prohibit recording additional physiological phenomena on the same charts.

(b) A polygraph examiner shall not conduct an examination on an instrument unless the examiner has ensured the instrument is functioning as designed.

(c) A polygraph examiner shall:

- (1) complete a functionality check or calibration of the instrument at time intervals that comply with the manufacturer's recommendations; and
- (2) maintain a signed and dated record of the charts collected during the functionality check or calibration for a period of three years.

*History Note: Authority G.S. 74C-5;
Eff. June 1, 1984;
Amended Eff. May 1, 2014; August 1, 1998; December 1, 1985.*

12 NCAC 07D .1302 REQUIRED CONTINUING EDUCATION HOURS

(a) Each licensee shall complete 12 credit hours of continuing education training during each two year renewal period.

(b) Credit shall be given only for classes that have been approved by the Board as set forth in Rule .1303 of this Section.

(c) A licensee who attends a complete meeting of a regularly scheduled meeting of the Private Protective Services Board shall receive two credit hours for each meeting that the licensee

attends, with credit being given for a maximum of two meetings per year with no more than four credit hours per year and eight credit hours per renewal period.

History Note: Authority G.S. 74C-2; 74C-5; 74C-22;
Eff. February 1, 2010;
Amended Eff. May 1, 2014;

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for Juvenile Court Counselors and Chief Court Counselors shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a Juvenile Court Counselor and a Chief Court Counselor.

(b) Each basic training course for Juvenile Court Counselors shall include training in the following topical areas:

- (1) Juvenile Justice Common Core:
 - (A) Juvenile Justice Overview;
 - (B) Counseling and Communication Skills;
 - (C) Characteristics of Delinquents;
 - (D) Unlawful Workplace Harassment;
 - (E) Professional Ethics;
 - (F) Staff and Juvenile Relationships;
 - (G) Gang Awareness;
 - (H) Situational Awareness and Risk Assessment;
 - (I) Restraints, Controls and Defensive Techniques;
 - (J) Secure Transportation;
 - (K) Mental Health; and
 - (L) Basic Life Support: CPR and First Aid; and
- (2) Juvenile Court Counselor Specific:
 - (A) Roles and Responsibilities;
 - (B) Juvenile Law;
 - (C) Intake;
 - (D) Risk and Needs Assessment;
 - (E) Report Writing and Documentation;
 - (F) Interviewing; and
 - (G) Driver Safety.

(c) The "Juvenile Court Counselor Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the basic curriculum for delivery of Juvenile Court Counselor basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon successful completion of a Commission-certified training course for Juvenile Court Counselors and Chief Court Counselors, the Director of the school conducting such course shall notify the Commission of the satisfactory achievement of

trainees by submitting a Report of Training Course Completion for each successful trainee.

(e) Employees of the Division of Juvenile Justice who have successfully completed the minimum 160 hour training program accredited by the Commission pursuant to Rule .0236 of this Section after January 1, 2013 who transfer from a Juvenile Justice Officer position to a Juvenile Court Counselor position shall be required to successfully complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Court Counselor under Subparagraph (b)(2) of this Rule.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004;
Amended Eff. May 1, 2014.

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

(a) The basic training course for Juvenile Justice Officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for Juvenile Justice Officers shall include training in the following identified topical areas:

- (1) Juvenile Justice Common Core:
 - (A) Juvenile Justice Overview;
 - (B) Counseling and Communication Skills;
 - (C) Characteristics of Delinquents;
 - (D) Unlawful Workplace Harassment;
 - (E) Professional Ethics;
 - (F) Staff and Juvenile Relationships;
 - (G) Gang Awareness;
 - (H) Situational Awareness and Risk Assessment;
 - (I) Restraints, Controls and Defensive Techniques;
 - (J) Secure Transportation;
 - (K) Mental Health; and
 - (L) Basic Life Support: CPR and First Aid; and
- (2) Juvenile Justice Officer Specific:
 - (A) Treatment Program Operation;
 - (B) Maintaining Documentation of Activities and Behaviors;
 - (C) Basic Group Leadership Skills;
 - (D) Crisis Intervention Techniques;
 - (E) Effective Behavior Management;
 - (F) Health Services Overview; and
 - (G) Trauma and Delinquents.

(c) The "Juvenile Justice Officer Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the basic curriculum for delivery of Juvenile Justice Officer basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety

2211 Schieffelin Road
Apex, North Carolina 27502

(d) Upon successful completion of a Commission-certified training course for Juvenile Justice Officers the Director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

(e) Employees of the Division of Juvenile Justice who have successfully completed the minimum 160 hour training program accredited by the Commission under Rule .0235 of this Section after January 1, 2013 who transfer from a Juvenile Court Counselor position to a Juvenile Justice Officer position shall be required to successfully complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Justice Officer pursuant to Subparagraph (b)(2) of this Rule.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004;
Amended Eff. May 1, 2014.*

**12 NCAC 09B .0241 JUVENILE JUSTICE
SPECIALIZED INSTRUCTOR TRAINING –
RESTRAINTS, CONTROLS AND DEFENSIVE
TECHNIQUES**

(a) The instructor training course requirement for the Department of Public Safety, Division of Juvenile Justice Restraints, Controls and Defensive Techniques Specialized Instructor certification shall consist of at least 70 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each Juvenile Justice Specialized Instructor Training – Restraints, Controls and Defensive Techniques course shall be designed to provide the trainee with the skills and knowledge to perform the function of the Juvenile Justice Restraints, Controls and Defensive Techniques Instructor in the "Basic Training for Juvenile Justice Officers" course and the "Basic Training for Juvenile and Chief Court Counselors" courses, as well as in-service training courses for juvenile justice officers and juvenile and chief court counselors.

(c) Each applicant for enrollment in the Specialized Instructor Training – Restraints, Controls and Defensive Techniques course shall:

- (1) Have completed the criminal justice general instructor training course; and
- (2) Possess a valid CPR certification that includes cognitive and skills testing.

(d) Each Juvenile Justice Specialized Instructor Training – Restraints, Controls and Defensive Techniques course shall include the following identified topical areas:

- (1) Orientation;
- (2) Introduction to Restraints, Controls and Defensive techniques;
- (3) Physical Fitness/Warm-Up and Stretching Exercises;
- (4) Response to Injury;
- (5) Restraints, Controls and Defensive Techniques Basic Techniques;

- (6) Restraint Applications; and
- (7) RCDT Program Student Evaluation and Testing

(e) The Commission-certified school that is certified to offer the Juvenile Justice Specialized Instructor Training – Restraints, Controls and Defensive Techniques course is the Office of Staff Development and Training of the North Carolina Department of Public Safety.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Eff. December 1, 2004;
Amended Eff. May 1, 2014.*

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

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification, except as set out in Paragraph (d) of this Rule. The applicant must apply for certification as a Specialized Instructor within 60 days from the date of completion of a specialized instructor course.

(b) The requirements for certification as a specialized instructor are determined by the expiration date of the existing General Instructor Certification. The following requirements apply during the initial period of certification:

- (1) where certification for both General Probationary Instructor and Specialized Instructor Certification are issued on the same date, the instructor is required to satisfy the teaching requirement for only the general probationary instructor certification. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are 12 months or more until the certifications' expiration date, the instructor must teach 12 hours for each specialized topic for which certification has been issued; and
- (4) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are fewer than 12 months until the certification expiration date, the instructor is not required to teach any hours for the specialized subject.

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

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted and that instruction was provided in a Commission-accredited training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and successfully completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and
 - (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form that the instructor successfully taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-certified training course or a Commission-recognized in-service training course during the three-year period of Specialized Instructor Certification; or
 - (B) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Commission Instructor Evaluation Form.

Upon submission of the required documentation for renewal, the Commission staff shall renew the certification as a Specialized Instructor. Such renewal shall occur at the time of renewal of the General Instructor certification.

(d) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas must be maintained.

(e) All instructors shall remain active during their period of certification. Any Specialized Instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not teach at least 12 hours in each of the specialized topics during the three-year period for which certification was granted. Upon application for re-certification, such applicants shall meet the requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" is permissible. However, such guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

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

Eff. January 1, 1981;

Amended Eff. May 1, 2014; June 1, 2012; November 1, 2007; January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.

12 NCAC 09B .0502 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the Commission issues the certification, unless earlier terminated by action of the Commission. Upon application, the certification may subsequently be renewed by the Commission for three-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0501(b)(2) and (3) of this Section.

(b) To retain certification as a school director, the school director shall:

- (1) Participate in annual training conducted by commission staff;
- (2) Maintain and comply with the current version of the "Basic Law Enforcement Training Course Management Guide";
- (3) Maintain and ensure compliance with the current version of the "Basic Law Enforcement Training Instructor Notebook" assigned to each certified school; and

- (4) Perform the duties and responsibilities of a school director as specifically required in Rule .0202 of this Subchapter.

*History Note: Authority G.S. 17C-6;
Eff. January 1, 1985;
Amended Eff. May 1, 2014; April 1, 2009.*

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors:
 - (A) delivering CPR certifications that include cognitive and skills testing;
 - (B) delivering use of equipment training conducted by a manufacturer, manufacturer's representative or a service provider and documented through a certificate of completion; or
 - (C) delivering Incident Command System training for NIMS (National Incident Management System) compliance who are certified through FEMA (Federal Emergency Management Agency) as Incident Command Instructors.

In addition, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (2) Instructors who teach a required in-service training topic must achieve a passing grade on a topic specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training topic online must also complete the in-service training for the topic he or she will be teaching. Instructors who teach an in-service training topic in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction documented by the Department Head or In-Service Training Coordinator once completed.
- (3) The instructor shall deliver the training consistent with the specifications established in Rules 09E .0105 and .0106.
- (4) The instructor shall report the successful or unsuccessful completion of training for each

officer to the Department Head. Such reporting shall be on a Commission form.

- (5) When the officer fails to qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department Head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

All Commission forms are available for download on the Criminal Justice Standards Division website: <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. July 1, 1989;
Amended Eff. May 1, 2014; February 1, 2013; April 1, 2008;
January 1, 2006; January 1, 2005.*

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

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification. The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) The terms of certification as a specialized instructor shall be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certifications for both General Probationary Instructor and Specialized Instructor are issued on the same date, the instructor shall only be required to satisfy the teaching requirement for the general probationary instructor certification. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes concurrent with an existing active

period of General Instructor Certification, and there are 12 months or more until the certifications' expiration date, the instructor must teach 12 hours for each specialized topic for which certification has been issued; and

- (4) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are fewer than 12 months until the certification expiration date, the instructor is not required to teach any hours for the specialized subject.

(c) The term of certification as a specialized instructor shall not exceed the 36 month period of full General Instructor Certification. The certification may subsequently be renewed by the Commission at the time of renewal of the full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which the Specialized Instructor Certification was granted and that instruction was provided in a Commission-certified training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors and written certification from a School Director and either of the following:

- (1) a favorable written recommendation from a School Director accompanied by certification that the instructor successfully taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-certified training course or a Commission-recognized in-service training course during the three-year period of Specialized Instructor Certification; or
- (2) a written evaluation by a staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification.

(d) Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not successfully teach at least 12 hours in each of the specialized topics during the three-year period for which certification was granted. Upon application for re-certification, such applicants shall be required to meet the requirements of Rule .0310 of this Section.

History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. May 1, 2014; June 1, 2012; January 1, 2006.

12 NCAC 09G .0415 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING – FIREARMS

(a) The instructor training course requirement for Corrections Specialized Instructor Training – Firearms certification shall consist of at least 80 hours of instruction presented during a period of not more than two consecutive weeks.

(b) Each Corrections Specialized Instructor Training – Firearms course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections firearms instructor in the "Basic Training – Correctional Officer" course, "Basic Training - Probation/Parole Officer" course, and in-service training courses for correctional officers and probation/parole officers.

(c) Each Corrections Specialized Firearms Instructor Training course shall include the following topical areas:

- (1) Course Overview;
- (2) Legal Considerations for Firearm Instructors;
- (3) Department of Public Safety, Division of Adult Correction Firearms Training Courses;
- (4) Firearms Safety;
- (5) Range Operations;
- (6) Medical Emergencies on the Range;
- (7) Handgun – Operation, Use and Maintenance:
 - (A) Handgun Training – Classroom and Range;
 - (B) Handgun Low/Limited Light Fire; and
 - (C) Handgun Care and Maintenance;
- (8) Advanced Handgun Training – Classroom and Range;
- (9) Shotgun Operation, Use and Maintenance:
 - (A) Shotgun Training – Classroom and Range;
 - (B) Shotgun Low/Limited Light Fire – Range; and
 - (C) Shotgun Care and Maintenance;
- (10) Special Techniques, Training Aids, and Methods;
- (11) Situational Use of Firearms:
 - (A) The Shooting Decision;
 - (B) Situational Use of Firearms;
 - (C) Situational Exercises – Day; and
 - (D) Situational Exercises – Low/Limited Light; and
- (12) Administrative Matters, Testing, and Evaluation.

(d) The Commission certified school that is certified to offer the "Corrections Specialized Instructor Training - Firearms" course is the Office of Staff Development and Training of the North Carolina Department of Public Safety.

History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. May 1, 2014; April 1, 2008; February 1, 2006;
 August 1, 2004.

12 NCAC 09G .0416 CORRECTIONS SPECIALIZED INSTRUCTOR TRAINING - CONTROLS, RESTRAINTS, AND DEFENSIVE TECHNIQUES

(a) The instructor training course requirement for corrections specialized controls, restraints, and defensive techniques (CRDT) instructor certification shall consist of at least 80 hours of instruction presented during a period of not more than two consecutive weeks.

(b) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections controls, restraints, and defensive techniques instructor in the "Basic Training - Correctional Officer" course, "Basic Training - Probation/Parole Officer" course, and in-service training courses for correctional officers and probation/parole officers.

(c) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall include the following topical areas:

- (1) Introduction to Controls, Restraints, and Defensive Techniques;

- (2) Physical Fitness/Warm-up and Stretching;
- (3) Response to Injury;
- (4) Basic Controls and Techniques;
- (5) Advanced Controls and Techniques;
- (6) Restraint Applications; and
- (7) CRDT Program Student Evaluations and Testing.

(d) The Commission-certified school that is certified to offer the "Corrections Specialized Instructor Training/Controls, Restraints, and Defensive Techniques" course is the Office of Staff Development and Training of the North Carolina Department of Public Safety.

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

Temporary Adoption Eff. January 1, 2001;

Eff. August 1, 2002;

Amended Eff. May 1, 2014; November 1, 2005; August 1, 2004.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the premises (adjacent property boundary) to any significant ambient air concentration that may adversely affect human health. In determining these significant ambient air concentrations, the Division shall be guided by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure (except for asbestos):

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		0.03	1	
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.3×10^{-7}			
asbestos (1332-21-4)	2.8×10^{-6} fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2×10^{-4}			
benzidine and salts (92-87-5)	1.5×10^{-8}			
benzo(a)pyrene (50-32-8)	3.3×10^{-5}			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1×10^{-6}			
beryllium chloride (7787-47-5)	4.1×10^{-6}			
beryllium fluoride (7787-49-7)	4.1×10^{-6}			
beryllium nitrate (13597-99-4)	4.1×10^{-6}			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3×10^{-8}			
bis-chloromethyl ether (542-88-1)	3.7×10^{-7}			
bromine (7726-95-6)				0.2

APPROVED RULES

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
1,3-butadiene (106-99-0)	4.4×10^{-4}			
cadmium (7440-43-9)	5.5×10^{-6}			
cadmium acetate (543-90-8)	5.5×10^{-6}			
cadmium bromide (7789-42-6)	5.5×10^{-6}			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7×10^{-3}			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3×10^{-3}			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
dichlorodifluoromethane (75-71-8)		248		
dichlorofluoromethane (75-43-4)		0.5		
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3×10^{-2}			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0×10^{-4}			
ethylene dichloride (107-06-2)	3.8×10^{-3}			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7×10^{-5}			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6×10^{-8}			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4×10^{-2}		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30

Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1×10^{-6}			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0×10^{-5}			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3×10^{-8}			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9×10^{-1}			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	8.3×10^{-5}			
soluble chromate compounds, as chromium (VI) equivalent		6.2×10^{-4}		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	3.0×10^{-9}			
1,1,1,2-tetrachloro-2,2- difluoroethane (76-11-9)		52		
1,1,2,2-tetrachloro-1,2- difluoroethane (76-12-0)		52		
1,1,2,2-tetrachloroethane (79-34-5)	6.3×10^{-3}			
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9×10^{-2}			
trichlorofluoromethane (75-69-4)			560	
1,1,2-trichloro-1,2,2- trifluoroethane (76-13-1)				950
vinyl chloride (75-01-4)	3.8×10^{-4}			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282;
Eff. May 1, 1990;

Amended Eff. September 1, 1992; March 1, 1992;

Temporary Amendment Eff. July 20, 1997;

Amended Eff. May 1, 2014; March 1, 2010; June 1, 2008; April 1, 2005; April 1, 2001; July 1, 1998

15A NCAC 02Q .0701 APPLICABILITY

With the exceptions in Rule .0702 of this Section, no person shall cause or allow any toxic air pollutant named in 15A NCAC 02D .1104 to be emitted from any facility into the atmosphere at a rate that exceeds the applicable rate(s) in Rule .0711 of this

Section without having received a permit to emit toxic air pollutants as follows:

- (1) new facilities according to Rule .0704 of this Section; or
- (2) modifications according to Rule .0706 of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998;
Amended Eff. May 1, 2014; July 10, 2010; February 1, 2005.*

15A NCAC 02Q .0702 EXEMPTIONS

(a) A permit to emit toxic air pollutants shall not be required under this Section for:

- (1) residential wood stoves, heaters, or fireplaces;
- (2) hot water heaters that are used for domestic purposes only and are not used to heat process water;
- (3) maintenance, structural changes, or repairs that do not change capacity of that process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of any regulated air pollutant or toxic air pollutant;
- (4) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or non-asbestos bearing insulation removal;
- (5) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (6) paving parking lots;
- (7) replacement of existing equipment with equipment of the same size, type, and function if the new equipment:
 - (A) does not result in an increase to the actual or potential emissions of any regulated air pollutant or toxic air pollutant;
 - (B) does not affect compliance status; and
 - (C) fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes to the permit;
- (8) comfort air conditioning or comfort ventilation systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (9) equipment used for the preparation of food for direct on-site human consumption;
- (10) non-self-propelled non-road engines, except generators, regulated by rules adopted by the Environmental Protection Agency under Title II of the federal Clean Air Act;
- (11) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (12) use of fire fighting equipment;

- (13) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the compounds listed in 15A NCAC 02D .1104 if such compounds are applied according to agronomic practices acceptable to the North Carolina Department of Agriculture;
- (14) asbestos demolition and renovation projects that comply with 15A NCAC 02D .1110 and that are being done by persons accredited by the Department of Health and Human Services under the Asbestos Hazard Emergency Response Act;
- (15) incinerators used only to dispose of dead animals or poultry as identified in 15A NCAC 02D .1201(c)(4) or incinerators used only to dispose of dead pets as identified in 15A NCAC 02D .1208(a)(2)(A);
- (16) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or with air pollution control equipment;
- (17) laboratory activities:
 - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
 - (B) bench scale experimentation, chemical or physical analyses, training or instruction from nonprofit, non-production educational laboratories;
 - (C) bench scale experimentation, chemical or physical analyses, training or instruction from hospital or health laboratories pursuant to the determination or diagnoses of illnesses; and
 - (D) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;
- (18) combustion sources as defined in Rule .0703 of this Section except new or modified combustion sources permitted on or after July 10, 2010;
- (19) storage tanks used only to store:
 - (A) inorganic liquids with a true vapor pressure less than 1.5 pounds per square inch absolute;

- (B) fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas, liquefied petroleum gas, or petroleum products with a true vapor pressure less than 1.5 pounds per square inch absolute;
 - (20) dispensing equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;
 - (21) portable solvent distillation systems that are exempted under Rule .0102(c)(1)(I) of this Subchapter;
 - (22) processes:
 - (A) electric motor burn-out ovens with secondary combustion chambers or afterburners;
 - (B) electric motor bake-on ovens;
 - (C) burn-off ovens for paint-line hangers with afterburners;
 - (D) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
 - (E) blade wood planers planing only green wood;
 - (F) saw mills that saw no more than 2,000,000 board feet per year, provided only green wood is sawed;
 - (G) perchloroethylene drycleaning processes with 12-month rolling total consumption of:
 - (i) less than 1366 gallons of perchloroethylene per year for facilities with dry-to-dry machines only;
 - (ii) less than 1171 gallons of perchloroethylene per year for facilities with transfer machines only; or
 - (iii) less than 1171 gallons of perchloroethylene per year for facilities with both transfer and dry-to-dry machines;
 - (23) wood furniture manufacturing operations as defined in 40 CFR 63.801(a) that comply with the emission limitations and other requirements of 40 CFR Part 63 Subpart JJ, provided that the terms of this exclusion shall not affect the authority of the Director under Rule .0712 of this Section;
 - (24) wastewater treatment systems at pulp and paper mills for hydrogen sulfide and methyl mercaptan only;
 - (25) natural gas and propane fired combustion sources with an aggregate allowable heat input value less than 450 million Btu per hour that are the only source of benzene at the facility;
 - (26) emergency engines with an aggregate total horsepower less than 4843 horsepower that are the only source of formaldehyde at the facility;
 - (27) an air emission source that is any of the following:
 - (A) subject to an applicable requirement under 40 CFR Part 61, as amended;
 - (B) an affected source under 40 CFR Part 63, as amended; or
 - (C) subject to a case-by-case MACT permit requirement issued by the Division pursuant to Paragraph (j) of 42 U.S.C. Section 7412, as amended;
 - (28) gasoline dispensing facilities or gasoline service station operations that comply with 15A NCAC 02D .0928 and .0932 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 02D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 02D .0932;
 - (29) the use of ethylene oxide as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale if the emissions from all new and existing sources at the facility described in 15A NCAC 02D .0538(d) are controlled to the degree described in 15A NCAC 02D .0538(d) and the facility complies with 15A NCAC 02D .0538(e) and (f);
 - (30) bulk gasoline plants, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0926, .0932, and .0933; unless the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline plant; or
 - (31) bulk gasoline terminals, including the storage and handling of fuel oils, kerosenes, and jet fuels but excluding the storage and handling of other organic liquids, that comply with 15A NCAC 02D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992, unless:
 - (A) the Director finds that a permit to emit toxic air pollutants is required under Paragraph (b) of this Rule or Rule .0712 of this Section for a particular bulk gasoline terminal; or
 - (B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 02D .0927(i).
- (b) Emissions from the activities identified in Subparagraphs (a)(28) through (a)(31) of this Rule shall be included in determining compliance with the toxic air pollutant requirements

in this Section and shall be included in the permit if necessary to assure compliance. Emissions from the activities identified in Subparagraphs (a)(1) through (a)(27) of this Rule shall not be included in determining compliance with the toxic air pollutant requirements in this Section provided that the terms of this exclusion shall not affect the authority of the Director under Rule .0712 of this Section.

(c) The addition or modification of an activity identified in Paragraph (a) of this Rule shall not cause the source or facility to be evaluated for emissions of toxic air pollutants.

(d) An activity that is exempt from being permitted under this Section is not exempt from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282;

Rule originally codified as part of 15A NCAC 02H .0610;

Eff. July 1, 1998;

Amended Eff. May 1, 2014; July 10, 2010; April 1, 2005; July 1, 2002; July 1, 2000.

15A NCAC 02Q .0703 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- (1) "Actual rate of emissions" means:
 - (a) for existing sources:
 - (i) for toxic air pollutants with an annual averaging period, the average rate or rates at which the source actually emitted the pollutant during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the Director may allow the use of a different, more representative, period.
 - (ii) for toxic air pollutants with a 24-hour or one-hour averaging period, the maximum actual emission rate at which the source actually emitted for the applicable averaging period during the two-year period preceding the date of the particular modification and that represents normal operation of the source. If this period does not represent normal operation, the Director may require or allow the use of a different, more representative, period.

- (b) for new or modified sources, the average rate or rates, determined for the applicable averaging period(s), that the proposed source will actually emit the pollutant as determined by engineering evaluation.
- (2) "Applicable averaging period" means the averaging period for which an acceptable ambient limit has been established by the Commission in Rule 15A NCAC 02D .1104.
- (3) "Bioavailable chromate pigments" means the group of chromium (VI) compounds consisting of calcium chromate (CAS No.13765-19-0), calcium dichromate (CAS No. 14307-33-6), strontium chromate (CAS No. 7789-06-2), strontium dichromate (CAS No. 7789-06-2), zinc chromate (CAS No. 13530-65-9), and zinc dichromate (CAS No. 7789-12-0).
- (4) "CAS Number" means the Chemical Abstract Service registry number identifying a particular substance.
- (5) "Chromium (VI) equivalent" means the molecular weight ratio of the chromium (VI) portion of a compound to the total molecular weight of the compound multiplied by the associated compound emission rate or concentration at the facility.
- (6) "Combustion sources" means boilers, space heaters, process heaters, internal combustion engines, and combustion turbines, which burn only wood or unadulterated fossil fuel. It does not include incinerators, waste combustors, kilns, dryers, or direct heat exchange industrial processes.
- (7) "Creditable emissions" means actual decreased emissions that have not been previously relied on to comply with Subchapter 15A NCAC 02D. All creditable emissions shall be enforceable by permit condition.
- (8) "Cresol" means o-cresol, p-cresol, m-cresol, or any combination of these compounds.
- (9) "Evaluation" means:
 - (a) a determination that the emissions from the facility, including emissions from sources exempted by Rule .0702(a)(28) through (31) of this Section, are less than the rate listed in Rule .0711 of this Section; or
 - (b) a determination of ambient air concentrations as described under 15A NCAC 02D .1106, including emissions from sources exempted by Rule .0702(a)(28) through (31) of this Section.
- (10) "GACT" means any generally available control technology emission standard applied to an area source or facility pursuant to Section 112 of the federal Clean Air Act.

- (11) "Hexane isomers except n-hexane" means 2-methyl pentane, 3-methyl pentane, 2,2-dimethyl butane, 2,3-dimethyl butane, or any combination of these compounds.
- (12) "MACT" means any maximum achievable control technology emission standard applied to a source or facility pursuant to Section 112 federal Clean Air Act.
- (13) "Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation under this Section using the best technology that is available taking into account, on a case-by-case basis, human health, energy, environmental, and economic impacts and other costs.
- (14) "Modification" means any physical changes or changes in the methods of operation that result in a net increase in emissions or ambient concentration of any pollutant listed in Rule .0711 of this Section or that result in the emission of any pollutant listed in Rule .0711 of this Section not previously emitted.
- (15) "Net increase in emissions" means for a modification the sum of any increases in permitted allowable and decreases in the actual rates of emissions from the proposed modification from the sources at the facility for which the air permit application is being filed. If the net increase in emissions from the proposed modification is greater than zero, all other increases in permitted allowable and decreases in the actual rates of emissions at the facility within five years immediately preceding the filing of the air permit application for the proposed modification that are otherwise creditable emissions may be included.
- (16) "Nickel, soluble compounds" means the soluble nickel salts of chloride (NiCl_2 , CAS No. 7718-54-9), sulfate (NiSO_4 , CAS No. 7786-81-4), and nitrate ($\text{Ni}(\text{NO}_3)_2$, CAS No. 13138-45-9).
- (17) "Non-specific chromium (VI) compounds" means the group of compounds consisting of any chromium (VI) compounds not specified in this Section as a bioavailable chromate pigment or a soluble chromate compound.
- (18) "Polychlorinated biphenyls" means any chlorinated biphenyl compound or mixture of chlorinated biphenyl compounds.
- (19) "Pollution prevention plan" means a written description of current and projected plans to reduce, prevent, or minimize the generation of pollutants by source reduction and recycling and includes a site-wide assessment of pollution prevention opportunities at a facility that addresses sources of air pollution, water pollution, and solid and hazardous waste generation.
- (20) "SIC" means standard industrial classification code.
- (21) "Soluble chromate compounds" means the group of chromium (VI) compounds consisting of ammonium chromate (CAS No. 7788-98-9), ammonium dichromate (CAS No. 7789-09-5), chromic acid (CAS No. 7738-94-5), potassium chromate (CAS No. 7789-00-6), potassium dichromate (CAS No. 7778-50-9), sodium chromate (CAS No. 7775-11-3), and sodium dichromate (CAS No. 10588-01-9).
- (22) "Toxic air pollutant" means any of those carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants listed in 15A NCAC 02D .1104.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282;
Rule originally codified as part of 15A NCAC 02H .0610;
Eff. July 1, 1998;
Amended Eff. May 1, 2014; April 1, 2001.

15A NCAC 02Q .0704 NEW FACILITIES

- (a) This Rule applies only to new facilities.
- (b) The owner or operator of a facility required to have a permit because of applicability of a Section in 15A NCAC 02D, other than 15A NCAC 02D .1100, are required to receive a permit to emit toxic air pollutants before beginning construction, and shall comply with the permit when beginning operation. This Paragraph does not apply to facilities whose emissions of toxic air pollutants result only from sources exempted under Rule .0102 of this Subchapter.
- (c) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if emissions of any toxic air pollutant exceed the levels contained in Rule .0711 of this Section.
- (d) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants listed in 15A NCAC 02D .1104. All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998;
Amended Eff. May 1, 2014.

15A NCAC 02Q .0705 EXISTING FACILITIES AND SIC CALLS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998;
Repealed Eff. May 1, 2014.

15A NCAC 02Q .0706 MODIFICATIONS

(a) The owner or operator shall comply with Paragraphs (b) and (c) of this Rule for modification of any facility required to have a permit because of applicability of a Section in 15A NCAC 02D, other than 15A NCAC 02D .1100. This Paragraph does not apply to facilities whose emissions of toxic air pollutants result only from insignificant activities, as defined in Rule .0103(20) of this Subchapter, or sources exempted under Rule .0102 of this Subchapter.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if the modification results in:

- (1) a net increase in emissions or ambient concentration of any toxic air pollutant that the facility was emitting before the modification; or
- (2) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and
- (2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation.

(d) If a source is included in an air toxic evaluation, but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, then the emissions from this source shall be reduced by the time that the new or modified source begins operating such that the facility shall be in compliance with the rules in this Section and 15A NCAC 02D .1100.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282;

Rule originally codified as part of 15A NCAC 2H .0610; Eff. July 1, 1998;

Amended Eff. May 1, 2014; July 10, 2010; December 1, 2005; April 1, 2005.

15A NCAC 02Q .0709 DEMONSTRATIONS

(a) Demonstrations. The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 02D .1104 to be exceeded beyond the premises (adjacent property boundary); or

(2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (adjacent property boundary) for the subject toxic air pollutant shall not adversely affect human health (e.g., a risk assessment specific to the facility) though the concentration is higher than the acceptable ambient level in 15A NCAC 02D .1104 by providing one of the following demonstrations:

- (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 02D .1104 is not inhabitable or occupied for the duration of the averaging time of the pollutant of concern; or
- (B) new toxicological data that show that the acceptable ambient level in 15A NCAC 02D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the new toxicological data.

(b) Technical Infeasibility and Economic Hardship. This Paragraph shall not apply to any incinerator covered under 15A NCAC 02D .1200. The owner or operator of any source constructed before May 1, 1990, or a perchloroethylene dry cleaning facility subject to a GACT standard under 40 CFR 63.320 through 63.325, or a combustion source as defined in Rule .0703 of this Section permitted before July 10, 2010, who cannot supply a demonstration described in Paragraph (a) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 is technically infeasible, as the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 02D .1104 from being exceeded does not exist; or
- (2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 would result in serious economic hardship. In deciding if a serious economic hardship exists, the Commission or its delegate shall consider market impact; impacts on local, regional and state economy; risk of closure; capital cost of compliance; annual incremental compliance cost; and environmental and health impacts.

If the owner or operator makes a demonstration to the satisfaction of the Commission or its delegate pursuant to Subparagraphs (1) or (2) of this Paragraph, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years from the date that the permit is issued for the maximum feasible control.

(c) Pollution Prevention Plan. The owner or operator of any facility using the provisions of Part (a)(2)(A) or Paragraph (b) of this Rule shall develop and implement a pollution prevention plan consisting of the following elements:

- (1) statement of corporate and facility commitment to pollution prevention;
- (2) identification of current and past pollution prevention activities;
- (3) timeline and strategy for implementation;
- (4) description of ongoing and planned employee education efforts; and
- (5) identification of internal pollution prevention goal selected by the facility and expressed in either qualitative or quantitative terms.

The facility shall submit the pollution plan along with the permit application. The pollution prevention plan shall be maintained on site. A progress report on implementation of the plan shall be prepared by the facility annually and be made available to Division personnel for review upon request.

(d) Modeling Demonstration. If the owner or operator of a facility demonstrates by modeling that no toxic air pollutant emitted from the facility exceeds the acceptable ambient level values set out in 15A NCAC 02D .1104 beyond the facility's premises, further modeling demonstration is not required with the permit application. However, the Commission may still require more stringent emission levels according to its analysis under 15A NCAC 02D .1107.

(e) Change in Acceptable Ambient Level. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a

permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until:

- (1) The permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation, excluding sources exempt from evaluation in Rule .0702 of this Section, showing that the new acceptable ambient level will not be exceeded. If additional time is needed to bring the facility into compliance with the new acceptable ambient level, the owner or operator shall negotiate a compliance schedule with the Director. The compliance schedule shall be written into the facility's permit and final compliance shall not exceed two years from the effective date of the change in the acceptable ambient level; or
- (2) The owner or operator of the facility requests that the condition be changed and submits along with that request an air toxic evaluation, excluding sources exempt from evaluation in Rule .0702 of this Section, showing that the new acceptable ambient level shall not be exceeded.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107; 143-215.108; 143B-282;

Rule originally codified as part of 15A NCAC 2H .0610;

Eff. July 1, 1998;

Amended Eff. May 1, 2014; July 10, 2010; February 1, 2005.

15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT

(a) A permit to emit toxic air pollutants is required for any facility where one or more emission release points are obstructed or non-vertically oriented whose actual rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)		0.4	0.22	
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.016			
asbestos (1332-21-4)	5.7×10^{-3}			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			

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bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	11			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110-80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n-hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)		1.7		
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		

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nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		1100		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) A permit to emit toxic air pollutants is required for any facility where all emission release points are unobstructed and vertically oriented whose actual rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				28.43
acetic acid (64-19-7)				3.90
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		1.3	1.05	
ammonia (7664-41-7)				2.84
aniline (62-53-3)			1.05	
arsenic and inorganic arsenic compounds	0.194			
asbestos (1332-21-4)	7.748×10^{-3}			
aziridine (151-56-4)		0.3		
benzene (71-43-2)	11.069			
benzidine and salts (92-87-5)	1.384×10^{-3}			
benzo(a)pyrene (50-32-8)	3.044			
benzyl chloride (100-44-7)			0.53	
beryllium (7440-41-7)	0.378			
beryllium chloride (7787-47-5)	0.378			
beryllium fluoride (7787-49-7)	0.378			

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beryllium nitrate (13597-99-4)	0.378			
bioavailable chromate pigments, as chromium (VI) equivalent	0.008			
bis-chloromethyl ether (542-88-1)	0.034			
bromine (7726-95-6)				0.21
1,3-butadiene (106-99-0)	40.585			
cadmium (7440-43-9)	0.507			
cadmium acetate (543-90-8)	0.507			
cadmium bromide (7789-42-6)	0.507			
carbon disulfide (75-15-0)		7.8		
carbon tetrachloride (56-23-5)	618.006			
chlorine (7782-50-5)		1.6		0.95
chlorobenzene (108-90-7)		92.7		
chloroform (67-66-3)	396.631			
chloroprene (126-99-8)		18.5	3.69	
cresol (1319-77-3)			2.32	
p-dichlorobenzene (106-46-7)				69.50
dichlorodifluoromethane (75-71-8)		10445.4		
dichlorofluoromethane (75-43-4)		21.1		
di(2-ethylhexyl)phthalate (117-81-7)		1.3		
dimethyl sulfate (77-78-1)		0.1		
1,4-dioxane (123-91-1)		23.6		
epichlorohydrin (106-89-8)	7655.891			
ethyl acetate (141-78-6)			147.41	
ethylenediamine (107-15-3)		12.6	2.63	
ethylene dibromide (106-93-4)	36.896			
ethylene dichloride (107-06-2)	350.511			
ethylene glycol monoethyl ether (110-80-5)		5.1		2.00
ethylene oxide (75-21-8)	2.490			
ethyl mercaptan (75-08-1)			0.11	
fluorides		0.7	0.26	
formaldehyde (50-00-0)				0.16
hexachlorocyclopentadiene (77-47-4)		2.5×10^{-2}	0.01	
hexachlorodibenzo-p-dioxin (57653- 85-7)	0.007			
n-hexane (110-54-3)		46.3		
hexane isomers except n-hexane				379.07
hydrazine (302-01-2)		2.5×10^{-2}		
hydrogen chloride (7647-01-0)				0.74
hydrogen cyanide (74-90-8)		5.9	1.16	
hydrogen fluoride (7664-39-3)		1.3		0.26
hydrogen sulfide (7783-06-4)		5.1		
maleic anhydride (108-31-6)		0.5	0.11	
manganese and compounds		1.3		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		2.5×10^{-2}		
manganese tetroxide (1317-35-7)		0.3		
mercury, alkyl		2.5×10^{-3}		
mercury, aryl and inorganic compounds		2.5×10^{-2}		
mercury, vapor (7439-97-6)		2.5×10^{-2}		
methyl chloroform (71-55-6)		505.4		257.98
methylene chloride (75-09-2)	2213.752		1.79	
methyl ethyl ketone (78-93-3)		155.8		93.19
methyl isobutyl ketone (108-10-1)		107.8		
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		2.5×10^{-2}		
nickel metal (7440-02-0)		0.3		

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nickel, soluble compounds, as nickel		2.5 x 10 ⁻²		
nickel subsulfide (12035-72-2)	0.194			
nitric acid (7697-37-2)				1.05
nitrobenzene (98-95-3)		2.5	0.53	
n-nitrosodimethylamine (62-75-9)	4.612			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.008			
pentachlorophenol (87-86-5)		0.1	0.03	
perchloroethylene (127-18-4)	17525.534			
phenol (108-95-2)			1.00	
phosgene (75-44-5)		0.1		
phosphine (7803-51-2)				0.14
polychlorinated biphenyls (1336-36-3)	7.656			
soluble chromate compounds, as chromium (VI) equivalent		2.6 x 10 ⁻²		
styrene (100-42-5)			11.16	
sulfuric acid (7664-93-9)		0.5	0.11	
tetrachlorodibenzo-p-dioxin (1746-01-6)	2.767 x 10 ⁻⁴			
1,1,1,2-tetrachloro-2,2-difluoroethane (76-11-9)		2190.2		
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		2190.2		
1,1,2,2-tetrachloroethane (79-34-5)	581.110			
toluene (108-88-3)				58.97
toluene diisocyanate, 2,4-(584-84-9) and 2,6-(91-08-7) isomers		8.4 x 10 ⁻³		
trichloroethylene (79-01-6)	5442.140			
trichlorofluoromethane (75-69-4)			589.66	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				1000.32
vinyl chloride (75-01-4)	35.051			
vinylidene chloride (75-35-4)		5.1		
xylene (1330-20-7)		113.7		68.44

(c) For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph (a) or (b) as applicable. These pollutants are:

- (1) acetaldehyde (75-07-0);
- (2) acetic acid (64-19-7);
- (3) acrolein (107-02-8);
- (4) ammonia (7664-41-7);
- (5) bromine (7726-95-6);
- (6) chlorine (7782-50-5);
- (7) formaldehyde (50-00-0);
- (8) hydrogen chloride (7647-01-0);
- (9) hydrogen fluoride (7664-39-3); and
- (10) nitric acid (7697-37-2).

History Note: Authority G.S. 143-215.3(a)(1); 143-215-107; 143-215.108; 143B-282;

Rule originally codified as part of 15A NCAC 02H .0610;

Eff. July 1, 1998;

Amended Eff. May 1, 2014; January 1, 2010; June 1, 2008; April 1, 2005; February 1, 2005; April 1, 2001.

**15A NCAC 02Q .0714 WASTEWATER
TREATMENT SYSTEMS AT PULP AND
PAPER MILLS**

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65;
143-215.66; 143B-282;

Eff. April 1, 2005;

Repealed Eff. May 1, 2014.

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>; and
 - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.

- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet shall migrate, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas except for:
 - (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
 - (b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Sub-item (1)(a) of this Rule. Photo copies are available at no charge.

- (4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:
 - (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the

website referenced in Sub-item (1)(a) of this Rule.

- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. May 1, 2014; February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

15A NCAC 10A .1301 FUNDING SOURCES

The Wildlife Resources Commission shall direct at least 10 percent of compensatory restitution associated with replacement costs and investigative costs as defined in G.S. 15A-1343(b1)(5) and specified in Rules 15A NCAC 10B .0117 and 15A NCAC 10C .0215 to the Wildlife Poacher Reward Fund.

History Note: Authority G.S. 15A-1343; 113-134; 113-294;
Eff. May 1, 2014.

15A NCAC 10A .1302 OFFENSES AND REWARD AMOUNTS

- (a) Rewards shall be paid only for information resulting in the arrest and conviction of persons who have committed Class 1 or Class 2 misdemeanors specified in G.S. 113-294 and G.S. 113-337, and Class 1 misdemeanors involving wildlife resources specified in G.S. 113-264(b).
- (b) The reward amount shall be equivalent to the amount of the fine, replacement costs, or restitution assessed by the court, whichever is greatest, not to exceed one thousand dollars (\$1,000). If no fine, replacement cost, or restitution is assessed, including in cases that result in a prayer for judgment, the reward shall be one hundred dollars (\$100.00).

History Note: Authority G.S. 113-134; 113-264; 113-294; 113-294.1; 113-337;
Eff. May 1, 2014.

15A NCAC 10A .1303 ELIGIBILITY

- (a) Rewards shall be paid only to individuals who provide information resulting in the arrest and conviction of persons who

have committed the offenses specified in Rule .1302(a) of this Section. If more than one individual provides information resulting in the arrest of a person for the same offense, the Commission shall pay reward money in equal amounts to each individual not to exceed the amount specified in Rule .1302(b) of this Section.

(b) Rewards shall be paid after the final disposition of a case resulting in a conviction or a prayer for judgment. For purposes of this Rule, a conviction shall be as defined in G.S. 113-171(a).

(c) The following individuals are not eligible to receive reward money:

- (1) any current Wildlife Resources Commission employee or members of his or her immediate family;
- (2) any current Wildlife Resources Commissioner;
- (3) any sworn law enforcement officer;
- (4) the perpetrator of the crime for which the information has been given and any accomplice or accessory to that crime; and
- (5) any individual who refuses to provide the Commission with his or her name and contact information.

History Note: Authority G.S. 113-134; 113-171; 113-294.1;
Eff. May 1, 2014.

15A NCAC 10B .0116 PERMITTED ARCHERY EQUIPMENT

(a) Only longbows and recurved bows having a minimum pull of 40 pounds, compound bows having a minimum pull of 35 pounds, and crossbows shall be used for taking game.

(b) Only arrows with a fixed minimum broadhead width of seven-eighths of an inch or a mechanically opening broadhead with a width of at least seven-eighths of an inch in the open position shall be used for taking bear, deer, or wild turkey. Blunt-type arrow heads may be used in taking small animals and birds including rabbits, squirrels, quail, grouse, and pheasants. Poisonous, drugged, barbed, or explosive arrowheads shall not be used for taking any game.

(c) Crossbows shall have a minimum pull rated at least 100 pounds. Heads on bolts used with crossbows shall conform to those described for arrows in Paragraph (b) of this Rule.

History Note: Authority G.S. 113-134; 113-291.1(a);
Eff. September 1, 1980;

Amended Eff. August 1, 2014; August 1, 2012; July 10, 2010; May 1, 2007; August 1, 2002; July 1, 2000; July 1, 1998; July 1, 1996; August 1, 1990.

15A NCAC 10B .0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums, and raccoon that have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossums, and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B.0106(e)(4) and 15A NCAC 10B .0127.

(b) Except as otherwise provided in Paragraphs (a), (d), and (e) of this Rule, the sale of game birds and game animals or parts thereof is prohibited, except that processed products other than those made from edible portions may be sold provided that no label or advertisement identifies the product as a game bird, game animal, or part thereof and provided further that the game bird or game animal was lawfully acquired. and the product is not readily identifiable as a game bird or game animal, or part thereof.

(c) The sale of edible portions or products of game birds and game animals is prohibited, except as may be otherwise provided by statute.

(d) The pelt or feathers of deer, elk, fox, pheasant, quail, rabbit, or squirrel (fox and gray) may be bought or sold for the purpose of making fishing flies provided that the source of these animals can be documented as being legally obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with 50 C.F.R. 20.91 which is hereby incorporated by reference, including subsequent amendments and editions.

(e) The Executive Director or his designee may issue Trophy Wildlife Sale permits as authorized in G.S. 113-274 for the sale of lawfully taken and possessed individual dead wildlife specimens or their parts that are mounted, stuffed, or otherwise permanently preserved that may be sold under G.S. 113-291.3. A copy of the permit must be retained with the specimen.

History Note: Authority G.S. 113-134; 113-273; 113-274; 113-276.2; 113-291.3; 113-337; 50 C.F.R. 20.91; Eff. November 9, 1980; Amended Eff. May 1, 2014; August 1, 2002; April 1, 1991; February 1, 1990.

15A NCAC 10B .0120 TAKING DEER AND BEAR WITH HANDGUNS

Handguns of any type may be used to take deer and bear. Ammunition of any type may be used to take deer and bear, unless otherwise prohibited by state or federal law.

History Note: Authority G.S. 113-134; 113-291.1; Eff. October 1, 1983; Amended Eff. August 1, 2014; June 1, 2005.

15A NCAC 10B .0202 BEAR

(a) Open Seasons for hunting bear shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of Surry, Wilkes, Caldwell, Burke, and Cleveland counties.
- (2) Second Monday in November to January 1 in all of Bladen, Carteret, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender, and Sampson counties.
- (3) First Monday in December to the third Saturday thereafter in Brunswick Columbus and Robeson counties.

(4) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Camden, Chowan, Craven, Dare, Edgecombe, Greene, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pasquotank, Pitt, Tyrrell, Washington, Wayne, and Wilson counties.

(5) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Currituck, Gates, Hertford, and Perquimans counties.

(6) Concurrent with the open season for all lawful weapons for hunting deer as specified in 15A NCAC 10B .0203(a)(1) in Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham, Davie, Davidson, Durham, Franklin, Forsyth, Gaston, Granville, Guilford, Harnett, Hoke, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, Warren, Wake, and Yadkin counties.

(b) Restrictions

(1) For purposes of this Paragraph, "bait" means any natural, unprocessed food product that is not a processed food product as defined in G.S. 113-294(r) and is not a bear bait attractant, including scented sprays, aerosols, scent balls, and scent powders.

(2) Bears may be taken with the aid of bait from the first open Monday through the following Saturday only in the counties in Subparagraphs (a)(1) through (a)(5) of this Rule.

(3) Bears shall not be taken while in the act of consuming bait.

(4) Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraph (a)(6) of this Rule.

(5) Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Anson west of N.C. Hwy 742, Cabarrus, Chatham, Davie, Davidson, Franklin, Forsyth, Gaston, Guilford, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Union, and Wake south of N.C. Hwy 98. In all other counties and parts of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.

(c) No Open Season. There is no open season in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke, and Caldwell counties--Daniel Boone bear sanctuary except by permit only
Beaufort, Bertie, and Washington counties--Bachelor Bay bear sanctuary

Beaufort and Pamlico counties--Gum Swamp bear sanctuary
 Bladen County--Suggs Mill Pond bear sanctuary
 Brunswick County--Green Swamp bear sanctuary
 Buncombe, Haywood, Henderson, and Transylvania counties--Pisgah bear sanctuary
 Carteret, Craven, and Jones counties--Croatan bear sanctuary
 Clay County--Fires Creek bear sanctuary
 Columbus County--Columbus County bear sanctuary
 Currituck County--North River bear sanctuary
 Dare County--Bombing Range bear sanctuary except by permit only
 Haywood County--Harmon Den bear sanctuary
 Haywood County--Sherwood bear sanctuary
 Hyde County--Gull Rock bear sanctuary
 Hyde County--Pungo River bear sanctuary
 Jackson County--Panthertown-Bonas Defeat bear sanctuary
 Macon County--Standing Indian bear sanctuary
 Macon County--Wayah bear sanctuary
 Madison County--Rich Mountain bear sanctuary
 McDowell and Yancey counties--Mt. Mitchell bear sanctuary except by permit only
 Mitchell and Yancey counties--Flat Top bear sanctuary
 Wilkes County--Thurmond Chatham bear sanctuary

(d) The daily bag limit is one, the possession limit is one, and the season limit is one.

(e) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305;

Eff. February 1, 1976;

Amended Eff. July 1, 1998; September 1, 1995; July 1, 1995;

July 1, 1994; April 14, 1992;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2002;

Amendment Eff. August 1, 2002;

Temporary Amendment Eff. September 1, 2003;

Temporary Amendment Expired Eff. December 27, 2003;

Amended Eff. August 1, 2014; August 1, 2012; August 1, 2010;

May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

(a) Open Seasons (All Lawful Weapons) for hunting deer:

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin,

Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties.

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(h) for seasons on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

(B) Saturday before Thanksgiving through January 1 in all of Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes*, and Yadkin counties.

*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, and Yancey counties.

(D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties.

(E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

(F) Monday of Thanksgiving week through the fifth Saturday after

- Thanksgiving Day in all of Cleveland, Polk, and Rutherford counties, except for South Mountain Game Land.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph: (Refer to 15A NCAC 10D .0103 for either-sex deer seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in those parts of Currituck County known as the Currituck National Wildlife Refuge and the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either-sex deer hunts. First Saturday in October for youth either-sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission; the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission. A youth is defined as a person under 16 years of age.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe*, Haywood, Henderson, Madison, and Transylvania counties.**
*Except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280
**Refer to 15A NCAC 10D .0103 for either-sex deer seasons on game lands that differ from the days identified in this Subparagraph
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Avery, Burke, Caldwell, McDowell, Mitchell, and Yancey counties.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland, Polk, and Rutherford counties.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln, and Gaston counties and in the following parts of counties:
Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and
Henderson. That part east of NC 191 and north and west of NC 280.
- (b) Open Seasons (Bow and Arrow) for hunting deer:
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and

parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.

- (C) Saturday on or nearest September 10 to the Sunday prior to the opening of the blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule to the Sunday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland, Polk, and Rutherford counties.

- (D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
- (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(c) Open Seasons (Blackpowder Firearms and Bow and Arrow) for hunting deer:

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with blackpowder firearms and bow and arrow during the following seasons:

- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.

*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.

- (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland, Polk, and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.

- (D) The fourth Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (a)(1) of this Rule, and on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.

(2) Restrictions

- (A) Deer of either sex may be taken during blackpowder firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of this season only in all other counties.
- (B) Dogs shall not be used for hunting deer during the blackpowder firearms and bow and arrow seasons, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).

- (3) As used in this Paragraph, blackpowder firearms means "Any firearm - including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system - manufactured in or before 1898; any replica of this type of firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; and any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading handgun that is designed to use blackpowder, blackpowder substitute, or any other propellant loaded through the muzzle and that cannot use fixed ammunition."

(d) Open Season (Urban Season) for hunting deer:

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the State, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.
- (2) Participation. Cities that intend to participate in the urban season must send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee at 1722 Mail Service Center, Raleigh, N.C. 27699-1722. Cities must also submit a map of the city's boundaries within which the urban season shall apply.
- (3) Restrictions:
 - (A) Dogs shall not be used for hunting deer during the urban season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
 - (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) Bag limits. In and east of Vance, Franklin, Wake, Harnett, Moore, and Richmond counties, the possession limit is six deer, up to four of which may be deer with visible antlers. In all other counties of the state the possession limit is six deer, up to two of which may be deer with visible antlers. The season limit in all counties of the State, is six deer. In addition to the bag limits described above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card on lands others than lands enrolled in the Commission's game land program during any open deer season in all counties and parts of counties of the State identified in Part (G) of Subparagraph (a)(2) of this Rule. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit. Hunters may also use the bonus antlerless harvest report cards for deer harvested during the season described in Paragraph (d) of this Rule within the boundaries of participating municipalities, except on State-owned game lands. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program (DMAP) as described in G.S. 113-291.2(e) for those individuals using Commission-issued DMAP tags and reporting harvest as described on the DMAP license. Season bag limits shall be set by the number of DMAP tags issued and in the hunters' possession. All deer harvested under this program, regardless of the date of harvest, shall be tagged with these DMAP tags and reported as instructed on the DMAP license. The hunter does

not have to validate the Big Game Harvest Report Card provided with the hunting license for deer tagged with the DMAP tags. Any deer harvested on lands enrolled in the DMAP and not tagged with DMAP tags may only be harvested during the regularly established deer seasons subject to all the restrictions of those seasons, including bag limits, and reported using the big game harvest report card or the bonus antlerless harvest report card.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. August 1, 2014; August 1, 2013; August 1, 2012; August 1, 2011; July 10, 2010; June 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10C .0203 RECIPROCAL LICENSE AGREEMENTS

(a) Virginia. In accordance with a reciprocal license agreement between the States of Virginia and North Carolina, all valid licenses and permits authorizing sport fishing and legally obtained from the Virginia Department of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing by means of rod and reel, hook and line, casting, or trotline in the Dan River east of the Union Street Dam at Danville, and east of the mouth of Difficult Creek on the Staunton River arm of Kerr Reservoir to the Gaston Dam on the Roanoke River, including all tributary waters lying in either Virginia or North Carolina that are accessible by boat from the main bodies of the Kerr and Gaston Reservoirs, or from the Island Creek subimpoundment. Senior citizen and juvenile license exemptions authorized by either state will be honored by both states. In addition, all valid fishing licenses and permits legally obtained from the Virginia Department of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing with rod and reel, hook and line or by casting in that portion of the New River between the confluence of the North and South forks of the New River in North Carolina (Alleghany County) and the confluence of the New and Little Rivers in Virginia (Grayson County).

(b) Georgia. In accordance with a reciprocal license agreement between the States of North Carolina and Georgia, all valid statewide fishing licenses, permits, and license exemptions required by and legally obtained from the North Carolina Wildlife Resources Commission or the Georgia Department of Natural Resources, or duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and

line in all of Chatuge Reservoir including all tributary waters lying in either Georgia or North Carolina that are accessible by boat from the main body of Chatuge Reservoir. All persons fishing in the waters of Chatuge Reservoir beyond the bounds of the state from which they hold a valid fishing license, shall be authorized to fish with said license only from boats not anchored to the shore or to a pier or boat dock connecting to the shore.

(c) Tennessee. In accordance with a reciprocal license agreement between the States of North Carolina and Tennessee, all valid statewide fishing licenses obtained from the North Carolina Wildlife Resources Commission or the Tennessee Wildlife Resources Agency, or the duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line or fishing in designated mountain trout waters, in that portion of Slick Rock Creek that coincides with the state line between North Carolina and Tennessee and in all of Calderwood Reservoir, when fishing from boat.

History Note: Authority G.S. 113-134; 113-275; 113-304; Eff. February 1, 1976; Amended Eff. August 1, 2014; July 1, 1998; July 1, 1995; July 1, 1991.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. For the purposes of this Rule, "artificial lure" means a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell. "Natural bait" means any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell. The waters listed herein or in 15A NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (a)(1)(A) through (Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein.

- (A) Alleghany County:
 - New River (not trout water)
 - Little River (Whitehead to McCann Dam) [Delayed

Harvest Regulations apply to portion between Whitehead and a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]

- Brush Creek (NC 21 bridge to confluence with Little River, except where posted against trespass)
- Big Pine Creek
- (Big) Glade Creek
- Bledsoe Creek
- Pine Swamp Creek
- South Fork New River (not trout water)
- Prather Creek
- Cranberry Creek
- Piney Fork
- Meadow Fork

(B) Ashe County:

- New River (not trout waters)
- North Fork New River (Watauga County line to Sharp Dam)
- Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River) [Delayed Harvest Regulations apply to portion between SR 1324 bridge and North Fork New River. See Subparagraph (a)(5) of this Rule.]
- Buffalo Creek (SR 1133 bridge to NC 194-88 bridge)
- Big Laurel Creek
- Three Top Creek (portion not on game lands)
- South Fork New River (Todd Island park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule]
- Cranberry Creek (Alleghany County line to South Fork New River)
- Nathans Creek

- Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Roan Creek
Beaver Creek
Old Fields Creek
- (C) Avery County:
Nolichucky River (not trout waters)
North Toe River – upper (Watauga Street to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespass)
North Toe River – lower (SR 1164 to Mitchell County line, except where posted against trespass)
Squirrel Creek
Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line)
Wildcat Lake
Catawba River (not trout water)
Johns River (not trout water)
Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
Buck Timber Creek [Not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
Cary Flat Branch [Not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
Boyde Coffey Lake
Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
Milltimber Creek
- (D) Buncombe County:
- French Broad River (not trout water)
Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
Dillingham Creek (Corner Rock Creek to Ivy Creek)
Stony Creek
Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
Bent Creek (headwaters to N.C. Arboretum boundary line)
Lake Powhatan
Rich Branch (downstream from confluence with Rocky Branch)
Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
Catawba River (Muddy Creek to the City of Morganton water intake dam) [Special Regulations apply. See Subparagraph (a)(7) of this Rule.]
South Fork Catawba River (not trout water)
Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Johns River (not trout water)
Parks Creek (portion not on game lands not trout water)
Carroll Creek (game lands portion above SR 1405)

- (F) Linville River (portion within Linville Gorge Wilderness Area, and portion below Lake James powerhouse from upstream bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:
- Catawba River (not trout water)
 - Johns River (not trout water)
 - Wilson Creek (game lands portion downstream of Lost Cove Creek to Brown Mountain Beach dam, except where posted against trespass) [Delayed Harvest Regulations apply to game lands portion between Lost Cove Creek and Phillips Branch. See Subparagraph (a)(5) of this Rule.]
 - Estes Mill Creek (not trout water)
 - Mulberry Creek (portion not on game lands not trout water)
 - Boone Fork [Not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
 - Boone Fork Pond
 - Yadkin River (Happy Valley Ruritan Community Park to SR 1515)
 - Buffalo Creek (mouth of Joes Creek to McCloud Branch)
 - Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)
- (G) Cherokee County:
- Hiwassee River (not trout water)
 - Shuler Creek (Joe Brown Highway (SR 1325) bridge to Tennessee line)
 - Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 - Valley River (headwaters to US 19 business bridge in Murphy)
 - Hyatt Creek (Big Dam Branch to Valley River)
 - Junaluska Creek (Ashturn Creek to Valley River)
- (H) Clay County:
- Hiwassee River (not trout water)
 - Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Fires Creek (foot bridge in the US Forest Service Fires Creek Picnic Area to SR 1300)
 - Tusquitee Creek (headwaters to lower SR 1300 bridge)
 - Nantahala River (not trout water)
 - Buck Creek (game land portion downstream of US 64 bridge)
- (I) Graham County:
- Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah River (not trout water)
 - Yellow Creek (Lake Santeelah hydropower pipeline to Cheoah River)
 - Santeelah Reservoir (not trout water)
 - West Buffalo Creek
 - Santeelah Creek (Johns Branch to Lake Santeelah)
 - Big Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - (Big) Snowbird Creek (USFS Road 2579 to SR 1127 bridge)
 - Tulula Creek (headwaters to lower bridge on SR 1275)
 - Cheoah Reservoir
 - Fontana Reservoir (not trout water)
 - Stecoah Creek
 - Panther Creek (confluence of Stand Creek and

- Rock Creek to Lake Fontana)
- (J) Haywood County:
 Pigeon River (Stamey Cove Branch to upstream US 19-23 bridge)
 Cold Springs Creek (Fall Branch to Pigeon River)
 Jonathan Creek (upstream SR 1302 bridge to Pigeon River, except where posted against trespass)
 Richland Creek (Russ Avenue (US 276) bridge to US 19 bridge)
 West Fork Pigeon River (Tom Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
 (Rocky) Broad River (Rocky River Lane to Rutherford County line)
 Green River (Lake Summit Powerhouse to game land boundary)
 (Big) Hungry River (SR 1885 to Green River)
 French Broad River (not trout water)
 Cane Creek (railroad bridge upstream of SR 1551 to US 25 bridge)
 Mud Creek (not trout water)
 Clear Creek (Laurel Fork to SR 1582)
 Mills River (not trout water)
 North Fork Mills River (Hendersonville watershed to the lower game land boundary). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (L) Jackson County:
 Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between the downstream NC 107 bridge and the falls located 275 yards upstream of US 23-441 bridge as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]
- Scott Creek (entire stream, except where posted against trespass)
 Dark Ridge Creek (Jones Creek to Scotts Creek)
 Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
 Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
 Cullowhee Creek (Tilley Creek to Tuckasegee River)
 Cedar Cliff Lake
 Bear Creek Lake
 Wolf Creek [Not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
 Wolf Creek Lake
 Balsam Lake
 Tanasee Creek [Not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
 Tanasee Creek Lake
- (M) Macon County:
 Little Tennessee River (not trout water)
 Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]
 Queens Creek Lake
 Burningtown Creek (Left Prong to Little Tennessee River)
 Cullasaja River (Sequoyah Dam to US 64 bridge near junction of SR 1672)
 Cliffside Lake
 Cartoogechaye Creek (downstream US 64 bridge to Little Tennessee River)
- (N) Madison County:
 French Broad River (not trout water)
 Shut-in Creek
 West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)
 Spring Creek - upper (junction of NC 209 and NC

- 63 to US Forest Service road 223)
 Spring Creek - lower (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Meadow Fork Creek
 Roaring Fork (Fall Branch to Meadow Fork)
 Max Patch Pond
 Big Laurel Creek (Mars Hill Watershed boundary to the SR 1318 bridge, also known as Big Laurel Road bridge, downstream of Bearpen Branch)
 Big Laurel Creek (NC 208 bridge to US 25-70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Spillcorn Creek
 Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
 Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Puncheon Fork (Hampton Creek to Big Laurel Creek)
 Big Pine Creek (SR 1151 bridge to French Broad River)
 Ivy Creek (not trout waters)
 Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
- (O) McDowell County:
 Catawba River – upper (Catawba Falls Campground to Old Fort Recreation Park)
 Catawba River – lower (portion adjacent to Marion Greenway) [Delayed Harvest Regulations apply.
- See Subparagraph (a)(5) of this Rule.]
 Buck Creek (portion not on game lands, not trout water)
 Little Buck Creek (game land portion)
 Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch. [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 North Fork Catawba River (headwaters to SR 1569 bridge)
 Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
 Mill Creek (upper railroad bridge to I 40 bridge, except where posted against trespass) [Delayed Harvest Regulations apply to that portion between US 70 bridge and I 40 bridge. See Subparagraph (a)(5) of this Rule.]
- (P) Mitchell County:
 Nolichucky River (not trout water)
 Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)
 Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)
 Cane Creek (SR 1219 to SR 1189 bridge) [Delayed Harvest Regulations apply to that portion from NC 226 bridge to SR 1189 bridge. See Subparagraph (a)(5) of this Rule.]
 Grassy Creek (East Fork Grassy Creek to mouth)
 East Fork Grassy Creek
 North Toe River (Avery County line to SR 1121 bridge)
 North Toe River (US 19E bridge to NC 226 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Q) Polk County:
 Broad River (not trout water)

- North Pacolet River (Joels Creek to NC 108 bridge)
Green River (Fishtop Falls Access Area to the natural gas pipeline crossing) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph (a)(5) of this Rule.]
- (R) Rutherford County:
(Rocky) Broad River (Henderson County line to US 64/74 bridge, except where posted against trespass)
- (S) Stokes County:
Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:
Yadkin River (not trout water)
Big Elkin Creek (dam 440 yards upstream of NC 268 bridge to a point 265 yards downstream of NC 268 bridge as marked by a sign on each bank)
Ararat River (SR 1727 bridge downstream to the NC 103 bridge)
Araat River (NC 103 bridge to US 52 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Stewarts Creek (not trout water)
Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
Fisher River (Cooper Creek) (Virginia State line to Interstate 77)
Little Fisher River (Virginia State line to NC 89 bridge)
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
- Little Tennessee River (not trout water)
Calderwood Reservoir (Cheoah Dam to Tennessee State line)
Cheoah Reservoir
Fontana Reservoir (not trout water)
Alarka Creek (game lands boundary to Fontana Reservoir)
Nantahala River (Macon County line to existing Fontana Reservoir water level)
Tuckasegee River (not trout water)
Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
Connelly Creek (Camp Branch to Tuckasegee River)
- (V) Transylvania County:
French Broad River (confluence of North Fork French Broad River and West Fork French Broad River to the Island Ford Road (SR 1110) Access Area)
Davidson River (Avery Creek to lower US Forest Service boundary line)
East Fork French Broad River (Gladly Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Little River (confluence of Lake Dense outflow to 100 yards downstream of Hooker Falls) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Middle Fork French Broad River
West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
- (W) Watauga County:
New River (not trout waters)
South Fork New River (canoe launch 70 yards upstream of US 421 bridge to lower boundary of Brookshire Park)

	Meat Camp Creek	East Prong Roaring River (Stone Mountain State Park lower boundary to Brewer's Mill on SR 1943)
	Norris Fork Creek	Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
	Middle Fork New River (Lake Chetola Dam to South Fork New River)	Middle Prong Roaring River (headwaters to second bridge on SR 1736)
	Yadkin River (not trout water)	Bell Branch Pond
	Stony Fork (headwaters to Wilkes County line)	Boundary Line Pond
	Elk Creek (SR 1510 bridge at Triplett to Wilkes County line, except where posted against trespass)	West Prong Roaring River (not trout waters)
	Watauga River upper (SR 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]	Pike Creek
	Watauga River-lower (SR 1103 bridge to confluence with Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule]	Pike Creek Pond
	Beech Creek	Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)
	Buckeye Creek Reservoir	Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
	Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)	Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
	Coffee Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]	South Fork Reddies River (SR 1355 bridge to confluence with Middle Fork Reddies River)
	Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)	North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)
	Laurel Creek	Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)
	Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)	Lewis Fork Creek (not trout water)
	Dutch Creek (second bridge on SR 1134 to mouth)	South Prong Lewis Fork (Fall Creek to SR 1155 bridge)
(X)	Wilkes County:	
	Yadkin River (not trout water)	
	Roaring River (not trout water)	
	East Prong Roaring River (from Bullhead Creek downstream to Stone Mountain State Park lower boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]	

- Fall Creek (SR 1300 bridge to confluence with South Prong Lewis Fork except portions posted against trespass)
- Elk Creek – upper (Watauga County line to lower boundary of Blue Ridge Mountain Club) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Elk Creek – lower (portion on Leatherwood Mountains development) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Y) Yancey County:
- Nolichucky River (not trout water)
- Cane River [Bee Branch (SR 1110) to Bowlens Creek]
- Bald Mountain Creek (except portions posted against trespass)
- Indian Creek (not trout water)
- Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
- North Toe River (not trout water)
- South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.
- (A) Alleghany County:
- Big Sandy Creek (portion on Stone Mountain State Park)
- Stone Mountain Creek (that portion on Stone Mountain State Park)
- (B) Ashe County:
- Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (C) Avery County:
- Birchfield Creek (entire stream)
- Cow Camp Creek (entire stream)
- Cranberry Creek (headwaters to US 19E/NC 194 bridge)
- Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
- Gragg Prong (entire stream)
- Horse Creek (entire stream)
- Jones Creek (entire stream)
- Kentucky Creek (entire stream)
- North Harper Creek (entire stream)
- Plumtree Creek (entire stream)
- Roaring Creek (entire stream)
- Rockhouse Creek (entire stream)
- Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
- South Harper Creek (entire stream)
- Webb Prong (entire stream)
- Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (D) Buncombe County:
- Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:
- All waters located on South Mountain State Park, except Clear Creek Reservoir, the main stream of Jacob Fork between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
- Nettle Branch (game land portion)
- (F) Caldwell County:
- Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
- Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
- Rockhouse Creek (entire stream)

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| (G) | <p>Cherokee County:</p> <p>Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> <p>Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> <p>North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> | | <p>Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)</p> <p>Wiles Creek (game land boundary to mouth)</p> |
| (H) | <p>Graham County:</p> <p>Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> <p>Little Buffalo Creek (entire stream)</p> <p>South Fork Squally Creek (entire stream)</p> <p>Squally Creek (entire stream)</p> | (M) | <p>Transylvania County:</p> <p>All waters located on Gorges State Park</p> <p>Whitewater River (downstream from Silver Run Creek to South Carolina State line)</p> |
| (I) | <p>Haywood County</p> <p>Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]</p> <p>Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> | (N) | <p>Watauga County:</p> <p>Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>Dutch Creek (headwaters to second bridge on SR 1134)</p> <p>Howard Creek (entire stream)</p> <p>Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]</p> <p>Maine Branch (headwaters to North Fork New River)</p> <p>North Fork New River (from confluence with Maine and Mine branches to Ashe County line)</p> <p>Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations Apply. See Subparagraph (a)(3) of this Rule.]</p> <p>Watauga River (Avery County line to SR 1580 bridge)</p> <p>Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)</p> |
| (J) | <p>Jackson County:</p> <p>Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> <p>Gage Creek (entire stream)</p> <p>North Fork Scott Creek (entire stream)</p> <p>Tanasee Creek (entire stream)</p> <p>Whitewater River (downstream from Silver Run Creek to South Carolina State line)</p> <p>Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)</p> | (O) | <p>Wilkes County:</p> <p>Big Sandy Creek (portion on Stone Mountain State Park)</p> <p>Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> <p>Garden Creek (portion on Stone Mountain State Park)</p> <p>Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release</p> |
| (K) | <p>Madison County:</p> <p>Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> | | |
| (L) | <p>Mitchell County:</p> <p>Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)</p> | | |

- Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
- Widow Creek (portion on Stone Mountain State Park)
- (P) Yancey County:
Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)
Licksillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:
Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
Newberry Creek (game land portion)
- (G) Watauga County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)
Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries)
Pond Creek (headwaters to Locust Ridge bridge, excluding the pond adjacent to Coffee Lake)
- (H) Wilkes County:
Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. Harvest or possession of trout while fishing these streams is prohibited:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (headwaters to Upper Creek, including tributaries)
Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Alleghany County:
Little River (Whitehead to a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank)
- (B) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
South Fork New River (Todd Island Park)
Big Horse Creek (SR 1324 bridge to North Fork New River)
- (C) Burke County:

- Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (D) Caldwell County:
Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)
- (E) Clay County;
Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area)
- (F) Graham County;
(Big) Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579)
- (G) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (H) Henderson County:
North Fork Mills River (Hendersonville watershed to the lower game land boundary)
- (I) Jackson County:
Tuckasegee River (downstream NC 107 bridge falls located 275 yards upstream of the US 23-441 bridge as marked by a sign on each bank)
- (J) Macon County:
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- (K) Madison County.
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)
- (L) McDowell County:
Catawba River (portion adjacent to Marion Greenway)
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
Mill Creek (US 70 bridge to I 40 bridge)
- (M) Mitchell County:
Cane Creek (NC 226 bridge to SR 1189 bridge)
North Toe River (US 19E bridge to NC 226 bridge)
- (N) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (O) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
Ararat River (NC 103 bridge to US 52 bridge)
- (P) Transylvania County:
East Fork French Broad River (Gladly Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (Q) Watauga County:
Watauga River upper (SR 1114 bridge to NC 194 bridge at Valle Crucis)
Watauga River-lower (SR 1103 bridge to confluence with Laurel Creek)
Coffee Lake
- (R) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)
Elk Creek – upper (Watauga County line to lower boundary of Blue Ridge Mountain Club)
Elk Creek – lower (portion on Leatherwood Mountains development)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0316(b)]:
- (A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
North Shoal Creek (game land portions)
- (B) Graham County:
Deep Creek
Long Creek (game land portion)
Franks Creek
- (C) Haywood County:

- (D) Hemphill Creek (including tributaries)
Hurricane Creek (including portions of tributaries on game lands)
Jackson County:
Buff Creek
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)
- (E) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
- (F) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
- (G) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)
- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:
- Burke County
Catawba River (Muddy Creek to City of Morganton water intake dam).
Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length. There are no bait restrictions and no closed season.
- (b) Fishing in Trout Waters
- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits, and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is

unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].

- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.
- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in Subparagraph (a)(6) of this Rule.
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

History Note: Authority G.S. 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 6/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17 2003); Amended Eff. August 1, 2014; August 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10C .0206 TROT LINES AND SET-HOOKS

- (a) For purposes of this Rule, the following definitions apply:
- (1) "set-hook" means any hook and line attached at one end only to a stationary or floating object and not under immediate control and attendance of the person using the device.
- (2) "jug-hook" means a single hook and line attached to a float.
- (3) "untended" means no bait is present on the device.
- (b) Except as otherwise prohibited in this Rule, trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used. Trotlines and set-hooks may not be set in any of the impounded waters on the Sandhills Game Land. Trotlines and set-hooks may not be set in any designated

public mountain trout waters except impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Waccamaw, trotlines or set-hooks may be set only from October 1 through April 30.

(c) Each trotline, set hook, and jug hook shall bear legible and indelible identification of the user's name and address or the user's Wildlife Resources Commission customer number. Each trotline shall be conspicuously marked at each end and each set-hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernible by boat operators and swimmers. Trotlines shall be set parallel to the nearest shore in all inland fishing waters unless otherwise prohibited. The number of jug-hooks that may be fished is limited to 70 per boat. All trotlines, throwlines, set-hooks, and jug-hooks shall be fished at least once daily and all fish removed at that time. Untended trotlines, set-hooks, and jug-hooks may be removed from the water by wildlife enforcement officers when located in areas of multiple water use. It is unlawful to use metal cans or glass jugs as floats.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;

Amended Eff. July 1, 1993; May 1, 1992; July 1, 1989; January 1, 1982;

Temporary Amendment Eff. July 1, 2002;

Amended Eff. August 1, 2014; August 1, 2013; May 1, 2008; June 1, 2005; August 1, 2002.

15A NCAC 10C .0217 PUBLIC ACCESS FOR ANGLERS ONLY

(a) A landowner who has accepted from the Wildlife Resources Commission a sign indicating Public Access for Fishing Only and posted such sign on his property agrees to allow any licensed angler, and accompanying youths, to cross his or her property in order to access public waters for the purpose of fishing.

(b) By accepting and posting the Public Access for Fishing Only sign, the landowner has designated the Wildlife Resources Commission as an agent as described in G.S. 14-159.6. As an agent, the Commission confers access to any member of the public with a valid fishing license and accompanying youths. Anglers who access property under the terms of this Rule are prohibited from engaging in any of the following activities while on the private property unless otherwise posted:

- (1) building fires;
- (2) littering;
- (3) swimming;
- (4) launching or retrieving boats;
- (5) camping;
- (6) causing property damage;
- (7) entering before 7 am; and
- (8) remaining on the property after 9 pm.

History Note: Authority G.S. 14-159.6; 113-134; 113-305; Eff. August 1, 2014.

15A NCAC 10C .0302 MANNER OF TAKING INLAND GAME FISHES

(a) Except as provided in this Rule, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of special devices for taking nongame fishes from inland fishing waters as authorized in Rule .0402 of this Subchapter or as authorized by 15A NCAC 10C .0407 by anglers licensed under G.S. 113-272.2(c) shall be immediately returned to the water unharmed, except that a daily creel limit of American and hickory shad may be taken with dip nets and bow nets from March 1 through April 30 in those waters where such gear may be lawfully used, and white perch may be taken when captured in a cast net being used to collect nongame fishes in all impounded waters west of Interstate 95 and in the Tar River Reservoir (Nash County).

(b) In the inland waters of the Roanoke River upstream of U.S. 258 bridge, only a single barbless hook or a lure with a single barbless hook may be used from 1 April to 30 June. Barbless as used in this Rule, requires that the hook does not have a barb or the barb is bent down.

History Note: Authority G.S. 113-134; 113-273; 113-292; 113-302;

Eff. February 1, 1976;

Amended Eff. July 1, 1996; October 1, 1994; July 1, 1993; May 1, 1992; January 1, 1982;

Temporary Amendment Eff. November 1, 1998;

Amended Eff. August 1, 2014; August 1, 2002; April 1, 1999.

15A NCAC 10C .0314 STRIPED BASS

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

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

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

(d) In Lake Gaston and Roanoke Rapids Reservoir, the daily creel limit on Striped Bass and its hybrids is four in the aggregate. The minimum size limit for these fish is 20 inches

from October 1 through May 31. There is no minimum size limit for these fish from June 1 through September 30.

(e) In Lake Norman, the daily creel limit on Striped Bass and its hybrids is four in the aggregate and the minimum size limit for these fish is 16 inches.

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

(g) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95 not specified in Paragraphs (f), (h), (i), and (j) of this Rule, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate. The minimum size limit is 18 inches but no Striped Bass or hybrids between the lengths of 22 inches and 27 inches shall be possessed. In these waters, the season for taking and possessing Striped Bass is closed from May 1 through September 30.

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

(i) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle, and Eastmost rivers and their tributaries, the open season for taking and possessing Striped Bass and its hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season, the daily creel limit for Striped Bass and its hybrids is two fish in the aggregate and the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be possessed in the daily creel limit. Only one fish larger than 27 inches may be possessed in the daily creel limit.

(j) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), Striped Bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.

(k) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for Striped Bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;

Eff. November 1, 2013;

Amended Eff. August 1, 2014.

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

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line

or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.
- (2) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback) that are greater than six inches in total length or possess such herring regardless of origin in:
 - (A) Roanoke River downstream of Roanoke Rapids Dam;
 - (B) Tar River downstream of Rocky Mount Mill Dam;
 - (C) Neuse River downstream of Milburnie Dam;
 - (D) Cape Fear River downstream of Buckhorn Dam;
 - (E) Pee Dee River downstream of Blewett Falls Dam;
 - (F) Lumber River including Drowning Creek;
 - (G) all the tributaries to the rivers listed above; and
 - (H) all other inland fishing waters east of I-95.

(3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir, Lake Wylie, and John H. Kerr Reservoir, except that one fish per day may be taken with archery equipment.

(4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.

(5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.

(6) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

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

(c) Nongame fishes taken by hook and line, grabbling, or by licensed special devices may be sold, with the following exceptions:

- (1) alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties);
- (2) blue crab; and

- (3) bowfin.
- (d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may be taken only from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (*Corbicula fluminea*).
- (e) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take channel, white, or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate. Waters where this creel limit applies shall be posted on-site with signs indicating the creel limit.
- (f) In Lake Norman and Badin Lake, the daily creel limit for blue catfish greater than 32 inches is one fish.
- (g) The daily creel limit for American eels taken from inland fishing waters is 25, and the minimum size limit is 9 inches.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992;
Temporary Amendment Eff. December 1, 1994;
Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. August 1, 2014; August 1, 2013; August 1, 2012;
August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008;
May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT OR PERSONAL CONSUMPTION

(a) It is unlawful to take nongame fish for bait or personal consumption in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) a gig (except in Public Mountain Trout Waters);
- (5) up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
- (6) up to two eel pots;
- (7) a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;

- (8) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and that are under the immediate control and attendance of the individual operating them;
- (9) a hand-held line with a single bait attached;
- (10) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device, with a limit of one line per person and no more than one line per vessel; or
- (11) a collapsible crab trap with the largest open dimension not greater than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

(b) It is unlawful to sell nongame fishes or aquatic animals taken under this Rule.

(c) Game fishes taken while netting for bait shall be returned unharmed to the water, except white perch may be taken when captured in a cast net being used to collect nongame fishes for bait or personal consumption in all impounded waters west of I-95 and in the Tar River Reservoir (Nash County).

(d) No person shall take or possess during one day more than 200 nongame fish in aggregate for bait or personal consumption subject to the following restrictions:

- (1) No more than 25 eels, none of which may be less than 9 inches in length, shall be taken or possessed from inland fishing waters;
- (2) While boating on or fishing in the following inland fishing waters, no river herring (alewife and blueback) that are greater than six inches in total length shall be taken and no such river herring shall be possessed regardless of origin:
 - (A) Roanoke River downstream of Roanoke Rapids Dam,
 - (B) Tar River downstream of Rocky Mount Mill Dam,
 - (C) Neuse River downstream of Milburnie Dam,
 - (D) Cape Fear River downstream of Buckhorn Dam,
 - (E) Pee Dee River downstream of Blewett Falls Dam,
 - (F) Lumber River including Drowning Creek,
 - (G) the tributaries to the rivers listed above, and
 - (H) all other inland fishing waters east of Interstate 95.
- (3) No more than 50 crabs per person per day or 100 per vessel per day with a minimum carapace width of five inches (point to point) shall be taken.

(e) Any fishes taken for bait purposes are included within the daily possession limit for that species.

(f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and from the bodies of water specified for the following counties:

- (1) Chatham County:
Deep River
Rocky River
Bear Creek
- (2) Lee County:
Deep River
- (3) Moore County:
Deep River
- (4) Randolph County:
Deep River below the Coleridge Dam
Fork Creek

(g) In the waters of the Little Tennessee River, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess, or release live alewife or live blueback herring.

History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292;

Eff. February 1, 1976;

Amended Eff. July 1, 2000; July 1, 1998; July 1, 1993; July 1, 1992; May 1, 1992; July 1, 1989;

Temporary Amendment Eff. July 1, 2001;

Amended Eff. July 18, 2002;

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. August 1, 2014; August 1, 2013; August 1, 2010; May 1, 2008; May 1, 2007; May 1, 2006.

15A NCAC 10C .0404 SPECIAL DEVICES

(a) Archery equipment. The use of archery equipment, as defined in 15A NCAC 10B .0116, as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless prohibited by Marine Fisheries Commission's rules in 15A NCAC 03, bow and arrow may be used in joint fishing waters.

(b) Nets. Where authorized, manually operated nets, including seines and bow, cast, dip, gill, drift, and fyke nets may be used under the special device license. No fixed gill net or other stationary net which may be authorized as a special device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline. No fixed or drift gill nets shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys that shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following:

- (1) owner's N.C. motor boat registration number;
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name, first and middle initials.

It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

(c) Traps. Baskets and traps, excluding collapsible crab traps, may be used under the special device license. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and upon which his name and address shall be legibly and indelibly inscribed. No fish trap may exceed 60 inches in length or 30 inches in depth or width. No lead nets, wing nets, or other device designed to guide or herd fish may be attached to the trap or used or set within 25 feet of the trap.

(d) Spears. Manually operated gigs or under-water spear or harpoon guns may be used under the special device license in the inland waters having a season for their use specified in Rule .0407 of this Section.

(e) Crab pots. It is unlawful to use crab pots in inland fishing waters, except by persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries who are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

(f) Eel pots. It is unlawful to use pots with mesh sizes smaller than one-half inch by one-half inch. Each pot must be marked by attaching a floating buoy that 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. The owner shall 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) owner's N.C. motorboat registration number;
- (2) owner's U.S. vessel documentation name; or
- (3) owner's last name, first and middle initials.

(g) Hand-crank electrofisher. For the purposes of this Rule, a hand-crank electrofisher is any manually-operated device which is capable of generating a low voltage electrical current not exceeding 300 volts for the taking of catfish. Hand-crank electrofishers may be used only where authorized by local law and only in those waters specified in 15A NCAC 10C .0407.

History Note: Authority G.S. 113-134; 113-272.2; 113-276; 113-292;

Eff. February 1, 1976;

Amended Eff. July 1, 1999; July 1, 1996; December 1, 1995; July 1, 1995; July 1, 1994; July 1, 1993;

Temporary Amendment Effective July 1, 2001;

Amended Eff. August 1, 2014; August 1, 2012; May 1, 2008; May 1, 2007; August 1, 2004; July 18, 2002.

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping, or fishing shall be as authorized by the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

- (1) Archery Zone. On portions of game lands posted as "Archery Zones," hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones," hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones," the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones," the discharge of firearms or bow and arrow is prohibited.

The Commission shall conduct a public input meeting in the area where the game land is located before establishing an archery, a restricted firearms or a restricted zone. After the input meeting, the public comments shall be presented at a Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any

person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Use of weapons. No person shall discharge:

- (1) any weapon within 150 yards of any game land building or designated game land camping area, except where posted otherwise;
- (2) any weapon within 150 yards of any residence located on or adjacent to game lands, except on Butner-Falls of Neuse and Jordan game lands; and
- (3) any firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Buckhorn, Butner-Falls of Neuse, Chatham, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Sutton Lake, and Vance game lands and Pee Dee River Game Land north of U.S 74, and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

- (4) the firearm is a .22 caliber pistol with a barrel not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition carried as a side arm;
- (5) the firearm is cased or not immediately available for use;
- (6) the firearm is used by persons participating in field trials on field trial areas; or
- (7) the firearm is possessed in designated camping areas for defense of persons and property.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses. A "field trial participant" means a judge, handler, scout, or owner.

(2) Exceptions:

- (A) a person under 16 years of age may hunt on game lands on the license of his or her parent or legal guardian;
- (B) the resident and nonresident sportsman's licenses include game lands use privileges;
- (C) judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule

may do so without the game lands license; or

- (D) on the game lands described in Rule .0103(e)(1) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial that, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident handler, scout, or owner participating therein may participate without procuring a game lands license, provided such nonresident has in his or her possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial area or the Laurinburg Fox Trial facility shall file with the Commission an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars (\$75.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Sandhills Field Trial area or the Laurinburg Fox Trial facility without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approved use. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays, and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95 except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or

permitted to run unleashed from March 15 through June 15 on any game land located east of I-95 except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) in posted "safety zones" located on any game land;
- (3) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (4) on the John's River Waterfowl Refuge in Burke County; and
- (5) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands, controlled trapping is allowed under a permit system.

(g) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained, and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (j) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (m) of this Rule and is abiding by the rules described in Paragraph (m).

(h) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(i) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(j) Disabled Sportsman Program. In order to qualify for permit hunts for disabled sportsmen offered by the Commission and use of designated blinds during those hunts, an individual shall possess a Disabled Veteran Sportsman license, a Totally Disabled Sportsman license, or a disabled sportsman hunt certification issued by the Commission. In order to qualify for the certification, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) deafness.

On game lands where the privileges described in Paragraph (m) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles, or other passenger vehicles:

- (1) on ungated or open-gated roads normally closed to vehicular traffic; and
- (2) on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel.

Each program participant may be accompanied by one companion provided such companion has in his possession the companion card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

(k) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes, or feral animals, or hatchery-raised fish on game lands without prior written authorization from the Commission. It is unlawful to move wild fish from one stream to another on game lands without prior written authorization from the Commission. Written authorization shall be given when release of such animals is determined by a Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(l) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (j) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but must comply with the terms of their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act, may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(m) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-

maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One companion, who is identified by a companion card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (j) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(n) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(o) For the purpose of this Subchapter "Permanent Hunting Blind" is defined as any structure that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

(p) Shooting Ranges. On public shooting ranges managed by the Commission, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions, or other activities not directly involved with recreational or competitive shooting are prohibited, except that activities that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede, or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow

on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post, or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each shooting range. No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(q) Limited-access Roads. During the months of June, July and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306;

Eff. February 1, 1976;

Amended Eff. July 1, 1993; April 1, 1992;

Temporary Amendment Eff. October 11, 1993;

Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. August 31, 2001;

Amended Eff. August 1, 2002;

Amended Eff. June 1, 2004; (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. August 1, 2014; January 1, 2013; January 1, 2012; June 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; November 1, 2005.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic or gates, or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts, or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal remaining in or attached to the tree.

(d) Time and Manner of Taking. Hunting is allowed on game lands only during the open season for game animals and game birds, unless hunting is allowed by permit. Individual game lands or parts thereof may be closed to hunting or limited to specific dates by this Chapter. Persons shall hunt only with weapons lawful for the open game animal or game bird seasons. On managed waterfowl impoundments, persons shall:

- (1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates;
- (2) not hunt after 1:00 p.m. on such hunting dates;
- (3) not set decoys out prior to 4:00 a.m.;
- (4) remove decoys by 3:00 p.m. each day; and
- (5) not operate any vessel or vehicle powered by an internal combustion engine.

On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

- (1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days within the federally-announced season.
- (2) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days, except for game lands in this Rule that specifically allow hunting on Tuesdays, Thursday, and Fridays. Falconry may also be practiced on Sundays. These "open days" also apply to either-sex deer hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons.

(f) Hunting with Dogs on Game Lands. Deer shall not be taken with the use of dogs on game lands in counties or parts of counties where taking deer with dogs is prohibited as described in 15A NCAC 10B .0109.

(g) Bear Sanctuaries. On Three Days per Week Areas and Six Days per Week Areas, bears shall not be taken on lands designated and posted as bear sanctuaries except when authorized by permit only elsewhere in this Chapter. Feral Swine shall not be taken with the use of dogs on bear sanctuaries. Dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15 on bear sanctuaries in and west of the counties and parts of counties described in 15A NCAC 10B .0109.

(h) The listed seasons and restrictions apply in the following game lands:

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan, and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
 - (C) On the Lick Creek Tract, deer and bear hunting is archery only.
- (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (4) Bachelor Bay Game Land in Bertie, Martin, and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

- (C) Except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used.
- (D) On the Singletary Lake Tract the use of dogs for hunting deer and bear is prohibited.
- (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
- (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (7) Brinkleyville Game Land in Halifax County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (8) Brunswick County Game Land in Brunswick County
 - (A) Hunting is by permit only.
 - (B) The use of dogs for hunting deer is prohibited.
- (9) Buckhorn Game Land in Orange County
 - (A) Hunting is by permit only.
 - (B) Horseback riding is prohibited.
- (10) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers Season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest

- October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays, Thursdays, and Saturdays of the applicable waterfowl seasons.
- On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding is prohibited.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
- (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
- (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is allowed only during June, July, and August, and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license as set forth in 15A NCAC 10G prior to engaging in such activity.
- (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the

- intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (18) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding is allowed only during June, July, and August; and on Sundays during the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (20) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (23) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (24) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl day in October through the end of the waterfowl season, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
- (E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.

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| <p>(26) Currituck Banks Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.</p> <p>(C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.</p> <p>(D) The boundary of the game land shall extend 5 yards from the edge of the marsh or shoreline.</p> <p>(E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.</p> <p>(F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.</p> <p>(G) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.</p> <p>(27) Dare Game Land in Dare County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) No hunting is allowed on posted parts of bombing range.</p> <p>(D) The use and training of dogs is prohibited from March 1 through June 30.</p> <p>(28) Dover Bay Game Land in Craven County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.</p> <p>(29) Dupont State Forest Game Lands in Henderson and Transylvania counties</p> <p>(A) Hunting is by Permit only.</p> <p>(B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.</p> <p>(30) Elk Knob Game Land in Watauga County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(31) Embro Game Land in Halifax and Warren counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited.</p> | <p>(32) Goose Creek Game Land in Beaufort and Pamlico counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:</p> <p>(i) the opening and closing days of the applicable waterfowl seasons;</p> <p>(ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and</p> <p>(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.</p> <p>(D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.</p> <p>(E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.</p> <p>(F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.</p> <p>(G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.</p> <p>(33) Green River Game Land in Henderson, and Polk counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited.</p> <p>(34) Green Swamp Game Land in Brunswick County</p> <p>(A) Six Days per Week Area</p> |
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- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (35) Gull Rock Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
 - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (36) Harris Game Land in Chatham, Harnett, and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds shall be prohibited.
 - (E) Wild turkey hunting is by permit only.
 - (F) Target shooting is prohibited.
- (37) Holly Shelter Game Land in Pender County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (38) Hyco Game land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (40) Johns River Game Land in Burke County
 - (A) Hunting is by permit only.
 - (B) During permitted deer hunts, deer of either sex may be taken by permit holders.
 - (C) Entry on posted waterfowl impoundments is prohibited October

- 1 through March 31, except by lawful waterfowl hunting permit holders and only on those days written on the permits.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (41) Jordan Game Land in Chatham, Durham, Orange, and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on:
- (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, and New Year's Days; and
- (iii) the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July, and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
- (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Use of centerfire rifles is prohibited.
- (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
- (D) Tree stands shall not be left overnight; and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (E) Deer of either sex may be taken on all open days of the applicable Deer With Visible Antlers season.
- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
- (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;
 - (ii) Christmas and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) Target shooting is prohibited.
- (50) Mitchell River Game Land in Surry County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (52) Needmore Game Land in Macon and Swain counties.
- (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
 - (C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.
- (53) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) New Lake Game Land in Hyde and Tyrrell counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Nicholson Creek Game Land in Hoke County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
- (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
 - (H) On Lake Upchurch, the following activities are prohibited:
 - (i) Operating any vessel or vehicle powered by an internal combustion engine; and
 - (ii) Swimming.
- (56) North River Game Land in Camden and Currituck counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (D) Hunting on the posted waterfowl impoundment is by permit only.
- (57) Northwest River Marsh Game Land in Currituck County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (58) Pee Dee River Game Land in Anson, Montgomery, Richmond, and Stanly counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
 - (D) Target shooting is prohibited.

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| <p>(59) Perkins Game Land in Davie County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited from November 1 through January 1.</p> <p>(60) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).</p> <p>(61) Pond Mountain Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.</p> <p>(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.</p> <p>(D) Deer and bear hunting is by permit only.</p> <p>(62) Pungo River Game Land in Hyde County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(63) Rhodes Pond Game Land in Cumberland and Harnett counties</p> <p>(A) Hunting is by permit only.</p> <p>(B) Swimming is prohibited on the area.</p> <p>(64) Roanoke River Wetlands in Bertie, Halifax, Martin, and Northampton counties</p> <p>(A) Hunting is by Permit only.</p> <p>(B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.</p> <p>(C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.</p> <p>(65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.</p> | <p>(66) Robeson Game Land in Robeson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(67) Rockfish Creek Game Land in Hoke County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.</p> <p>(C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.</p> <p>(D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.</p> <p>(E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(F) The use of dogs for hunting deer is prohibited.</p> <p>(G) Wild turkey hunting is by permit only.</p> <p>(H) Taking fox squirrels is prohibited.</p> <p>(68) Rocky Run Game Land in Onslow County: Hunting is by permit only.</p> <p>(69) Sampson Game Land in Sampson County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties</p> <p>(A) Three Days per Week Area</p> <p>(B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:</p> <p>(i) deer may be taken with archery equipment on all the open days of the bow-and-arrow season through the fourth Friday before Thanksgiving; with legal muzzleloading firearms and archery equipment all the open days of the muzzleloader season through the second Saturday before Thanksgiving; and with all legal weapons from the</p> |
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- second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
 - (iii) opossum, raccoon, and squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;
 - (v) waterfowl may be taken on open days during any waterfowl season; and
 - (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt.
- (C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the J. Robert Gordon Field Trial Grounds.
- (D) The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment on all open hunting days during the bow and arrow season, the Deer with Visible antlers season, and the muzzleloader season as stated in this Subparagraph.
- (E) Muzzleloader season is all the open days from the fourth Saturday preceeding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with muzzle-loading firearms on all open hunting days during the muzzleloader season and the Deer With Visible Antlers season.
- (F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
- (G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- (H) Wild turkey hunting is by permit only.
- (I) The following areas are permit-only for all quail and woodcock hunting and dog training on birds:
 - (i) In Richmond County: that part east of US 1;
 - (ii) In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
- (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (K) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays, and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.

- (73) Second Creek Game Land in Rowan County-hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
 - (D) Swimming in all lakes is prohibited.
 - (E) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
 - (A) Hunting and trapping is by Permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (C) Entry is prohibited on scheduled hunt or trapping days except for:
 - (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a game lands license prior to horseback riding on this area.
 - (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal

- belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
 - (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery, and Randolph counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (85) Vance Game Land in Vance County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
 - (i) access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
 - (ii) hunting is by permit only; and
 - (iii) the use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (i) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands;
 - (2) Bertie County—Roanoke River National Wildlife Refuge;
 - (3) Bladen County—Suggs Mill Pond Game Lands;
 - (4) Burke County—John's River Waterfowl Refuge;
 - (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting);

- (6) Dare County—Roanoke Sound Marshes Game Lands; and
- (7) Henderson and Transylvania counties—Dupont State Forest Game Lands.

(k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission will be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

(l) Feral swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons. Dogs may not be used to hunt feral swine except on game lands that allow the use of dogs for hunting deer or bear and during the applicable deer or bear season.

(m) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where prohibited in Paragraph (h) of this Rule. A youth is defined as a person under 16 years of age.

(n) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the hunt has a limited weapon choice, the allowed weapons shall be stated on each permit.

(o) As used in this Rule, horseback riding includes all equine species.

(p) When waterfowl hunting is specifically permitted in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305;

Eff. February 1, 1976;

Temporary Amendment Eff. October 3, 1991;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;

Temporary Amendment Eff. October 1, 1999; July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2002; July 1, 2001;

Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. August 1, 2014; January 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; October 1, 2006; August 1, 2006; May 1, 2006; February 1, 2006; June 1, 2005; October 1, 2004.

15A NCAC 10D .0104 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow, or other special fishing device of a type mentioned in 15A NCAC 10C .0404(b),(c),(d), and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on game lands with the exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.

(b) Designated Public Mountain Trout Waters

(1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to the natural gas pipeline crossing.

(2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond, Cheoah River downstream of Santeetlah Reservoir, Little River from 100 yards downstream of Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake, North Fork Catawba River downstream of the mouth of Armstrong Creek, Green River downstream of the natural gas pipeline crossing, and Spring Creek below US Forest Service road 223.

Dupont State Forest Game Lands in Henderson and Transylvania counties.

Three Top Mountain Game Land in Ashe County.

Nantahala National Forest Game Lands in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties.

Pisgah National Forest Game Lands in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, and Yancey counties.

Thurmond Chatham Game Land in Wilkes County.

Toxaway Game Land in Transylvania County.

South Mountains Game Land in Cleveland and Rutherford counties.

Cold Mountain Game Land in Haywood County.

Green River Game Land in Henderson and Polk counties.

- (3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

(c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

History Note: Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305;

Eff. February 1, 1976;

Amended Eff. July 1, 2000; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;

Temporary Amendment Eff. July 1, 2002; July 1, 2001;

Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. August 1, 2014; August 1, 2010; May 1, 2009; August 1, 2004.

15A NCAC 10F .0102 APPLICATION FOR CERTIFICATE OF VESSEL NUMBER

(a) General. Every owner applying for a certificate of number or certificate of title of a vessel required to be numbered pursuant to G.S. 75A-4 and 75A-7 or required to be titled pursuant to G.S. 75A-34 and 75A-35 shall apply to the North Carolina Wildlife Resources Commission or to one of its Wildlife Service Agents for a certificate of number or certificate of title using an application provided by the Wildlife Resources Commission. The application shall contain the following information:

- (1) name of owner(s);
- (2) address, telephone number, date of birth, and North Carolina driver license number of owner(s);
- (3) present or previous certificate of number (if any);

- (4) desired period of certificate of number (one or three years);
- (5) primary use of vessel (pleasure, livery, demonstration, commercial passenger, commercial fishing, other commercial, other);
- (6) model of vessel (if known);
- (7) manufacturer (if known);
- (8) year of manufacture or model year (if known);
- (9) manufacturer's hull identification number (if any);
- (10) overall length of vessel in feet and inches;
- (11) type of vessel (open, cabin, houseboat, personal watercraft, pontoon, other);
- (12) hull material (wood, metal, fiberglass, inflatable, plastic, other);
- (13) type of propulsion (inboard; outboard; inboard-outdrive; jet drive; sail; auxiliary sail/inboard; auxiliary sail/outboard, other);
- (14) type of fuel (gasoline, diesel, electric, other);
- (15) proof of ownership document;
- (16) signature of owner(s);
- (17) make of motor (if over 25 horsepower), serial number, purchase price of motor;
- (18) lien holder name, address, and telephone number;
- (19) effective lien date;
- (20) county where vessel is taxed; and
- (21) status of United States Coast Guard documentation.

(b) Application for certificate of number and certificate of title. The owner(s) shall complete and submit an application for a certificate of number, along with the proof of ownership document and applicable fees to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. A new certificate of number shall be issued for new or never before registered vessels. For a period of 60 days following the date of sale, the new owner may use a copy of the proof of ownership document, provided it contains the date of sale, as a temporary certificate of number pending receipt of the original certificate. If the vessel is 14 feet or longer or is a personal watercraft, then a Certificate of Title for Vessel shall be issued, including recordation of any liens listed on the application.

(c) Livery Vessel Owners. A "livery vessel" is one that is rented or leased to an individual for a specific time period by the owners(s). The certificate of numbering and certificate of titling requirements of G.S. 75A-4, 75A-7, 75A-34, and 75A-35 apply to livery vessels. Upon receipt of a completed application, a copy of the lease or rental agreement form and fee, the Wildlife Resources Commission shall issue to the applicant a certificate of number and, if applicable according to the standards in Paragraph (b) of this Rule, a certificate of title.

(d) Dealers and Manufacturers of Vessels. A "manufacturer" as the term is used in this Rule is defined as a person, firm, or corporation engaged in the business of manufacturing vessels either upon prior commission or for the purpose of selling them after manufacture. A "dealer" as the term is used in this Rule is defined as a person, firm, or corporation engaged in the business of offering vessels for sale at retail or wholesale from an

established location(s). The certificate of numbering requirements of G.S. 75A-4 and 75A-7 apply to vessels belonging to dealers and manufacturers. Upon receipt of a completed application and fee, the Wildlife Resources Commission shall issue to the applicant a certificate of number that may be used in connection with the operation of any vessel in the possession of the dealer or manufacturer when the vessel is being demonstrated. Dealer and manufacturer certificate of numbers shall not be transferred. A new certificate of number shall be issued upon transfer. Demonstration vessels shall not be titled so long as the vessel is owned by the dealer or manufacturer. Vessels owned or possessed by dealers or manufacturers for personal use or for any use other than for demonstration and testing purposes shall be individually registered in the name of the dealer or manufacturer in accordance with Paragraph (a) of this Rule. Additional dealer's or manufacturer's certificates of number may be obtained by making application in the same manner as prescribed for the initial certificate with payment of an additional fee for each additional certificate. Dealers and manufacturers may register individual vessels in accordance with Rule .0104(a) of this Section.

(e) Government Agency Vessels. The certificate of numbering requirements of G.S. 75A-4 and 75A-7 apply to vessels belonging to state or local government agencies. Upon receipt of a completed application from a state or local government agency, the Wildlife Resources Commission shall issue to the applicant a permanent certificate of number. There is no fee for a permanent state or local government agency certificate of number and the certificate is valid until the vessel is transferred to another government agency, an individual, business, or dealer. Government agency registered vessels shall not be titled.

(f) Commercial Fishing Vessel. The certificate of numbering and certificate of titling requirements of G.S. 75A-4, 75A-7, 75A-34, and 75A-35 apply to commercial fishing vessels. The standard application for a certificate of number shall be used for commercial fishing vessels with the term "commercial fishing" marked in the section designated for "primary use." Upon receipt of a completed application, proof of ownership document, and fee, as provided for in G.S. 75A-3 and 75A-5, the Wildlife Resources Commission shall issue to the applicant a certificate of number and, if applicable according to the standards in Paragraph (b) of this Rule, a certificate of title.

(g) Commercial Passenger Vessel. The certificate of numbering requirements of G.S. 75A-4, 75A-7, 75A-34, and 75A-35 apply to commercial passenger vessels. Upon receipt of a completed application, proof of ownership document, and fee, the Wildlife Resources Commission shall issue to the applicant a certificate of number and, if applicable according to the standards in Paragraph (b) of this Rule, a certificate of title.

*History Note: Authority G.S. 75A-3; 75A-5; 75A-7; 75A-19; 75A-34; 75A-35; 33 C.F.R. 174.17;
Eff. February 1, 1976;
Amended Eff. August 31, 1980;
Legislative Objection Lodged Eff. December 16, 1980;
Amended Eff. July 1, 1988 at ARRC request to cure referenced
Legislative Objection;*

Amended Eff. August 1, 2014; May 1, 2007; July 1, 1998; April 1, 1997; November 1, 1993; August 1, 1988; July 1, 1988.

15A NCAC 10F .0103 TRANSFER OF OWNERSHIP

(a) Transfer of previously registered and titled vessels.

(1) Transfer of previously registered and titled vessels from one individual owner(s) to another.

(A) When the ownership of a titled vessel is transferred, the owner(s) listed on the face of the Certificate of Title for Vessel shall complete the Assignment of Title section on the reverse side of the Certificate of Title and surrender the title to the new owner(s). All outstanding liens shall be satisfied before the Certificate of Title is surrendered to the new owners(s). If the ownership of a titled vessel is transferred by court order, will, settlement agreement, separation agreement, judgment or other document and the original title is not available, the previous owner(s) or estate representative shall provide the new owner(s) with documents establishing ownership.

(B) The new owner(s) shall submit an application for a certificate of number and certificate of title, along with the properly assigned Certificate of Title and applicable fees to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. The new owner(s) shall indicate on the application whether or not any liens exist on the vessel. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel, previously registered in North Carolina, is transferred to a new owner. A new certificate of number shall be issued to vessels previously registered in another state or to vessels never before registered.

(C) For 60 days following the transfer of ownership of a previously titled vessel, the new owner may use a copy of the properly assigned Certificate of Title as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.

- (2) Transfer of previously registered and titled vessels through a dealer.
 - (A) When the ownership of a titled vessel is transferred to a dealer, the owner(s) listed on the face of the Certificate of Title for Vessel shall complete the Assignment of Title section on the reverse side of the Certificate of Title and surrender the title to the dealer. All outstanding liens shall be satisfied before the certificate of title is surrendered to the dealer.
 - (B) When the vessel is subsequently sold, the dealer shall, on the day of the sale, provide the new owner(s) the original Certificate of Title completed by the previous owner(s) and a Dealer Bill of sale. The Dealer's Bill of Sale shall include the dealer's name, the name of the new owner(s), the date of sale, certificate of number, manufacturer's hull identification number, model, year, and length of the vessel. The Dealer's Bill of Sale shall be signed by both the dealer and the new owner(s).
 - (C) The new owner(s) shall complete and submit the standard application for a certificate of number and Certificate of Title, along with the properly assigned certificate of title, Dealer Bill of Sale, and applicable fees to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel, previously registered in North Carolina, is transferred to a new owner(s). A new certificate of number shall be issued to vessels previously registered in another state or vessels never before registered.
 - (D) For a period of 60 days following the transfer of ownership of a previously registered vessel, the new owner may use a copy of the Dealer's Bill of Sale as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
- (b) Transfer of previously registered, non-titled vessels.
 - (1) Transfer of a previously registered, non-titled vessel from one individual owner to another.
 - (A) If the ownership of a previously registered vessel is transferred, by sale or gift, the previous owner(s) shall complete a notarized bill of sale. The bill of sale shall be given to the new owner and shall include the previous owner's name, the new owner's name, the date of sale or gift, certificate of number, manufacturer's hull identification number, model, year, and length of the vessel. The previous owner's signature shall be notarized. If the ownership of a previously registered vessel is transferred by a court order, will, settlement agreement, separation agreement, judgment or other document, the previous owner(s) or representative of the estate shall provide the new owner(s) with documents establishing ownership.
 - (B) The new owner shall complete and submit an application for a certificate of number and Certificate of Title, along with the proof of ownership document and applicable fees, to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale or gift. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel previously registered in North Carolina is transferred to a new owner. A new certificate of number shall be issued to vessels previously registered in another State or to vessels never before registered.
 - (C) For 60 days following the transfer of ownership of a previously registered vessel, the new owner may use a copy of the proof of ownership document, provided it contains the date of sale, as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
 - (2) Transfer of a previously registered, non-titled vessel through a dealer.
 - (A) The owner(s) selling or transferring a previously registered vessel to a dealer shall complete a notarized bill of sale naming the dealer as the new owner. The bill of sale shall be given to the dealer and shall include the

previous owner's name, date of sale, certificate of number, manufacturer's hull identification number, model, year, and length of the vessel. The signature of the previous owner(s) shall be notarized.

- (B) When the vessel is subsequently sold, the dealer shall, on the day of the sale, provide the new owner(s) a dealer bill of sale. The dealer's bill of sale shall include the dealer's name, the new owner(s) name, the date of sale, certificate of number, manufacturer's hull identification number, model year, and length of the vessel. The dealer's bill of sale shall be signed by both the dealer and the new owner(s).
- (C) The new owner(s) shall complete and submit the standard application for a certificate of number and Certificate of Title, along with the proof of ownership document and applicable fees to the Wildlife Resources Commission or one of its authorized agents for processing within 15 days of the date of sale. If applicable, a new Certificate of Title for Vessel shall be issued, including recordation of any new liens listed on the application. The original certificate of number shall be retained when a vessel, previously registered in North Carolina, is transferred to a new owner(s). A new certificate of number shall be issued to vessels previously registered in another state or vessels never before registered.
- (D) For a period of 60 days following the transfer of ownership of a previously registered vessel, the new owner may use a copy of the dealer's bill of sale as a temporary certificate of number pending receipt of his own certificate provided the certificate is validated in accordance with Part (b)(1)(A) of this Rule.
- (3) Transfer of a vessel individually-registered to a dealer or manufacturer. Vessels that have been individually numbered by dealers or manufacturers shall upon transfer of ownership be governed by the provisions of Subparagraph (b)(1) of this Rule.

History Note: Authority G.S. 75A-3; 75A-5; 75A-19; 75A-37; 33 C.F.R. 174.21;
Eff. February 1, 1976;

Amended Eff. August 1, 2014; May 1, 2007; July 1, 1998; April 1, 1997; February 1, 1995; November 1, 1993; July 1, 1988; April 19, 1981.

15A NCAC 10F .0106 DISPLAY OF VESSEL NUMBERS

- (a) The vessel numbers shall be painted on or attached to each side of the forward half of the vessel for which the number was issued in a position that is visible and legible for identification. The numbers shall read from left to right and shall be in block characters not less than three inches in height. The numbers shall be of a solid color that contrasts with the color of the background and maintained to be visible and legible; *i.e.*, dark numbers on a light background, or light numbers on a dark background.
- (b) No other number, except the year date of the validation decal described in Rule .0107 of this Section, shall be carried on the bow of such vessel.
- (c) Manufacturers or dealers may have the number awarded to them printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being demonstrated, so long as the display meets the requirements of the Rules in this Section. Where a currently or previously-numbered vessel is being demonstrated with a set of dealer's numbers, the permanent numbers painted on or attached to the bow shall be covered.
- (d) A vessel registered to a governmental entity and bearing the letter "P" shall continue to display the assigned numbers for so long as the vessel belongs to a governmental entity. Upon transfer of ownership to a private individual(s) or business, the new owner shall apply to the Wildlife Resources Commission for a new certificate of number and shall be assigned a new certificate of number.
- (e) A United States Coast Guard documented vessel registered in North Carolina shall not display the state vessel numbers.

History Note: Authority G.S. 75A-3; 75A-5; 75A-19;
Eff. February 1, 1976;
Amended Eff. August 1, 2014, May 1, 2007; April 1, 1997.

15A NCAC 10F .0107 VALIDATION DECAL

In addition to the certificate of number, the Wildlife Resources Commission shall supply to the owner of each vessel that is numbered, two validation decals indicating the year of expiration. The owner shall affix one validation decal in a position that is visible and legible on the starboard bow and one validation decal on the port side bow of the vessel following and within six inches of the vessel number. The owner of a United States Coast Guard documented vessel shall affix one validation decal in a position that is visible and legible on the forward half of the starboard bow and one validation decal on the forward half of the port side bow. Any validation decals issued for a vessel numbered on application by a governmental entity shall contain no expiration date, but shall bear the letter "P" and shall not be subject to renewal so long as the vessel remains the property of a governmental entity. When any such vessel is transferred to private ownership, the decals shall be removed or obliterated by the transferring agency.

History Note: Authority G.S. 75A-3; 75A-5; 75A-7; 33 C.F.R. 174.15;
Eff. February 1, 1976;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 1997;
August 31, 1980; January 1, 1980.

15A NCAC 10F .0326 PAMLICO COUNTY

(a) Regulated Areas. This Rule applies to the following waters or portions of waters in Pamlico County:

- (1) Silverthorn Bay: the waters of Silverthorn Bay, a tributary of Lower Broad Creek;
- (2) Minnesott Beach: the Minnesott Beach Yacht Basin and its access channel inland from the shoreline to 30 yards beyond the outermost points of the rock jetties in Neuse River.

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

(c) Placement and Maintenance of Markers. The Board of Commissioners of Pamlico 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. May 1, 1977;
Amended Eff. December 1, 1985; November 1, 1977;
Temporary Amendment Eff. March 15, 2003;
Temporary Amendment Expired October 12, 2003;
Amended Eff. May 1, 2014; May 1, 2004.

15A NCAC 10F .0336 NORTHAMPTON AND WARREN COUNTIES

(a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Northampton and Warren Counties.

(b) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Northampton and Warren Counties.

(c) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

(d) Speed Limit in specific waters. No person shall operate a vessel at greater than no-wake speed within the following bodies of water.

- (1) Northampton County, the waters of the cove on the north shore of Lake Gaston east of Vincent Drive, shore to shore from a point at 36.51652 N, 77.82232 W to a point at 36.51580 N, 77.82273 W;
- (2) Warren County, the waters of Big Stonehouse Creek within 50 yards of the culvert under Highway 903;

- (3) Warren County, the waters of Songbird Creek within 50 yards of the culvert under Highway 903;
- (4) Warren County, the waters of Six Pound Creek within 50 yards of the culvert under State Road 1707;
- (5) Warren County, the waters of Lizard Creek within 50 yards of the culvert under Highway 903.

(e) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area on the waters of Gaston Lake in Northampton and Warren Counties.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Northampton County and Warren County are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

History Note: Authority G.S. 75A-3; 75A-15;
Eff. March 29, 1981;
Amended Eff. June 1, 1994; March 1, 1993; September 1, 1989;
Temporary Amendment Eff. March 15, 2003;
Temporary Amendment Expired October 12, 2003;
Amended Eff. May 1, 2014; May 1, 2004.

15A NCAC 10F .0354 PITT COUNTY

(a) Regulated Areas. This Rule applies to the waters described in this Paragraph:

- (1) The entire inlet of Hardee Creek from the Tar River in Pitt County; and
- (2) that portion of Tranters Creek east of a line from a point on the north shore at 35.56961 N, 77.09159 W to a point on the south shore at 35.56888 N, 77.09118 W and north of a line from a point on the east shore at 35.56714 N, 77.08941 W to a point on the west shore at 35.56689 N, 77.09029 W.

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

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

History Note: Authority G.S. 75A-3; 75A-15;
Eff. May 1, 1988;
Amended Eff. May 1, 2014; September 1, 2010; July 1, 1995;
April 1, 1992.

15A NCAC 10G .0601 TOTALLY DISABLED LICENSE ELIGIBLTY

The Wildlife Resources Commission shall accept documentation from individual residents who are certified as totally and permanently disabled by the Social Security Administration, Civil Service Retirement System, Railroad Retirement Board, or

the North Carolina State Retirement System for the purpose of obtaining a lifetime totally disabled hunting and fishing license as described in G.S. 113-270.1C, 113-270.1D, 113-271, and 113-351.

*History Note: Authority G.S. 113-134; 113-270.1C; 113-270.1D; 113-271; 113-351;
Eff. August 1, 2014.*

19A NCAC 03B .0201 DRIVER'S LICENSE EXAMINATION

(a) The Division shall issue a driver's license to any person who passes the driver license examination and is otherwise eligible to hold a license. Applicants for a driver's license are subject to the following tests:

- (1) Knowledge Examination. This is an automated computer test on knowledge of rules of the road. An audio component allows customers with reading comprehension difficulties to listen to the test questions by use of earphones. Eighty percent of the questions shall be answered correctly in order to pass the knowledge examination.
- (2) Road Signs. This is a test on knowledge of highway signs and their meanings. Applicants for a regular Class "C" license shall correctly identify nine of twelve road signs. Applicants for "A" or "B" licenses shall correctly identify all road signs.
- (3) Visual Acuity. Applicant's visual acuity shall be 20/40 or better in either eye or both eyes together to receive an unrestricted license. License is restricted to require corrective lenses if acuity is less than 20/40 in either eye or both eyes together.
- (4) Road Test. The road test measures the applicant's ability to operate a motor vehicle safely in actual traffic situations. The required maneuvers are: quick stop, turnabout, backing, approach corner, right turns, left turns, traffic lights, use of controls, starts, use of lanes, use of brakes, following and attention. Approval or disapproval is determined by the driver license examiner

based upon the applicant's ability to execute the required maneuvers.

(b) The tests contained in Paragraph (a) will be administered as follows:

- (1) First time applicants. Applicants applying for a driver's license for the first time shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test.
- (2) Renewals and licenses expired less than two years. Applicants seeking to renew a valid, unexpired North Carolina driver's license shall complete the road signs test and visual acuity test. Applicants possessing a previously issued North Carolina driver's license, expired less than two years, shall complete the road signs test and visual acuity test.
- (3) Applicants possessing a previously issued North Carolina driver's license, expired greater than two years. Applicants shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test.
- (4) Applicants with a driver's license issued by another State, which is valid and current or expired less than two years. Applicants seeking to transfer their current driver's license from another state shall complete the road signs test and visual acuity test. Applicants possessing a driver's license issued by another state which is expired less than two years shall complete the road signs test and visual acuity test.
- (5) Applicants with a driver's license issued by another state, expired more than two years. Applicants shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test.

*History Note: Authority G.S. 20-2; 20-7(a) through (e); 20-39;
Eff. July 1, 1978;
Amended Eff. May 1, 2014; December 1, 1993; July 1, 1982;
June 5, 1981.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on June 18, 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
Amber Cronk May	(919)431-3074

RULES REVIEW COMMISSION MEETING DATES

June 18, 2014	July 17, 2014
August 21, 2014	September 18, 2014

AGENDA

RULES REVIEW COMMISSION
WEDNESDAY, JUNE 18, 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. Home Inspector Licensure Board – 11 NCAC 08 .1103 (Hammond)
 - B. Department of Justice, Division of Criminal Information – 12 NCAC 04H .0101, .0102, .0103, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0401, .0402, .0403; 04I .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0501, .0601, .0602, .0603, .0701, .0801; 04J .0101, .0102, .0103, .0201, .0301 (May)
 - C. State Human Resources Commission – 25 NCAC 01J .1321(Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between April 22, 2014 and May 20, 2014
 - Medical Care Commission (May)
 - Commission for Public Health (Reeder)
 - Private Protective Services Board (Reeder)
 - Department of Public Safety (Reeder)
 - Board of Architecture (May)
 - Board of Chiropractic Examiners (May)
 - Board of Examiners for Nursing Home Administrators (Reeder)
 - Board of Licensed Professional Counselors (Hammond)
 - Board of Examiners for Engineers and Surveyors (Reeder)
 - Appraisal Board (May)
 - Real Estate Commission (Reeder)
- 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
- Next meeting: Thursday, July 17, 2014
-

**Commission Review
Log of Permanent Rule Filings
April 22, 2014 through May 20, 2014**

MEDICAL CARE COMMISSION

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13D are rules for the licensing of nursing homes including general information (.2000); licensure (.2100); general standards of administration (.2200); patient and resident care and services (.2300); medical records (.2400); physician's services (.2500); pharmaceutical services (.2600); dietary services (.2700); activities, recreation and social services (.2800); special requirements (.2900); specially designated units (.3000); design and construction (.3100); functional requirements (.3200); fire and safety requirements (.3300); and mechanical, electrical, and plumbing requirements (.3400).

<u>Administrative Penalty Determination Process</u>	10A	NCAC	13D	.2111
Amend/*				
<u>Reporting and Investigating Abuse, Neglect or Misappropri...</u>	10A	NCAC	13D	.2210
Amend/*				
<u>General Rules</u>	10A	NCAC	13D	.3101
Amend/*				
<u>Site</u>	10A	NCAC	13D	.3103
Amend/*				
<u>Plans and Specifications</u>	10A	NCAC	13D	.3104
Amend/*				
<u>Required Spaces</u>	10A	NCAC	13D	.3201
Amend/*				
<u>Furnishings</u>	10A	NCAC	13D	.3202
Amend/*				
<u>New Facility Requirements</u>	10A	NCAC	13D	.3301
Repeal/*				
<u>Additions</u>	10A	NCAC	13D	.3302
Repeal/*				
<u>Heating and Air Conditioning</u>	10A	NCAC	13D	.3401
Amend/*				
<u>Emergency Electrical Service</u>	10A	NCAC	13D	.3402
Amend/*				
<u>General Electric</u>	10A	NCAC	13D	.3403
Amend/*				
<u>Other</u>	10A	NCAC	13D	.3404
Amend/*				

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 39 are adult health rules.

The rules in Subchapter 39A deal with chronic disease issues including migrant health (.0100); home health services (.0200); chronic renal disease control program (.0300); adult health promotion and disease prevention program (.0500);

medication assistance program for the disabled (.0600); health care services in the home demonstration program (.0700); home and community-based HIV health services program (.0800), Ryan White HIV care program (.0900), HIV medications program (.1000), cancer diagnostic and treatment program (.1100); breast cervical cancer screening and follow-up program (.1200); and prescription drug assistance program (.1300).

<u>General</u>	10A	NCAC	39A	.0201
Repeal/*				
<u>Definitions</u>	10A	NCAC	39A	.0202
Repeal/*				
<u>Reimbursement Funds</u>	10A	NCAC	39A	.0203
Repeal/*				
<u>Patient Financial Eligibility</u>	10A	NCAC	39A	.0204
Repeal/*				
<u>Covered Services</u>	10A	NCAC	39A	.0205
Repeal/*				
<u>Billing the Program</u>	10A	NCAC	39A	.0206
Repeal/*				
<u>Rates of Reimbursement</u>	10A	NCAC	39A	.0207
Repeal/*				
<u>Reimbursement Funds: Third Party Payors</u>	10A	NCAC	39A	.0208
Repeal/*				
<u>Monitoring</u>	10A	NCAC	39A	.0209
Repeal/*				
<u>Audits</u>	10A	NCAC	39A	.0210
Repeal/*				
<u>Special Provision</u>	10A	NCAC	39A	.0211
Repeal/*				
<u>General</u>	10A	NCAC	39A	.0801
Repeal/*				
<u>Definitions</u>	10A	NCAC	39A	.0802
Repeal/*				
<u>Financial Eligibility</u>	10A	NCAC	39A	.0804
Repeal/*				
<u>Medical Eligibility</u>	10A	NCAC	39A	.0805
Repeal/*				
<u>Billing the HIV Health Services Program</u>	10A	NCAC	39A	.0806
Repeal/*				
<u>Rates of Reimbursement</u>	10A	NCAC	39A	.0807
Repeal/*				
<u>Reimbursement Funds: Third Party Payors</u>	10A	NCAC	39A	.0808
Repeal/*				
<u>Monitoring</u>	10A	NCAC	39A	.0809
Repeal/*				
<u>Audits</u>	10A	NCAC	39A	.0810
Repeal/*				

The rules in Subchapter 40 concern dental health.

The rules in Subchapter 40A concern school water fluoridation including purpose (.0100); eligibility (.0200); administration (.0300); and forms (.0400).

<u>School Fluoridation Information</u>	10A	NCAC	40A	.0104
Repeal/*				

<u>Definitions</u>	10A	NCAC	40A	.0105
Repeal/*				
<u>Water Supply</u>	10A	NCAC	40A	.0206
Repeal/*				
<u>Inspection</u>	10A	NCAC	40A	.0207
Repeal/*				
<u>Application and Approval</u>	10A	NCAC	40A	.0208
Repeal/*				
<u>Notification</u>	10A	NCAC	40A	.0306
Repeal/*				
<u>Renovation</u>	10A	NCAC	40A	.0307
Repeal/*				
<u>Equipment and Maintenance</u>	10A	NCAC	40A	.0308
Repeal/*				
<u>Training</u>	10A	NCAC	40A	.0309
Repeal/*				
<u>Surveillance</u>	10A	NCAC	40A	.0310
Repeal/*				
<u>School Fluoridation Agreement</u>	10A	NCAC	40A	.0403
Repeal/*				
<u>Water Analysis Form</u>	10A	NCAC	40A	.0404
Repeal/*				

The rules in Chapter 41 concern epidemiology health.

The rules in Subchapter 41A deal with communicable disease control and include reporting of communicable diseases (.0100); control measures for communicable diseases including special control measures (.0200-.0300); immunization (.0400); purchase and distribution of vaccine (.0500); special program/project funding (.0600); licensed nursing home services (.0700); communicable disease grants and contracts (.0800); and biological agent registry (.0900).

<u>Dosage & Age Requirements for Immunization</u>	10A	NCAC	41A	.0401
Amend/*				
<u>Vaccine for Providers Other than Local Health Departments</u>	10A	NCAC	41A	.0502
Repeal/*				

The rules in Subchapter 41G concern the veterinary public health program.

<u>Fees for Rabies, Tags, Links, and Rivets</u>	10A	NCAC	41G	.0102
Repeal/*				

The rules in Chapter 43 are from the Department of Health and Human Services and the Commission for Public Health and concern personal health.

The rules in Subchapter 43D concern WIC/Nutrition including definitions (.0100); WIC program general information (.0200); selection of local WIC agencies (.0300); eligibility for WIC program participation (.0400); WIC program food package (.0500); WIC program nutrition education (.0600); WIC program food delivery system (.0700); WIC program administrative appeals (.0800); WIC program participant fair hearings (.0900); consultation services (.1000); and maternal and child health block grant nutrition program (.1200).

<u>General</u>	10A	NCAC	43D	.1201
Repeal/*				
<u>Provider Eligibility</u>	10A	NCAC	43D	.1202
Repeal/*				

<u>Allocation of Funds</u>	10A	NCAC	43D	.1203
Repeal/*				
<u>Client Eligibility</u>	10A	NCAC	43D	.1204
Repeal/*				
<u>Scope of Services</u>	10A	NCAC	43D	.1205
Repeal/*				
<u>Service Provider Qualifications</u>	10A	NCAC	43D	.1206
Repeal/*				
<u>Payment for Reimbursable</u>	10A	NCAC	43D	.1207
Repeal/*				

The rules in Subchapter 43E concern child health including school health funds (.0100); kindergarten health assessments (.0200); and pediatric primary care program (.0300).

<u>General</u>	10A	NCAC	43E	.0301
Repeal/*				
<u>Definitions</u>	10A	NCAC	43E	.0302
Repeal/*				
<u>Provider Eligibility</u>	10A	NCAC	43E	.0303
Repeal/*				
<u>Client Eligibility</u>	10A	NCAC	43E	.0304
Repeal/*				
<u>Application for Funds: Program Plan: Renewal</u>	10A	NCAC	43E	.0305
Repeal/*				
<u>Budgeting of Grant Funds</u>	10A	NCAC	43E	.0306
Repeal/*				
<u>Medical Records</u>	10A	NCAC	43E	.0307
Repeal/*				
<u>Client and Third Party Fees</u>	10A	NCAC	43E	.0308
Repeal/*				
<u>Monitoring and Evaluation</u>	10A	NCAC	43E	.0309
Repeal/*				

The rules in Subchapter 43F concern children's special health services: children and youth section including general provisions and policies (.0100, .0200); eligibility (.0300); services (.0400); authorization and billing procedures (.0500); forms (.0600); rosters (.0700); adoption (.0800); agreements with other agencies (.0900); children's special health contract funds (.1000); North Carolina hemophilia assistance plan (.1000) and newborn screening program (.1100).

<u>Purpose</u>	10A	NCAC	43F	.0101
Repeal/*				
<u>Definitions</u>	10A	NCAC	43F	.0102
Repeal/*				
<u>Referral and Follow-Up</u>	10A	NCAC	43F	.0201
Repeal/*				
<u>Release of Medical Information</u>	10A	NCAC	43F	.0202
Repeal/*				
<u>Out-of-State Care</u>	10A	NCAC	43F	.0203
Repeal/*				
<u>Sponsored Clinics</u>	10A	NCAC	43F	.0204
Repeal/*				
<u>Participating Physicians, Orthodontists and Prosthodontists</u>	10A	NCAC	43F	.0205
Repeal/*				

<u>New Clinic Directors and New Clinics</u> Repeal/*	10A	NCAC	43F	.0206
<u>Speech and Language Pathologists and Audiologists</u> Repeal/*	10A	NCAC	43F	.0207
<u>Determination</u> Repeal/*	10A	NCAC	43F	.0301
<u>Age</u> Repeal/*	10A	NCAC	43F	.0302
<u>Medical Conditions Supported by the Program</u> Repeal/*	10A	NCAC	43F	.0303
<u>Medical Conditions or Procedures not Supported</u> Repeal/*	10A	NCAC	43F	.0304
<u>Appeals Procedure Concerning Eligibility</u> Repeal/*	10A	NCAC	43F	.0305
<u>Clinic Services</u> Repeal/*	10A	NCAC	43F	.0401
<u>Other Outpatient Services</u> Repeal/*	10A	NCAC	43F	.0402
<u>Hospitals</u> Repeal/*	10A	NCAC	43F	.0403
<u>Hospitalization</u> Repeal/*	10A	NCAC	43F	.0404
<u>Special Therapy</u> Repeal/*	10A	NCAC	43F	.0405
<u>Orthodontic and Prosthodontic Dental Care</u> Repeal/*	10A	NCAC	43F	.0406
<u>Appliances and Equipment</u> Repeal/*	10A	NCAC	43F	.0407
<u>Drugs</u> Repeal/*	10A	NCAC	43F	.0408
<u>Blood</u> Repeal/*	10A	NCAC	43F	.0409
<u>Staff Consultant and Advisory Services</u> Repeal/*	10A	NCAC	43F	.0410
<u>Authorization Policies</u> Repeal/*	10A	NCAC	43F	.0501
<u>Service Authorization</u> Repeal/*	10A	NCAC	43F	.0502
<u>Cancellations</u> Repeal/*	10A	NCAC	43F	.0503
<u>Special Therapy Requests</u> Repeal/*	10A	NCAC	43F	.0504
<u>Billing Policies</u> Repeal/*	10A	NCAC	43F	.0505
<u>Physicians' Billing Policies</u> Repeal/*	10A	NCAC	43F	.0506
<u>Other Professional Services</u> Repeal/*	10A	NCAC	43F	.0507
<u>Clinic Charges and Outpatient Charges</u> Repeal/*	10A	NCAC	43F	.0508
<u>Clerical Charges</u> Repeal/*	10A	NCAC	43F	.0509

<u>Authorized Hospitalization</u> Repeal/*	10A NCAC 43F .0510
<u>Authorized Appliances</u> Repeal/*	10A NCAC 43F .0511
<u>Authorized Drugs for Outpatients</u> Repeal/*	10A NCAC 43F .0512
<u>Reimbursement Rates</u> Repeal/*	10A NCAC 43F .0513
<u>Appeals Procedure</u> Repeal/*	10A NCAC 43F .0514
<u>Requests for Forms</u> Repeal/*	10A NCAC 43F .0601
<u>Request Form for Cost Services</u> Repeal/*	10A NCAC 43F .0602
<u>Financial Eligibility Form</u> Repeal/*	10A NCAC 43F .0603
<u>Forms for Denial of Requests for Services</u> Repeal/*	10A NCAC 43F .0604
<u>Clinic Notes Form</u> Repeal/*	10A NCAC 43F .0605
<u>Clinic Record</u> Repeal/*	10A NCAC 43F .0606
<u>Clerical Services</u> Repeal/*	10A NCAC 43F .0607
<u>Qualifications</u> Repeal/*	10A NCAC 43F .0701
<u>Further Information</u> Repeal/*	10A NCAC 43F .0702
<u>Appeals Procedure</u> Repeal/*	10A NCAC 43F .0703
<u>Administrative Requirements</u> Repeal/*	10A NCAC 43F .0704
<u>General Provision</u> Repeal/*	10A NCAC 43F .0801
<u>Requirements for the Adoptive Child</u> Repeal/*	10A NCAC 43F .0802
<u>Application for Coverage After Adoption</u> Repeal/*	10A NCAC 43F .0804
<u>Agreement with Vocational Rehabilitation</u> Repeal/*	10A NCAC 43F .0901
<u>Outpatient Clinic Services</u> Repeal/*	10A NCAC 43F .1001
<u>Definitions</u> Repeal/*	10A NCAC 43F .1002
<u>Provider Eligibility</u> Repeal/*	10A NCAC 43F .1003
<u>Client Eligibility</u> Repeal/*	10A NCAC 43F .1004
<u>Scope of Services</u> Repeal/*	10A NCAC 43F .1005
<u>Allocation of Funds: Contract</u> Repeal/*	10A NCAC 43F .1006

<u>Client and Third Party Fees</u> Repeal/*	10A	NCAC	43F	.1008
<u>Application for Funds</u> Repeal/*	10A	NCAC	43F	.1009
<u>Budgeting of Grant Funds</u> Repeal/*	10A	NCAC	43F	.1010
<u>Annual Plan</u> Repeal/*	10A	NCAC	43F	.1011
<u>Renewal of Grant Funds</u> Repeal/*	10A	NCAC	43F	.1012

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Subchapter 7D cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator and counterintelligence (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); continuing education (.1300); unarmed armored car service guard registration requirements (.1400); and armed armored car service guard registration permit requirements (.1500).

<u>Requirements for a Firearms Trainer Certificate</u> Amend/*	12	NCAC	07D	.0901
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PUBLIC SAFETY, DEPARTMENT OF

The rules in Subchapter 7A concern enforcement regulations of the State Highway Patrol.

<u>Rotation Wrecker Service Regulations</u> Amend/*	14B	NCAC	07A	.0116
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ARCHITECTURE, BOARD OF

The rules in Chapter 2 are from the Board of Architecture and include general provisions (.0100); practice of architecture (.0200); examination procedures (.0300); rules, petitions, and hearings (.0400); declaratory rulings (.0500); administrative hearings: procedures (.0600); administrative hearings: decisions and related rights (.0700); judicial review (.0800); and continuing education (.0900).

<u>Forms</u> Amend/*	21	NCAC	02	.0107
<u>Fees</u> Amend/*	21	NCAC	02	.0108
<u>Applicability of Board Rules</u> Amend/*	21	NCAC	02	.0202
<u>Firm Practice of Architecture</u> Amend/*	21	NCAC	02	.0214
<u>Examination</u> Amend/*	21	NCAC	02	.0302
<u>Licensure by Reciprocity</u> Amend/*	21	NCAC	02	.0303

CHIROPRACTIC EXAMINERS, BOARD OF

The rules in Chapter 10 include organization of the Board (.0100); the practice of chiropractic (.0200); rules of unethical conduct (.0300); rule-making procedures (.0400); investigation of complaints (.0500); contested cases and hearings in contested cases (.0600-.0700); and miscellaneous provisions (.0800).

<u>Licensure</u>	21	NCAC	10	.0204
Amend/*				
<u>Certification of Clinical Assistants</u>	21	NCAC	10	.0213
Adopt/*				

NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS FOR

The rules in Subchapter 37B are departmental rules including general provisions (.0100); and definitions (.0200).

<u>Authority: Name & Location of Board</u>	21	NCAC	37B	.0101
Amend/*				

The rules in Subchapter 37D concern new licenses including general provisions (.0100); application for license (.0200); education, experience, and required course (.0300); administrators in training (.0400); preceptors (.0500); national exam (.0600); and state exam (.0700).

<u>Initial Licensure Fee</u>	21	NCAC	37D	.0202
Amend/*				
<u>Application to Become Administrator-In-Training</u>	21	NCAC	37D	.0402
Amend/*				
<u>State Examination Administration</u>	21	NCAC	37D	.0703
Amend/*				

The rules in Subchapter 37E concern applications for reciprocity/endorsement.

<u>Application Contents</u>	21	NCAC	37E	.0102
Amend/*				

The rules in Subchapter 37F concern temporary license requirements.

<u>Issuance of Temporary License</u>	21	NCAC	37F	.0102
Amend/*				

The rules in 37G concern renewal requirements (.0100); inactive licenses (.0200); reinstatement (.0300); and duplicate licenses (.0400).

<u>Renewal Fee</u>	21	NCAC	37G	.0102
Amend/*				
<u>Inactive Requirements</u>	21	NCAC	37G	.0201
Amend/*				

The rules in Subchapter 37H concern continuing education requirements.

<u>Continuing Education Programs of Study</u>	21	NCAC	37H	.0102
Amend/*				

LICENSED PROFESSIONAL COUNSELORS, BOARD OF

The rules in Chapter 53 are from the Board of Licensed Professional Counselors and include general information (.0100); definitions and clarification of terms (.0200); how to obtain licensure (.0300); disciplinary procedures (.0400); fees (.0500); renewal of license (.0600); rules specific to licensed professional counselor associates (.0700); licensed professional counselor supervisors (.0800); and registration for a professional entity (.0900).

<u>Professional Ethics</u>	21	NCAC	53	.0102
Amend/*				
<u>Professional Disclosure Statement Requirements for LPCA a...</u>	21	NCAC	53	.0204
Amend/*				
<u>Counseling Experience</u>	21	NCAC	53	.0205
Amend/*				
<u>Graduate Counseling Experience</u>	21	NCAC	53	.0206
Amend/*				
<u>Supervised Professional Practice</u>	21	NCAC	53	.0208
Amend/*				
<u>Qualified Clinical Supervisor</u>	21	NCAC	53	.0209
Amend/*				
<u>Individual Clinical Supervision</u>	21	NCAC	53	.0210
Amend/*				
<u>Group Clinical Supervision</u>	21	NCAC	53	.0211
Amend/*				
<u>Face to Face Supervision Defined</u>	21	NCAC	53	.0212
Amend/*				
<u>Applications</u>	21	NCAC	53	.0301
Amend/*				
<u>Transcripts</u>	21	NCAC	53	.0302
Amend/*				
<u>Applicants Licensed in Other States, Military Personnel a...</u>	21	NCAC	53	.0304
Amend/*				
<u>Examination</u>	21	NCAC	53	.0305
Amend/*				
<u>Retaking of Examination</u>	21	NCAC	53	.0307
Amend/*				
<u>Receipt of Application</u>	21	NCAC	53	.0308
Amend/*				
<u>Foreign Degree Applicants</u>	21	NCAC	53	.0310
Adopt/*				
<u>Requirements for Candidate for Licensure Pending Status</u>	21	NCAC	53	.0311
Adopt/*				
<u>Alleged Violations</u>	21	NCAC	53	.0403
Amend/*				
<u>Application Fee</u>	21	NCAC	53	.0501
Amend/*				
<u>Renewal and Other Fees</u>	21	NCAC	53	.0503
Amend/*				
<u>Renewal Period</u>	21	NCAC	53	.0601
Amend/*				
<u>Renewal for Licensure Form; Address Change; Name Change</u>	21	NCAC	53	.0602
Amend/*				
<u>Continuing Education</u>	21	NCAC	53	.0603

Amend/*				
<u>Failure to Secure Sufficient Continuing Education/Renewal...</u>	21	NCAC	53	.0604
Amend/*				
<u>Licensed Professional Counselor Associate</u>	21	NCAC	53	.0701
Amend/*				
<u>Supervised Practice for Licensed Professional Counselor A...</u>	21	NCAC	53	.0702
Amend/*				
<u>Licensed Professional Counselor Supervisor</u>	21	NCAC	53	.0801
Amend/*				
<u>Certificate of Registration for Professional Entity</u>	21	NCAC	53	.0901
Adopt/*				
<u>Renewal of Certificate of Registration for a Professional...</u>	21	NCAC	53	.0902
Adopt/*				

ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

The rules in Chapter 56 concern the organization of the board (.0100); instructional programs (.0300); records and reports of the board, retention and dispositions (.0400); professional engineer (.0500); professional land surveyor (.0600); rules of professional conduct (.0700); firm registration (.0800); general business entities (.0900); temporary permit (.1000); seal (.1100); rulemaking proceedings (.1200); board disciplinary procedures (.1300); contested cases (.1400); fees (.1500); standards of practice for land surveying in North Carolina (.1600); and continuing professional competency (.1700).

<u>Requirements for Licensing</u>	21	NCAC	56	.0501
Amend/*				
<u>Application Procedure: Individual</u>	21	NCAC	56	.0502
Amend/*				
<u>Examinations</u>	21	NCAC	56	.0503
Amend/*				
<u>Requirements for Licensing</u>	21	NCAC	56	.0601
Amend/*				
<u>Application Procedure: Individual</u>	21	NCAC	56	.0602
Amend/*				
<u>Examinations</u>	21	NCAC	56	.0603
Amend/*				
<u>Procedure</u>	21	NCAC	56	.0802
Amend/*				
<u>Offices</u>	21	NCAC	56	.0901
Amend/*				
<u>Opportunity for Licensee or Applicant to have Hearing</u>	21	NCAC	56	.1402
Amend/*				
<u>Surveying Procedures</u>	21	NCAC	56	.1602
Amend/*				
<u>Classification of Boundary Surveys</u>	21	NCAC	56	.1603
Amend/*				
<u>Mapping Requirements for Boundary Surveys</u>	21	NCAC	56	.1604
Amend/*				
<u>Specifications for Topographic and Planimetric Mapping, I...</u>	21	NCAC	56	.1606
Amend/*				
<u>Classification/Land Information System/Geographic Informa...</u>	21	NCAC	56	.1608
Amend/*				
<u>Requirements</u>	21	NCAC	56	.1703

Amend/*				
<u>Units</u>	21	NCAC	56	.1704
Amend/*				
<u>Determination of Credit</u>	21	NCAC	56	.1705
Amend/*				

APPRAISAL BOARD

The rules in Subchapter 57A cover licensing, certification and practice rules for appraisers including application procedures (.0100); licensing and certification (.0200); examination (.0300); general practice requirements (.0400); and appraisal standards (.0500).

<u>Form</u>	21	NCAC	57A	.0101
Amend/*				
<u>Filing and Fees</u>	21	NCAC	57A	.0102
Amend/*				
<u>Qualifications for Trainee Registration and Appraiser Lic...</u>	21	NCAC	57A	.0201
Amend/*				
<u>Continuing Education</u>	21	NCAC	57A	.0204
Amend/*				
<u>Expired Registration, License or Certificate</u>	21	NCAC	57A	.0206
Amend/*				
<u>Temporary Practice</u>	21	NCAC	57A	.0210
Amend/*				
<u>Time and Place</u>	21	NCAC	57A	.0301
Amend/*				
<u>Subject Matter and Passing Scores</u>	21	NCAC	57A	.0302
Amend/*				
<u>Re-examination</u>	21	NCAC	57A	.0303
Amend/*				
<u>Supervision of Trainees</u>	21	NCAC	57A	.0407
Amend/*				

The rules in Subchapter 57B cover real estate appraisal education including the courses required for licensure or certification (.0100); course sponsor standards for pre-licensing or pre-certification courses (.0200); pre-licensing and pre-certification course standards (.0300); course sponsor fees (.0400); fees for private real estate appraisal education schools (.0500); and continuing education course standards (.0600).

<u>Licensed Residential and Certified Residential Real Estat...</u>	21	NCAC	57B	.0102
Amend/*				
<u>Course Exemptions for Equivalent Education</u>	21	NCAC	57B	.0104
Repeal/*				
<u>Purpose and Applicability</u>	21	NCAC	57B	.0201
Amend/*				
<u>Application for Approval</u>	21	NCAC	57B	.0202
Amend/*				
<u>Criteria for Approval</u>	21	NCAC	57B	.0203
Amend/*				
<u>Administration</u>	21	NCAC	57B	.0207
Amend/*				
<u>Accommodations for Persons With Disabilities</u>	21	NCAC	57B	.0208
Amend/*				
<u>Certificate of Course Completion</u>	21	NCAC	57B	.0209

Amend/*				
<u>Purpose</u>	21	NCAC	57B	.0301
Amend/*				
<u>Course Content</u>	21	NCAC	57B	.0302
Amend/*				
<u>Course Completion Standards</u>	21	NCAC	57B	.0303
Amend/*				
<u>Instructor Requirements</u>	21	NCAC	57B	.0306
Amend/*				
<u>Criteria for Course Recognition</u>	21	NCAC	57B	.0307
Amend/*				
<u>Applicability</u>	21	NCAC	57B	.0401
Amend/*				
<u>Qualifying Courses</u>	21	NCAC	57B	.0604
Amend/*				
<u>Continuing Education Credit Hours</u>	21	NCAC	57B	.0605
Amend/*				
<u>Instructors for the Trainee/Supervisor Course Required by...</u>	21	NCAC	57B	.0614
Adopt/*				

The rules in Subchapter 57C concern administrative law procedures including appraisal board hearings (.0100); petitions for rules (.0200); rule-making (.0300); and declaratory rulings (.0400).

<u>Form of Complaints and Pleadings</u>	21	NCAC	57C	.0101
Amend/*				

The rules in Subchapter 57D concern appraisal management companies including application for appraisal management registration (.0100); appraisal management company registration (.0200); appraisal management company procedures (.0300); and appraisal management company general practices (.0400).

<u>Form</u>	21	NCAC	57D	.0101
Amend/*				
<u>Registration Renewal</u>	21	NCAC	57D	.0202
Amend/*				
<u>Compliance Manager</u>	21	NCAC	57D	.0303
Amend/*				
<u>Payment of Fees to Appraisers</u>	21	NCAC	57D	.0310
Amend/*				

REAL ESTATE COMMISSION

The rules in Chapter 58 are from the North Carolina Real Estate Commission.

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate education and recovery fund (.1400); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); brokers in military service (.2100); and broker price opinions and comparative market analyses (.2200).

<u>Agency Agreements and Disclosure</u>	21	NCAC	58A	.0104
Amend/*				
<u>Broker-In-Charge</u>	21	NCAC	58A	.0110

Amend/*				
<u>Offers and Sales Contracts</u>	21	NCAC	58A	.0112
Amend/*				
<u>Residential Property and Owners' Association Disclosure S...</u>	21	NCAC	58A	.0114
Amend/*				
<u>Accounting for Trust Money</u>	21	NCAC	58A	.0117
Amend/*				
<u>Trust Money Belonging to Property Owners' Associations</u>	21	NCAC	58A	.0118
Amend/*				
<u>Cheating and Related Misconduct</u>	21	NCAC	58A	.0404
Amend/*				
<u>Business Entities</u>	21	NCAC	58A	.0502
Amend/*				
<u>License Renewal; Penalty for Operating While License Expired</u>	21	NCAC	58A	.0503
Amend/*				
<u>Continuing Education Requirement</u>	21	NCAC	58A	.1702
Amend/*				
<u>Extensions of Time to Complete Continuing Education</u>	21	NCAC	58A	.1709
Amend/*				
<u>Trust Monies</u>	21	NCAC	58A	.1808
Amend/*				

The rules in Subchapter 58C deal with real estate prelicensing education schools including rules dealing with the licensing of all schools except private real estate schools (.0100); private real estate schools (.0200); prelicensing courses (.0300); and pre-licensing course instructors (.0600).

<u>Enrollment Procedure and Contracts</u>	21	NCAC	58C	.0209
Amend/*				
<u>Transfer of School Ownership</u>	21	NCAC	58C	.0221
Adopt/*				
<u>Course Completion Reporting</u>	21	NCAC	58C	.0309
Amend/*				
<u>Course Records</u>	21	NCAC	58C	.0310
Amend/*				

The rules in Subchapter 58E are the real estate continuing education rules both update and elective course components including rules dealing with update courses (.0100); update course instructors (.0200); elective courses, sponsors, and instructors (.0300); general sponsor requirements (.0400); course operational requirements (.0500); and broker-in-charge annual review (.0600).

<u>Update Course Component</u>	21	NCAC	58E	.0102
Amend/*				
<u>Nature and Scope of Approval</u>	21	NCAC	58E	.0202
Amend/*				
<u>Application and Criteria for Original Approval</u>	21	NCAC	58E	.0203
Amend/*				
<u>Active and Inactive Status: Renewal of Approval</u>	21	NCAC	58E	.0204
Amend/*				
<u>Criteria for Elective Course Approval</u>	21	NCAC	58E	.0304
Amend/*				
<u>Change in Sponsor Ownership</u>	21	NCAC	58E	.0408
Amend/*				

<u>Purpose and Applicability</u>	21	NCAC	58E	.0601
Repeal/*				
<u>Course Description</u>	21	NCAC	58E	.0602
Repeal/*				
<u>Authority to Conduct Course</u>	21	NCAC	58E	.0603
Repeal/*				
<u>Course Operational Requirements</u>	21	NCAC	58E	.0604
Repeal/*				

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>.

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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

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J. Randolph Ward	

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Amanda Thaxton v. State Ethics Commission	09 OSP 03754	09/20/12	
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Nathan Anthony Swanson v. DHHS, Division of Mental Health	10 OSP 00929	01/31/14	28:21 NCR 2694
Jacob W. Scott v. Department of Crime Control and Public Safety Alcohol Law Enforcement	10 OSP 04582	07/19/13	28:12 NCR 1419
Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 05424	03/28/12	27:01 NCR 119
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Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
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Valerie Small v. NC Agricultural and Technical State University	11 OSP 03245	05/24/13	28:11 NCR 1231
Beatrice T. Jackson v. Durham County Health Department	11 OSP 03835	06/08/12	
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Thomas W. Wheeler v. NC Department of Transportation	11 OSP 13440	12/03/13	
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Jesus A. Cabrera v. Department of Revenue	12 REV 08968	01/03/13	
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Chase Auto Finance Corporation v. Department of Revenue	13 REV 10115	06/19/13	28:10 NCR 1164
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Vikki J Goings v. UNC Hospital	12 UNC 04109	09/18/12	
Elonnie Alston v. UNC Hospitals	12 UNC 04551	09/11/12	
Diara Z Andrews v. UNC Hospitals	12 UNC 04827	08/15/12	
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WILDLIFE RESOURCES COMMISSION

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

STATE OF NORTH CAROLINA

COUNTY OF WAKE

2014 JUN 24 PM 3:52

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 OSP 14632

Office of

Administrative Hearings

LARRY CHRISTOPHER MANESS,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
CORRECTION, DIVISION OF PRISONS
Respondent.

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DECISION

This contested case was heard before the Honorable Eugene J. Cella, Temporary Administrative Law Judge, on January 16, 2014, at the Office of Administrative Hearings, Raleigh, North Carolina.

APPEARANCES

For Petitioner: J. Heydt Philbeck
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WITNESSES

The Respondent, North Carolina Department of Correction, effective 1 January 2012 the Division of Adult Correction in the Department of Public Safety (hereinafter "Respondent" or "NCDPS") presented testimony from the following seven witnesses: Petitioner, Larry Christopher Maness; Sherry Hinson-Downey, a Correctional Captain at Southern Correctional Institution ("SCI"); Alice Elizabeth Blankenship; Donna Denise Blankenship; Larry Douglas Callicutt, a Correctional Captain at SCI; Kevin Tyrone King, the Assistant Superintendent for Custody and Operations at SCI; and Annie Delores Harvey, the Female Command Manager for

NCDPS. The Petitioner, Larry Maness presented testimony from the following four witnesses: Sandra Ray Maness, a Correctional Officer at SCI; Rhonda Caudill Hudson, a Correctional Officer at SCI; Abby Freeman Haywood, a Correctional Officer at SCI; and Donna Jean Wilkes.

EXHIBITS

Respondent's exhibits ("R. Exs.") 1 - 4 (redacted), 8, 9 (redacted), 10 - 14 were admitted into evidence. Petitioner's exhibits ("P. Exs.") 1 - 6 were admitted into evidence.

ISSUE

1. Did Respondent have just cause to terminate its employment of Petitioner for unacceptable personal conduct?

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

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:

FINDINGS OF FACT

1. The parties are properly before the Office of Administrative Hearings on a Petition pursuant to Chapter 126 of the General Statutes, and the Office of Administrative Hearings has jurisdiction over both the parties and the subject matter as such.

2. Respondent has a policy governing the personal conduct of its employees. (Respondent's Exhibit ("R. Ex.") 12.) The personal conduct policy of the then named Department of Correction is found in the NCDPS *Personnel Manual* as Appendix C to the Disciplinary Policy and Procedures. (R. Ex. 12 at pp. 38 - 41.) The policy states, "All employees of the Department of Correction shall maintain personal conduct of an acceptable standard as an employee and member of the community. Violations of this policy may result in disciplinary action including dismissal without prior warning." (R. Ex. 12 at p. 38.) Unacceptable personal conduct includes "(1) conduct for which no reasonable person should expect to receive prior warning, (2) job-related conduct that constitutes a violation of state or federal laws, (4) the willful violation of known or written work rules, (5) conduct unbecoming a

state employee that is detrimental to state service, and (6) the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State” as listed in the *NCDPS Personnel Manual*. (Transcript (“T.”) p. 140; R. Ex. 12 at p. 38.)

3. Respondent has a policy governing personal dealings with offenders of the then named Department of Correction found in the *NCDPS Personnel Manual*. (R. Ex. 11 at pp. 60 - 63.) The policy provides that employees of the Department shall not:

- 2. Lend anything to an offender,
- 5. Make gifts to or perform personal services for an offender,
- 13. Engage in sexual relations with an offender. Sexual relations includes, but is not limited to, vaginal intercourse, fondling, kissing, hugging, or any other intimate contact. Such acts are prohibited regardless of the offender’s consent to the act.

(R. Ex. 11 at pp. 61 - 62.)

4. NCDPS, Division of Prisons also has a policy regarding personal dealings with inmates that is found in the then named North Carolina Department of Correction, Division of Prisons Policy and Procedures Manual at Chapter A, Section .0200, Title: Conduct of Employees. The policy states at Section .0202(f) “Personal Dealings with Inmates,”

- (1) Employees will maintain a quiet but firm demeanor in their dealings with inmates and will not indulge in undue familiarity with them.
- (2) Employees will not borrow anything from or lend anything to nor accept gifts or personal services from, nor barter or trade with any inmate, except as specifically authorized by law, regulations, or directive. Employees will not tip an inmate. Employees will not make gifts or perform personal services for inmates not in keeping with authorized operations.
- (5) An employee shall not engage in sexual misconduct or harassment with an inmate as outlined in the Division’s Inmate Sexual Abuse and Harassment Policy, F .3400.
- (8) Any employee involved in such personal dealings with inmates as outlined in section A .202(f) will be subject to disciplinary action up to and including dismissal.

(R. Ex. 10 at pp. 3 - 4 of 8.)

5. Petitioner began work for Respondent on July 1, 1992 as a Correctional Officer at SCI. For Petitioner's first eleven years of employment, SCI was a close custody prison facility for male inmates and then was converted to a facility that houses female inmates. (T. pp. 10 - 11.)

6. Petitioner was dismissed from his position as a Correctional Officer, effective August 12, 2011, for unacceptable personal conduct. (T. pp. 35 - 36; R. Ex. 9.)

7. Prior to Respondent's termination of Petitioner's employment, Respondent afforded Petitioner a pre-disciplinary letter that informed him that he was being disciplined for giving a picture of another inmate to inmate Sarah Chavis and for being unduly familiar with inmate Donna Blankenship as a violation of the Respondent's policy regarding personal dealings with inmates. Further, the Petitioner attended a pre-dismissal conference that was afforded to him by the Respondent. (T. pp. 22, 25 - 27, 35.)

8. Respondent sent and Petitioner received a letter terminating his employment ("Dismissal Letter") and afforded Petitioner the opportunity to administratively appeal his termination. (T. pp. 29 - 31, 35 - 36; R. Ex. 9.)

9. The circumstances leading up to Petitioner's dismissal were as follows. In January 2011 Correctional Captain Hinson-Downey was approached by two SCI staff members who told her that inmate Alice Blankenship had reported to them that Mr. Maness had engaged in inappropriate behavior with an inmate. Captain Hinson-Downey questioned inmate Alice Blankenship in her office, and inmate Alice Blankenship reported that inmate Donna Blankenship had been involved in a relationship with Mr. Maness that included kissing and "heavy petting." Captain Hinson-Downey reported this allegation involving Mr. Maness to the Administrator for SCI. (T. pp. 52 - 54.)

10. Inmate Alice Blankenship testified that another inmate Donna Blankenship (no relation) confided in her that sometime at the end of 2010 while working in the clothes house at SCI Mr. Maness had kissed and inappropriately touched her. (T. pp. 60 - 61.)

11. Inmate Alice Blankenship was interviewed on January 4, 2011, by Captain Callicutt who asked her to write a statement about what inmate Donna Blankenship told her. Inmate Alice Blankenship wrote in her statement that, "Donna Blankenship confided in me that she and Mr. Manus [sic] had kissed and messed around in an office or area somewhere back in the clothes house or vocational area." Inmate Alice Blankenship's statement also included that Mr. Maness and Donna Blankenship had been intimate on more than one occasion with Mr. Maness groping Donna's breast and feeling her butt. (T. p. 64; R. Ex. 1.)

12. Inmate Donna Blankenship testified that she was housed at SCI and assigned to work in the clothes house from January 2007 to November 2010. Donna Blankenship recalled having a conversation in Lieutenant Downey's office with Mr. Maness about her interest in switching jobs from folding clothes to working on the loading dock. (T. pp. 68 - 69.)

13. Donna Blankenship further testified that during this conversation with Mr. Maness about a job in the loading dock Mr. Maness placed his hands on her shoulders, kissed her, and then grabbed her shirt, pulled it up, and put his mouth on her breast without her consent. About one to two weeks after that incident Donna Blankenship said that Mr. Maness again grabbed her and kissed her. Donna Blankenship told Mr. Maness to stop and leave her alone. Donna Blankenship testified that she told Alice Blankenship about what Mr. Maness had done to her. (T. pp. 70 - 71.)

14. Inmate Alice Blankenship was interviewed in January 2011 by Captain Callicutt who asked her to write a statement about the incident involving Mr. Maness. Donna Blankenship wrote in her statement that, "When I walked into the office, he [Maness] put his hands on my shoulders, turned me around, kissed me on my lips & put his hands up my shirt & I pushed him away. I felt intimidated by him & I was scared that I would get into trouble for something I had no control over. Another incident happened afterwards, I was supposed to get a flat iron or hair dryer for our unit. Mr. Maness said that there should be one in the supply cage. I went into the cage, when he attempted to kiss me." (T. pp. 71 - 73; R. Exs. 2 and 3.)

15. Petitioner acknowledged that while employed with NCDPS that he attended in excess of five training courses related to staff and offender relationship training and received a copy of Respondent's memorandum regarding the criminal statute for intercourse and sexual offenses with certain victims and DOP [Division of Prisons] policy on personal dealings with inmates. Petitioner further acknowledged that he has attended at least two courses related to the Prison Rape Elimination Act ("PREA"). (T. pp. 14 - 16, R. Exs. 13 and 14.)

16. Larry D. Callicutt, a Correctional Captain at SCI, was assigned by Correctional Administrator Tim Kimble to investigate a report he had received from Captain Hinson-Downey that inmate Alice Blankenship had made involving Mr. Maness and inmate Donna Blankenship. (T. pp. 87 - 88.) Captain Callicutt interviewed Mr. Maness regarding the allegations. During the interview while Mr. Maness denied the allegations of misconduct involving Donna Blankenship Maness told Captain Callicutt that inmate Sarah Chavis had approached him and asked him if he could give her a picture of another inmate that had been transferred to another correctional facility. Mr. Maness admitted to Captain Callicutt that he printed a picture of this inmate from OPUS, Respondent's electronic database for inmate records, and gave it to inmate Chavis in violation of Respondent's policies and procedures. (T. pp. 88 - 90.)

17. During the hearing, Captain Callicutt testified that the Petitioner told him that he recalled talking with Donna Blankenship about her interest in working in the loading dock. The Petitioner told Captain Callicutt that he conducted this meeting with Donna Blankenship in the canteen warehouse office that is more secluded and has a much smaller window than the windows in the Petitioner's office in the loading dock. Also, at the time of this meeting the loading dock operation had been shut down and there was no open position that needed to be filled in the loading dock. (T. pp. 91 - 95.)

18. Captain Callicutt further testified that since his investigation of the Petitioner involved allegations of sexual misconduct with an inmate it was conducted as a PREA investigation. Captain Callicutt conducted his investigation and prepared a written summary for his chain of command concluding that the Petitioner engaged in unprofessional conduct and violated Respondent's policy regarding correctional staff personal interactions with inmates. (T. pp. 94 - 96; R. Ex. 4.)

19. Captain Callicutt testified that his investigation included requesting polygraph examinations of Donna Blankenship and the Petitioner as an investigative tool. (T. p. 98.)

20. NCDPS's Female Command Manager Annie Harvey testified that PREA is legislation that was purposed to prevent, detect, and respond to and investigate and prosecute prison rape violations. Respondent began implementing PREA in 2007, which included the development of department policy on sexual assault and harassment and the training of NCDPS correctional staff. (T. pp. 125 - 127.)

21. Ms. Harvey received and reviewed the written investigation prepared by Captain Callicutt. Ms. Harvey agreed with the recommendation of SCI's Administrator to dismiss the Petitioner from his employment. (T. pp. 128 - 129.)

22. In a memorandum dated June 21, 2011, Female Command Manager Harvey recommended to Deputy Secretary James French that the Petitioner be dismissed from his employment with Respondent. During the hearing, Ms. Harvey testified that the basis of her recommendation for dismissal was that the Petitioner admitted to printing a picture from OPUS and giving it to an inmate in violation of policy which gave credibility to inmate Donna Blankenship's allegations against the Petitioner. (T. pp. 129 - 131; R. Ex. 8.)

23. Female Command Manager Harvey further testified that she recommended the dismissal of the Petitioner because he had received extensive training related to undue relationships and personal dealings with inmates, and his admission to giving confidential information to an inmate in violation of these policies. Additionally, Ms. Harvey testified that the Petitioner chose to meet with a female inmate, Donna Blankenship, by himself in an isolated area of the facility. In the opinion of Ms. Harvey the Petitioner engaged in unacceptable personal conduct sufficient to warrant his dismissal from employment with NCDPS. (T. pp. 132 - 140.)

24. In the opinion of Female Command Manager Harvey dismissal of the Petitioner is the most appropriate form of discipline in this matter. A lesser form of discipline would not be sufficient since the Petitioner in his actions with inmates Sarah Chavis and Donna Blankenship did not act consistent with Respondent's policy on personal dealings with inmates, allowing himself to be in a vulnerable situation resulting in Respondent losing confidence in his ability to use good judgment in his supervision of female offenders. (T. pp. 141 - 143; R. Ex. 12.)

25. The Dismissal Letter indicated that the recommendation for dismissal was approved in part “[b]ased on the findings of the investigation as evidenced by [Petitioner’s] own admission, it . . . [was] determined that [Petitioner was] alone in the Canteen Warehouse with inmate Donna Blankenship for an unspecified amount of time to ‘discuss’ with her an assignment working on the loading dock.” Further, the Dismissal Letter indicates that, “it has been determined [that Petitioner] engaged in undue familiarity with inmate Sarah Chavis by printing a picture of Donna Hopkins from OPUS and giving the picture to inmate Chavis. . . . Management cannot condone [Petitioner’s] actions in this matter and has lost confidence in [Petitioner’s] ability to work effectively with an incarcerated population. [Petitioner’s] actions constitute unacceptable personal conduct sufficient to warrant . . . dismissal.” (R. Ex. 9.)

26. After completing his internal agency appeals, the Petitioner filed this contested case at the Office of Administrative Hearings on December 16, 2011. In his contested case petition, the Petitioner alleged that Respondent lacked “just cause” to end his employment for disciplinary purposes.

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 per Chapter § 126 and § 150B of the North Carolina General Statutes. 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. At the time of his discharge, Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C. Gen. Stat. § 126-1 *et. seq.* Petitioner, therefore, could only “be warned, demoted, suspended or dismissed by” Respondent “for just cause.” 25 NCAC 01J .0604(a).

3. One of the two bases for “just cause” is “unacceptable personal conduct,” 25 N.C.A.C. 01J .0604(b)(2), which includes, “conduct for which no reasonable person should expect to receive prior warning, job-related conduct that constitutes a violation of state or federal laws, the willful violation of known or written work rules, conduct unbecoming a state employee that is detrimental to state service, and the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State.” 25 NCAC 01J .0614(8)(a), .0614(8)(b), .0614(8)(d), .0614(8)(e), and .0614(8)(f).

4. The Dismissal Letter specified that Petitioner was being discharged for unacceptable personal conduct.

5. Respondent complied with the procedural requirements for dismissal for unacceptable personal conduct pursuant to 25 N.C.A.C. 01J .0608 and .0613.

6. It is well settled that judgment should be rendered in favor of the State agency when the evidence presented establishes that the employee committed at least one of the acts for which he/she was disciplined. *Hilliard v. Dept. of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

7. The case of *Warren v. North Carolina Dep't of Crime Control & Public Safety* sets forth what this tribunal must consider as to the degree of discipline. It states:

This passage instructs us to consider the specific discipline imposed as well as the facts and circumstances of each case to determine whether the discipline imposed was "just." Based on this language, and the authorities relied upon by the Supreme Court, we hold that a commensurate discipline approach applies in North Carolina. (Citing *N.C. Dep't of Env't & Natural Resources. v. Carroll*, 358 N.C. 649, 666, 599 S.E.2d 888, 898 (2004)) The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken. Just cause must be determined based "upon an examination of the facts and circumstances of each individual case." (Internal cites omitted)

Warren v. North Carolina Dep't of Crime Control & Public Safety, N. Carolina Highway Patrol, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) *review denied*, 735 S.E.2d 175 (N.C. 2012).

8. Petitioner did engage in the conduct alleged by his employer. His conduct does fall within a category of unacceptable personal conduct. His conduct does amount to just cause for the disciplinary action taken, *i.e.* dismissal.

9. Respondent met its burden of proof and established by substantial evidence in the record that it had just cause to dismiss Petitioner for unacceptable personal conduct that violated NCDPS's Personal Conduct Policies. Petitioner's admission to giving inmate Sarah Chavis a picture of inmate Donna Hopkins obtained from Respondent's OPUS electronic database, is conduct for which no reasonable person should expect to receive prior warning, the willful violation of known or written work rules, and conduct unbecoming a state employee that is detrimental to state service. It is well settled that in cases where the employee admits to the misconduct for which he/she was disciplined, judgment should be rendered in favor of the employing State of North Carolina agency. *Hilliard*, 173 N.C. App. at 598, 620 S.E.2d at 17-18.

10. Respondent further met its burden of proof and established by substantial evidence in the record that it had just cause to dismiss Petitioner for unacceptable personal conduct that violated NCDPS's Personal Conduct Policies. Petitioner's conduct in engaging in inappropriate and unprofessional behavior by his own admission being alone in the Canteen Warehouse with inmate Donna Blankenship for an unspecified amount of time to discuss a change in her work assignment supports the credibility of inmate Donna Blankenship's allegations that the Petitioner engaged in sexual relations with her as defined in Respondent's personal dealings with inmates policy. Thus, Petitioner's conduct with inmate Donna Blankenship is conduct for which no reasonable person should expect to receive prior warning, job-related conduct that constitutes a violation of state or federal laws, the willful violation of known or written work rules, conduct unbecoming a state employee that is detrimental to state service, and the abuse of client(s), patient(s), student(s), or person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State.

11. Therefore, Respondent has met its burden of proof and established by substantial evidence in the record that it had just cause to discipline the Petitioner for unacceptable personal conduct.

12. On the basis of the above-noted Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

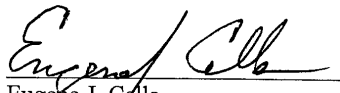
The undersigned affirms Respondent's dismissal of Petitioner in that Respondent had just cause for this disciplinary action per N.C. Gen. Stat. § 126-35.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Decision and to present written arguments to those in the agency who will consider this decision.

The agency is required by N.C. Gen. Stat. § 150B-36(b), for contested case petitions filed prior to January 1, 2012, to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 23^d day of April, 2014.


Eugene J. Cella
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DHR03718

Office of

<p>Talia Boston, Petitioner, v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Respondent.</p>	<p align="center">FINAL DECISION</p>
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THIS MATTER came on for hearing before Beecher R. Gray, Administrative Law Judge, on June 10, 2013, presiding in Bolivia, North Carolina. Petitioner filed a proposed decision on November 13, 2013.

APPEARANCES

For Petitioner: Michael C. Allen
Cranfill Sumner & Hartzog, LLP
5420 Wade Park Blvd., Suite 300
Raleigh, NC 27607

For Respondent: Josephine N. Tetteh
Assistant Attorney General
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

ISSUE

Whether Respondent substantially prejudiced Petitioner's rights and failed to act as required by law or rule when Respondent substantiated an allegation of neglect and entered the finding of neglect by Petitioner's name in the Health Care Personnel Registry (hereinafter referred to as "HCPR").

APPLICABLE STATUTES AND RULES

North Carolina General Statute §131E-255
North Carolina General Statute §131E-256
North Carolina General Statute §150B-23
10A N.C.A.C. 130.0101

EXHIBITS

Petitioner's Exhibits ("P. Exs.") 1 through 6 were admitted, with the exception of Page 35 and Page 36, Lines 1-11, of Petitioner's Exhibit No. 6, which were not admitted.

Respondent's Exhibits ("R. Exs.") 1, 2, 3, and 5 through 25 were admitted, with the exception that any discussion of, or reference to, alleged prior discussions of lap belt use not involving Petitioner were excluded from Respondent's exhibits.

WITNESSES

1. Talia Boston (Petitioner)
2. Jill Wheeler (For Petitioner)
3. Ashley Carper (via videotape testimony) (For Petitioner)
4. Rhonda Daughtry (For Petitioner)
5. Detective Melisande Manning (For Respondent)
6. Stephanie Mathews (For Respondent)
7. Melanie Lenk (For Respondent)
8. Ken Nance (For Respondent)
9. Margaret Martin (For Respondent)
10. Amber Duggins (For Petitioner)
11. Pat Chapman (For Petitioner)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the undersigned has weighed all the evidence and has assessed the credibility of witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness; any interest, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know, or remember the facts or occurrence 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. From the admitted documents and sworn testimony of witnesses, the Undersigned makes the following:

FINDINGS OF FACT

1. The parties received Notice of Hearing by certified mail more than fifteen (15) days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent notified Petitioner that it had substantiated an allegation of neglect related to her care of a resident at Cape Fear Respite Home and consequently was listing her name on the HCPR under N.C. Gen. Stat. § 131 E-256.
3. On or about May 10, 2012, Petitioner filed a timely Petition for a Contested Case regarding this listing of her name in the HCPR.
4. Respondent conducted an investigation into the allegation of possible neglect.
5. At all times relevant to this matter, Petitioner Talia Boston was a healthcare personnel at Cape Fear Respite Home in Wilmington, North Carolina. Cape Fear Respite Home is a healthcare facility subject to the provisions of North Carolina General Statutes §131E-255 and §131E-256.
6. Petitioner was trained regarding client's rights, including neglect. Petitioner also received appropriate training on the proper use of wheelchairs, appropriate methods to secure an individual in a wheelchair, and specific training concerning Student JB's wheelchair.
7. Student JB was born on November 30, 2003.
8. Student JB's medical diagnosis prior to February 29, 2012 included a mental disorder because of cerebral palsy; severe developmental delays in speech, motor skills, and cognition; severe to profound mental retardation; cerebral palsy; seizure disorder; and asthma.
9. Student JB was placed in the Cape Fear Respite Care facility on October 10, 2011, by New Hanover County DSS after being removed from living in her home with her mother. JB resided in the respite care facility until her death on February 29, 2012.
10. Student JB was transported from the Cape Fear Respite Home to Rachel Freeman Elementary School on the morning of February 29, 2012, on a school bus operated by New Hanover County Schools.
11. Petitioner Talia Boston was a direct support staff member at the Cape Fear Respite Home on the morning of February 29, 2012. She assisted Student JB with various morning activities on February 29, 2012, including bathing, medication administration, feeding, and clothing prior to the arrival of the school bus at approximately 6:45 a.m. to transport Student JB to Rachel Freeman Elementary School.

12. Petitioner placed Student JB in her wheelchair on the morning of February 29, 2012, prior to transition of care to bus driver Rhonda Daughtry ("Bus Driver Daughtry") of the New Hanover County Schools.
13. When Student JB was placed on the school bus on the morning of February 29, 2012, she was secured by Petitioner in JB's wheelchair utilizing a wheelchair-mounted "seatbelt" or lap belt, as well as a wheelchair-mounted shoulder harness.
14. Student JB's physical condition, in combination with the recent removal of a pommel from Student JB's wheelchair, made it physically impossible to transport Student JB from the Cape Fear Respite Home to the school bus on the morning of February 29, 2012, without the use of a wheelchair-mounted lap belt or "seatbelt", as well as a shoulder harness.
15. After placement on the school bus on the morning of February 29, 2012, bus driver Bus Driver Daughtry further secured Student JB using floor-mounted security straps, as well as a bus-mounted seatbelt placed over Student JB's chest and waist.
16. Transport time between Cape Fear Respite Home and Rachel Freeman School exceeded one hour on the morning of February 29, 2012. Bus Driver Daughtry was the only adult on the bus during Student JB's transport.
17. Student JB was the first student placed on driver Bus Driver Daughtry's bus on the morning of February 29, 2012. During the transport to Rachel Freeman Elementary School, eight to ten other students were picked up for transport on the bus. The remaining students varied in level of function and independence, with some students able to board the bus independently, secure themselves independently in child safety seating, and unsecure themselves independently and leave the bus.
18. Approximately five minutes prior to her arrival at Rachel Freeman School on the morning of February 29, 2012, Bus Driver Daughtry noted that Student JB appeared to be sleeping. At the time of this assessment, Bus Driver Daughtry visually observed that Student JB appeared appropriately positioned in her wheelchair and did not appear to have "slipped down" in her wheelchair. Bus Driver Daughtry remained in her driver's seat following this assessment.
19. Upon arrival at Rachel Freeman School on the morning of February 29, 2012, Student JB was noted by Bus Driver Daughtry as unresponsive. Bus Driver Daughtry immediately informed teacher assistant Ashley Carper, who was present at the bus stop, of the change in Student JB's condition. Resuscitation efforts were initiated by Teacher Assistant Carper and other individuals, but were not successful.
20. Petitioner cooperated fully with law enforcement personnel during their investigation of this incident. During an interview with Detective Manning on February 29, 2012, Petitioner informed Detective Manning that she secured Student JB prior to placement on

the school bus on February 29, 2012 utilizing a wheelchair-mounted "seatbelt," as well as a wheelchair-mounted shoulder harness.

21. An autopsy was performed on Student JB and the cause of death was noted as "undetermined." On April 13, 2012, major findings in the autopsy revealed no hemorrhages within the lingual mucosa, a separated layer interior neck dissection revealed no hemorrhages within the strap muscle of the anterolateral neck and no fractures of the cartilage of the hyoid or larynx. There was no external evidence of injury to the neck.
22. "Neglect" is the "failure to provide goods and services necessary to prevent physical harm, mental anguish and mental illness."

Based upon the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the parties and the subject matter under Chapters 131E and 150B of the North Carolina General Statutes.
2. All parties correctly have been designated, and there is no question as to misjoinder or nonjoinder.
3. As a healthcare professional working in a healthcare facility, Petitioner is a healthcare personnel and is subject to the provisions of North Carolina General Statute §131E-225 and §131E-226.
4. There is insufficient evidence in this case to find that Petitioner failed to provide the care necessary to avoid physical harm, mental anguish, or mental illness. Petitioner has demonstrated by the preponderance of the evidence that she appropriately secured Student JB to her wheelchair on the morning of February 29, 2012, prior to transitioning care to Bus Driver Daughtry. The preponderance of the evidence further indicates that Petitioner appropriately secured Student JB on February 29, 2012, utilizing a wheelchair-mounted lap belt or "seatbelt," in combination with a wheelchair-mounted shoulder harness.
5. The greater weight of the evidence produced in this contested case hearing does not support the decision made by Respondent to substantiate neglect of Student JB by Petitioner on February 29, 2012.

FINAL DECISION

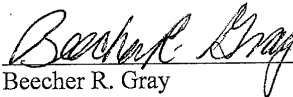
Based on the foregoing Findings of Fact and Conclusions of Law, I find that Respondent's substantiation of neglect against Petitioner, regarding her care of Student JB on February 29, 2012, is not supported by sufficient evidence and is REVERSED.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 9th day of December, 2013.


Beecher R. Gray
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Filed
2014 APR 15 AM 9:47
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DHR 10569

A GREAT CHOICE FOR HOME
CARE, INC.,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Respondent.

FINAL DECISION

THIS MATTER came on for hearing before the undersigned, Eugene J. Cella,
Administrative Law Judge, on September 12, 2013 in Raleigh, North Carolina:

APPEARANCES

For Petitioner: Robert A. Leandro
Parker Poe Adams & Bernstein
150 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601

For Respondent Brenda Eaddy
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

APPLICABLE LAW

The statutory law applicable to this contested case is N.C. Gen. Stat. Chapter 150B, Article 3, (the "North Carolina Administrative Procedure Act"), N.C. Gen. Stat. Chapter 108C, Articles 1, 2, and 3 and North Carolina Division of Medical Assistance Medicaid and Health

Choice Clinical Coverage Policy 3E (effective October 1, 2011) and Clinical Coverage Policy 3C, (effective April 1, 2010 through October 1, 2011).

BURDEN OF PROOF

As Respondent, the North Carolina Department of Health and Human Services has the burden of proof. *See* N.C. Gen. Stat. § 108C-12(d).

ISSUE

Whether Respondent acted in violation of N.C. Gen. Stat. § 150B-23(a) when it sought recoupment from Petitioner in the amount of \$3,632.92 for alleged noncompliance with Medicaid Clinical Coverage Policy 3C.

EXHIBITS

Petitioner's Exhibit 1 was admitted into evidence. This exhibit is:

1. Competency and training documentation for aides employed by Great Choice

Respondents' Exhibits A through E were admitted into evidence. These exhibits are:

- A. Medicaid Provider Enrollment Form for A Great Choice for Home Care, Inc.
- B. Tentative Notice of Overpayment for PI case number 2012-0696
- C. Notice of Decision for PI case number 2012-0696
- D. Spreadsheet for PI case number 2012-0696 (admitted for the limited purposes of documenting the amount paid to Great Choice for each claim audited)
- E. -- DMA Provider Case Summary
-- 10A NCAC 13J .0901
-- 10A NCAC 13J .1107
-- 10A NCAC 13J .1110
-- Clinical Coverage Policy No. 3E, In-Home Care for Adults (effective October 1, 2011)
-- Clinical Coverage Policy No. 3C, Personal Care Services (effective April 1, 2010)

WITNESSES

At the hearing the following witness testimony was received by the Court:

For Petitioner:

Dinez Baker – Owner and Operator, A Great Choice for Home Care, Inc.

For Respondent:

Carol Lukosius – N.C. Department of Medical Assistance, Program Integrity

PRELIMINARY MATTERS

Before the hearing in this case, the Parties filed Cross Motions for Summary Judgment pursuant to N.C. Gen. Stat. § 150(b)-33(b)(3)(a), 36(d) and Rule 56(c) of the North Carolina Rules of Civil Procedure. ALJ's are specifically authorized to grant summary judgment in accordance with N.C. Gen. Stat. § 1A, Rule 56. N.C. Gen. Stat. §150B-36(d) and 26 NCAC 3.0105(6).

Petitioner's Motion for Partial Summary Judgment asserted that the undisputed facts demonstrate as a matter of law that Respondent violated N.C. Gen. Stat. §108C-5(i) by extrapolating results of an audit when the Respondent did not determine that Great Choice failed to substantially comply with State or federal law or regulation or that Respondent had a credible allegation of fraud. Petitioner also asserted that the undisputed facts demonstrated as a matter of law that Respondent violated N.C. Gen. Stat. § 108C-5(j) because Respondent's post-payment review was not performed and reviewed by individuals credentialed by the Department in the matter to be audited.

Respondent's Motion for Summary Judgment asserted that the Agency's decision should be upheld as a matter of law because the undisputed facts show that Petitioner failed to comply with two (2) provisions of Respondent's clinical coverage policy requiring in-home aides training and competency and criminal background checks.

The Court considered Petitioners' Motion for Partial Summary Judgment, Petitioner's Exhibits and Affidavit, Petitioner's Brief in Support of its Motion, Petitioner's Brief in Opposition to Respondent's Motion, Respondent's Motion for Summary Judgment, and Respondent's Brief in Support of its Motion. Respondent submitted no supporting evidence or affidavits to support its Motion or dispute facts set forth in Petitioner's Motion, exhibits, and affidavits.

The Court carefully considered the information submitted by the Parties and found that there were no genuine issues of material fact that DMA had not determined that Great Choice failed to substantially comply with State and federal laws and regulations or had engaged in fraud. The Court also found that the undisputed facts demonstrated that the Agency failed to credential the reviewers that conducted this audit. Based on these undisputed facts, the Court found that as a matter of law the Agency erred and acted in violation of the law by using extrapolation in Great Choice's audit. The Court denied Respondent's Motion for Summary Judgment finding that Respondent failed to submit supporting affidavits or refute evidence and information submitted by Petitioner in response to DMA's Motion.

The Court ordered that the contested case proceed to a hearing with the amount at issue being the actual repayment amount determined by the Department's post-payment review not including extrapolation.

FINDINGS OF FACT

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

The Parties

1. Petitioner A Great Choice for Home Care, Inc., (“Great Choice” or “Petitioner”) provides personal care services (“PCS”) to Medicaid recipients in North Carolina.
2. Respondent North Carolina Department of Health and Human Services, Department of Medical Assistance (“DMA” “Agency” or “Respondent”) is an administrative agency operating under the laws of North Carolina. DMA oversees the Medicaid program and conducts post-payment reviews of Medicaid services pursuant to 42 CFR §§ 455 *et. seq.* and 10A NCAC 22F.
3. 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.

Background

4. This matter involves a post-payment review conducted by DMA of PCS provided by Great Choice between March 1, 2011, and February 1, 2012 (the “period under review”). (Respondent’s Exhibit B).
5. The PCS program is a North Carolina Medicaid program that provides in-home assistance to the disabled and elderly so that they can remain safely in their homes, avoiding unnecessary and costly institutionalization.
6. PCS aides provide the disabled and elderly with basic in-home care with activities of daily living (“ADLs”) such as eating, skin care, ambulation, bathing, dressing and toileting assistance. (Respondent’s Exhibit E, Clinical Coverage Policy 3C § 1.1). PCS aides also provide assistance with instrumental activities of daily living (“IADLs”) such as food preparation, cleaning and laundry. (Respondent’s Exhibit E, Clinical Coverage Policy 3C § 1.4).

DMA Post-Payment Review

7. The DMA Program Integrity Section conducted an on-site post-payment review of Medicaid claims submitted by Great Choice. DMA’s auditors reviewed documentation

relating to a randomly selected number of Medicaid recipients served by Great Choice. (Respondent Ex. B). The post-payment review included an audit of both clinical and administrative documentation to determine compliance with federal and State laws and regulations as well as compliance with DMA's own clinical coverage policies and other guidance. *Id.*

8. Great Choice was not aware that the post-payment review would take place until the review team arrived at its offices. (Baker, Tr., p. 41). Although DMA will typically conduct an exit conference with the provider at the conclusion of the review, DMA's auditors did not conduct a post review exit conference with Great Choice to discuss its initial findings or inquire about documentation that it could not locate during its review of Great Choice's files. *Id.*

9. On June 7, 2012, DMA sent Great Choice a Tentative Notice of Overpayment (the "Tentative Notice") in which it identified allegedly non-compliant Medicaid claims reviewed during the audit. (Respondent's Ex. B).

10. The Tentative Notice alleged that Great Choice received overpayments in an amount of \$3,632.92 due, in part, to Great Choice's purported failure to comply with Clinical Coverage Policy 3C. *Id.* DMA extrapolated these alleged overpayments to arrive at a total recoupment amount of \$118,692.00. *Id.*

11. Great Choice timely filed a Request for Reconsideration, and a Reconsideration Review Hearing took place on August 8, 2012.

12. During the reconsideration hearing, the discussion regarding aide competency centered around Great Choice's need for a "skills checklist" to demonstrate aide competency. (Baker, Tr., pp. 42, 120-121, 157-158). Great Choice maintained that it properly trained and confirmed that its aides were competent, but acknowledged that it only began completing a "skills checklist" for its aides after the audit period in question. (Baker, Tr., pp. 42, 157-158).

13. On September 25, 2012, the Department of Health and Human Services Hearing Office issued a Notice of Decision with regard to Great Choice's post-payment review, in which the Hearing Officer upheld DMA's tentative overpayment determination. (Respondent's Ex. C).

14. The Department Hearing Officer's decision was based in part on her finding that Great Choice had failed to document aide competency. *Id.*

Contested Case Petition

15. Great Choice timely filed a Petition for Contested Case Hearing before the Office of Administrative Hearings pursuant to N.C. Gen. Stat. § 150B-23.

16. Following discovery, the Parties filed cross motions for summary judgment. By Order dated August 9, 2013, this Court granted Great Choice's Motion for Partial Summary Judgment with regard to DMA's extrapolation of overpayments, concluding as a matter of law that DMA had acted in violation of law and erred by using extrapolation in this audit. *See* August 13, 2013 Order Granting Petitioner's Motion for Partial Summary Judgment.

17. At the commencement of the contested case hearing, DMA stipulated that the only remaining issue for which it is seeking recoupment of funds is whether Great Choice documented its personnel competency training in a manner adequate to satisfy the requirements of Clinical Coverage Policy 3C. (Eaddy, Tr., pp. 4-5; Lukosius pp. 22-23).

Aide Competency Requirement

18. DMA only seeks a recoupment in this case on the grounds that Great Choice failed to document that its aides were competent to provide PCS. (Eaddy, Tr., pp. 4-5; Lukosius pp. 22-23). DMA provided evidence of no other deficiencies or policy violations by Great Choice that supports the overpayment determination.

19. Clinical Coverage Policy 3C and Clinical Coverage Policy 3E were in effect at the time of the audit. (Respondent's Ex. E).

20. Section 7.10.3 of Clinical Coverage Policy 3C and Clinical Coverage Policy 3E requires that providers of PCS maintain an individual file that documents aide training and competency and provides evidence that the aide meets the competence standards provided in 10A NCAC 13J .1107 and .1110. *Id.*

21. There is no specific form(s) that Medicaid PCS providers must use to document that each aide has been trained and is competent to provide PCS. (Lukosius, Tr., pp. 36-37).

22. DMA policy does not dictate the manner by which a provider documents that its aides have been trained and are competent to provide PCS. Instead, the policy only requires that that competency verification is documented by the provider. (Lukosius, Tr., pp. 36-37).

23. While a "skills checklist" is an example of one way a PCS provider can document that an aide is competent to provide services, aide competency can be documented by means other than a skills checklist or narrative documentation. (Lukosius, Tr., pp. 24, 36-37).

24. The Agency offered no testimony or evidence of the specific Medicaid paid claims for which it alleged Great Choice was missing aide competency documentation.

25. DMA failed to provide any evidence of the individual aides which it alleged provided services without having the proper aide competency documentation.

Great Choice's Evidence of Aide Competency Training

26. Dinez Baker, the owner and operator of Great Choice, testified that her agency complied with the aide competency requirements contained in the Clinical Coverage Policy. (Baker, Tr., pp. 42-49).

27. Specifically, Great Choice organized training sessions with its new aides. (Baker, Tr., p. 42). These training sessions were conducted by a registered nurse. *Id.*

28. As a part of the training sessions, aides were asked to watch a video that described and demonstrated the skills necessary to provide PCS. *Id.* The video also offered information on additional topics such as food safety, infection control, blood-borne illness and identifying signs of depression. (Baker, Tr., p. 44). While training on these additional subjects is not required, Great Choice believed that such training would be useful to its aides. (Baker, Tr., p. 50).

29. At the conclusion of the video presentation, the registered nurse required each aide to demonstrate the personal care skills taught during the video presentation. (Baker, Tr., p. 42). If the skill demonstration was sufficient, the aide was then asked to complete a true/false test that covered some of the topics presented during the video presentation. (*Id.*; Petitioner's Ex. 1).

30. If the aide was able to sufficiently demonstrate the necessary skills to the registered nurse and pass the written tests, Great Choice would issue certificates of completion to the aides which documented their competency in the subject area. (Baker, Tr., p. 42). One of the certificates issued as a part of the training specifically documented that the aide passed the PCS training requirements and was competent to provide PCS. *Id.*

31. Great Choice has PCS training certificates for each of its aides. (Petitioner's Ex. 1). The training certificates were in Great Choice's file at the time the audit took place and were issued on or around the date the aide was hired by Great Choice and prior to the dates of service that were audited by DMA. (Baker, Tr., p. 49; Petitioner's Ex. 1).

32. Ms. Lukosius did not participate in the on-site review of Great Choice. (Lukosius, Tr., p. 8). Agency failed to provide any testimony regarding the documentation it reviewed in making its determination that Great Choice had not properly documented training and skills competency. The Agency did not provide any testimony to contradict the testimony of Ms. Baker that the PCS training certificates were in its file and available for review during the audit view.

33. Because the DMA audit team did not have an exit conference with Great Choice at the conclusion of its audit, Great Choice was not able to direct the auditors to these certificates or have a conversation with the auditors regarding why it did not maintain "skills checklists" for its aides but instead issued training certificates. (Baker, Tr., p. 49).

CONCLUSIONS OF LAW

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 as Conclusions of Law. Based upon the foregoing Findings of Fact, the undersigned makes the following Conclusions of Law:

1. All parties are properly before the Office of Administrative Hearings, and this tribunal has jurisdiction of the parties and of the subject matter at issue.

2. An ALJ need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).

3. Under N.C.G.S. §108C-12(d), DMA has the burden of proof in this matter.

4. DMA failed to provide any evidence of the specific claims at issue or the names of the aides which it alleged did not have the proper competency documentation.

5. DMA did not meet its burden of proof in demonstrating Great Choice's failure to document aide training and competency.

6. Clinical Coverage Policy 3C (effective April 1, 2010) and Clinical Coverage Policy 3E (effective October 1, 2011) does not require PCS providers to document that its aides have been properly trained and are competent to provide PCS services in a specific format or on a specific form.

7. Because DMA's policy does not require that training and competency must be documented in a certain format or manner, PCS providers must create their own documentation to confirm that their aides were trained and are competent to provide services.

8. The training certificates issued by Great Choice sufficiently document aide competency and training and meet the documentation requirements of Clinical Coverage Policy 3C.

9. Although Great Choice has no burden of proof in this case, it demonstrated that its aides were properly trained in accordance with Clinical Coverage Policy 3C.

10. The Agency has acted erroneously, contrary to its own policy, and in excess of its authority by finding that Great Choice was overpaid in the amount of \$3,632.92.

DECISION

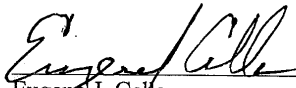
Based on the foregoing Findings of Fact and Conclusions of Law, Respondent DMA's decision to recoup \$3,632.92 is hereby REVERSED.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. 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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 15th day of April, 2014.


Eugene J. Cella
Administrative Law Judge

FILED

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
OFFICE OF ADMINISTRATIVE HEARINGS
ADMIN HEARINGS 12 OSP 10424

MALCOMBE JERRY JACKSON,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
PUBLIC SAFETY,
Respondent.

FINAL DECISION

This contested case was heard before the Honorable Selina M. Brooks, Administrative Law Judge, on October 16, 2013, at the Haywood County Justice Center, Waynesville, North Carolina.

APPEARANCES

For Petitioner: Paul Louis Bidwell
Attorney At Law
77 Central Avenue, Suite E
Asheville, NC 28801

For Respondent: Yvonne B. Ricci
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

PROTECTIVE ORDER

A Protective Order was entered on consent by the Honorable Selina M. Brooks on March 20, 2013.

WITNESSES

The Respondent, North Carolina Department of Public Safety (hereinafter "Respondent" or "NCDPS") presented testimony from the following four witnesses: Malcombe Jerry Jackson, the Petitioner; David W. Guice, the Commissioner of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice; Mark D. Higgins, a Probation Officer in Haywood County; and Boyce B. Fortner, Jr., Assistant Judicial Division Four Administrator for NCDPS, Division of Community Correction.

EXHIBITS

Respondent's exhibits ("R. Exs.") 1-9, 11-13 were admitted into evidence. Petitioner's exhibits ("P. Exs.") 1-2 were admitted into evidence.

ISSUES

1. Did Respondent have just cause to terminate its employment of Petitioner for unacceptable personal conduct?
2. Did Petitioner, Malcombe Jerry Jackson, meet his burden to show he was discharged in retaliation for engaging in protected activity in accordance with N.C. Gen. Stat. §§ 126-84 and 126-85?

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

FINDINGS OF FACT

1. Petitioner Malcombe Jerry Jackson began work for Respondent on April 1, 1990 and was promoted to Judicial District Manager with the Division of Community Correction ("DCC") in April 2006. He supervised four persons in positions that directly reported to him in this role. (T. pp. 15-17)
2. In November 2007, Assistant Division IV Administrator Boyce B. Fortner, Jr. became the Petitioner's direct supervisor. Mr. Fortner has been trained and instructed on what documents are a part of a NCDPS employee's confidential personnel file which includes pre-disciplinary notification memoranda, disciplinary letters, and employee witness statements, and that DCC managers or supervisory employees have a responsibility to maintain the confidentiality of documents contained in an employee's personnel file. (T. pp. 212-213, 226-230)
3. The Petitioner heard a rumor that Chief Probation/Parole Officer Susan Maney's husband had a marijuana plant worth about \$10,000 and that Ms. Maney had warned her husband that the Sheriff's Office was doing flyovers for marijuana eradication. (T. p. 43)
4. Several weeks later in August 2011, the Petitioner reported the rumor to the Madison County Sheriff. Later that same day, the Sheriff told the Petitioner that his office would

be executing a search warrant of Ms. Maney's house and told the Petitioner to keep this information confidential. (T. p. 45-46; R. Ex. 5)

5. The Petitioner immediately called Ms. DeBruhl and reported the conversation with the Sheriff to her on August 9, 2011. (T. p. 46)

6. During an internal investigation concerning the search of Ms. Maney's home and property, the Petitioner was interviewed. He told the investigator that he was aware of Ms. Maney's alleged activities four to six weeks prior to reporting them to Ms. DeBruhl. (R. Ex. 5)

7. On September 23, 2011, Petitioner received a written warning issued by Mr. Fortner as a result of the Petitioner's failure to communicate information regarding Ms. Susan Maney in a timely and thorough manner to DCC Administration. (T. pp. 32-34; R. Ex. 5)

8. Petitioner testified that the warning made him a "scapegoat" for Respondent's failure to act on his earlier reports that Ms. Maney was a victim of domestic violence and because there was press coverage of the search of Ms. Maney's home and property. Petitioner did not offer any documentation to support his statement, including an email he claimed to have sent to Mr. Fortner. (T. pp. 36-42, 47-48)

9. The Petitioner felt that the written warning was inappropriate because he "got five and a half pounds of marijuana off the street by a county official." (T. p. 36)

10. Petitioner testified that he was aware of the personnel rules concerning written warnings. (T. p. 34)

11. W. David Guice was the Director of the DCC within the NCDPS at the time. He had decided not to remove the warning because it was appropriate. (T. pp. 125, 182-187; P. Exs. 1 & 2)

12. At the time of this contested case hearing, Mark Higgins was employed as a Probation Officer in Haywood County. Prior to this position he was demoted from surveillance officer in Buncombe County to a correctional officer position for allegedly taking a state vehicle to his home without proper authorization and for being untruthful during an internal investigation. Mr. Higgins appealed his demotion by NCDPS to the Office of Administrative Hearings. (T. pp. 190-192)

13. Sometime at the end of January 2012, the Petitioner went to Mr. Higgins's residence and gave him a copy of a statement written by Ms. Maney during her appeal of a disciplinary action. (T. pp. 191-194, 200-201, 224; R. Ex. 3 & 6)

14. Mr. Fortner was the agency representative in the internal appeal process following the Respondent's demotion of Mr. Higgins. (T. pp. 208 - 209)

15. In February 2012, Mr. Fortner was told by Assistant Attorney General Terence Friedman that Mr. Higgins's attorney had been given documents from another employee's personnel file. Mr. Friedman asked Mr. Fortner to find out if the Petitioner had given this personnel document to Mr. Higgins or his attorney. (T. pp. 209-211)

16. Mr. Guice assigned Betty Bauer, the Judicial Division Administrator for Division III in the DCC, and Vernon J. Bryant, a Special Investigator for the DCC, to investigate an allegation of misconduct involving the Petitioner. (T. pp. 105-106) They interviewed Mr. Fortner and the Petitioner on April 25, 2012.

17. The Petitioner provided a written witness statement admitting that he gave two documents to Mr. Higgins concerning Ms. Maney. Petitioner also wrote that "I asked Mr. Higgins what his response would be ... asked where he got the documents. Mr. Higgins said he would say he found them in his door at home." (R. Ex. 1, p. 2)

18. Petitioner also wrote that he attended the deposition on February 12, 2012 and that "[w]hen Mr. Fortner came out of the room where the deposition took place he came into the hall and asked me if I gave Mr. Higgins the documents about Ms. Maney [sic] discipline. I said no." (R. Ex. 1, p. 3)

19. Petitioner testified in the contested case hearing that on February 21, 2012 when Mr. Fortner asked him whether he gave any documents from Ms. Maney's file to Mr. Higgins, he denied it. (T. p. 32)

20. Ms. Bauer and Mr. Bryant reviewed the Petitioner's statement and asked him to add details initially omitted. (T. pp. 56-58, 79-80)

21. The Petitioner gave Mr. Higgins two documents that were shown to him by Ms. Bauer and Mr. Bryant. (T. p. 19)

22. The Petitioner testified that these documents were Ms. Maney's Pre-Disciplinary Conference Letter and her written response to the allegations that formed the basis for her recommended dismissal and that both would be part of her personnel file. (T. pp. 19-25; R. Exs. 2 & 3)

23. Mr. Fortner was present during the deposition of Mr. Higgins that was conducted on April 5, 2012, and Mr. Higgins testified in his deposition that the Petitioner gave him Ms. Maney's documents. (T. pp. 211, 215-217; R. Ex. 4 p. 4)

24. The Petitioner told Mr. Fortner that he did not give Ms. Maney's disciplinary decision to Mr. Higgins. (T. p. 32, 254-255) The letter "did not have a disciplinary decision" because it was "the standard recommendation for disciplinary decision and ... it was not the disciplinary decision" and, therefore, his statement to Mr. Fortner was truthful. (T. p. 61)

25. The Petitioner testified that he did not take the documents out of Ms. Maney's personnel file, but discovered them in a vacant office. The Petitioner gave the documents to Mr. Higgins because he believed the actions of the Respondent to be inappropriate, unreasonable and, in his opinion, an "unlawful circumvention of the SPA." (T. pp. 69-75)

26. The Petitioner testified that he recognized the document "as something that could be in a record" but because he did not know that it was the copy that had actually been in a file he believes it is not confidential even though it relates to discipline. (T. pp. 96-97)

27. The Petitioner admitted under cross-examination that the documents he provided to Mr. Higgins related to Susan Maney were not letters reflecting the final agency decision regarding the dismissal of Ms. Maney which would be open to public inspection under Respondent's policy. (T. pp. 87-88)

28. The Petitioner testified that he was an employee of Respondent for twenty-two years, and during that time he attended several training programs on how to be a manager, including the confidentiality of documents in a personnel file. He knew that the document given to Mr. Higgins's attorney was available to him through discovery. (T. pp. 255-257)

29. Ms. Bauer and Mr. Bryant reported their findings to DCC Deputy Director Diane Isaacs. In the memorandum, dated April 25, 2012, addressed to Ms. Isaacs, the investigators concluded that the Petitioner failed to cooperate with NCDPS officials and provided false or purposefully misleading information to Mr. Fortner on February 21, 2012. (R. Ex. 6)

30. Respondent sent the Petitioner a pre-disciplinary letter and a pre-dismissal conference was held on May 31, 2012. (R. Exs. 7, 8 & 9; T. pp. 26-29)

31. Mr. Guice received and reviewed the written investigation prepared by Ms. Bauer and Mr. Bryant and made the decision to dismiss the Petitioner from his employment with the Respondent. (R. Ex. 10; T. pp. 100-101, 103, 107) The bases for the dismissal were the Petitioner giving Ms. Maney's confidential personnel documents to Mr. Higgins and the Petitioner providing false or misleading information regarding these documents during an internal investigation. (T. pp. 108-110, 120-121)

32. Petitioner was dismissed from his position as a Judicial District Manager with the DCC in Division Four effective July 18, 2012 for unacceptable personal conduct. (R. Ex. 11; T. pp. 30-32)

33. Respondent sent a letter to the Petitioner terminating his employment ("Dismissal Letter") and Petitioner administratively appealed his termination. (R. Ex. 11; T. pp. 30-32)

34. Mr. Guice was appointed to his current position as the Commissioner of Adult Correction and Juvenile Justice for NCDPS in January 2013. (T. p. 99)

35. Mr. Guice testified that confidential personnel documents are no less confidential if the document is physically located and discovered outside of the normal location where personnel files are kept and maintained. The documents the Petitioner admitted to providing to Mr. Higgins were employment-related documents that were confidential and not open for inspection and public release. (T. pp.111-115; R. Ex. 12)

36. Mr. Guice “felt [] that someone in a management level position as Mr. Jackson was in, with his years of experience of service and his knowledge about his work, that not being truthful during the course of an investigation and acknowledging providing information to a subordinate that were – where we were addressing personnel issues at the time was just over the top and just something that could not be tolerated.” (T. p. 116) “... If I demoted him to an officer position, he would have to testify in court as it relates to offender supervision and that untruthfulness was just something that I just do feel was appropriate to go in that direction. He essentially undermined our management and the management structure that was in place by not being truthful and through his actions.” (T. p. 116)

37. The Dismissal Letter indicated that the recommendation for dismissal was approved based on the findings of the internal investigation and Petitioner’s own admission to providing Mark Higgins with a copy of Susan Maney’s September 22, 2011, Pre-Disciplinary Conference Notification Letter and a copy of her written statement submitted at her Pre-Disciplinary Conference on September 23, 2011. The Dismissal Letter also noted that Petitioner was issued a written warning on September 23, 2011, for unacceptable personal conduct as a result of the Petitioner’s failure to communicate all information that he was made aware of in a timely and thorough manner to DCC Administration regarding an issue under investigation. Respondent issued this written warning within eighteen months of the Dismissal Letter. (R. Ex. 11)

38. After completing his internal agency appeals, the Petitioner filed A Petition For A Contested Case Hearing with the Office of Administrative Hearings on November 16, 2012, alleging that Respondent lacked “just cause” to end his employment for disciplinary purposes.

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 pursuant to Chapter § 126 and § 150B of the North Carolina General Statutes. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. The parties are properly before the Office of Administrative Hearings on a Petition pursuant to Chapter 126 of the General Statutes, and the Office of Administrative Hearings has jurisdiction over both the parties and the subject matter as such.

3. At the time of his discharge, Petitioner was a career State employee subject to the provisions of the State Personnel Act (North Carolina Human Resources System), N.C. Gen. Stat. § 126-1 *et. seq.* Petitioner, therefore, could only “be warned, demoted, suspended or dismissed by” Respondent “for just cause.” 25 NCAC 01J .0604(a).

4. One of the two bases for “just cause” is “unacceptable personal conduct,” 25 N.C.A.C. 01J .0604(b)(2), which includes “conduct for which no reasonable person should expect to receive prior warning, the willful violation of known or written work rules, and conduct unbecoming a state employee that is detrimental to state service.” 25 NCAC 01J .0614(8)(a), .0614(8)(d), and .0614(8)(e).

5. NCDPS has a policy governing the personal conduct of its employees, to wit: “All employees of the Department of Correction shall maintain personal conduct of an acceptable standard as an employee and member of the community. Violations of this policy may result in disciplinary action including dismissal without prior warning.” Unacceptable personal conduct includes “(1) conduct for which no reasonable person should expect to receive prior warning, (4) the willful violation of known or written work rules, and conduct, and (5) conduct unbecoming a state employee that is detrimental to state service” as listed in the NCDPS *Personnel Manual*. (R. Ex. 13, 38)

6. The Dismissal Letter specified that Petitioner was being discharged for unacceptable personal conduct.

7. At the time of the Dismissal Letter, Petitioner’s prior Written Warning was still an active disciplinary action because eighteen (18) months had yet to pass since its issuance. 25 N.C.A.C. 1J.0614(6)(c).

8. Respondent complied with the procedural requirements for dismissal for unacceptable personal conduct pursuant to 25 N.C.A.C. 01J .0608 and .0613.

9. It is well settled that judgment should be rendered in favor of the State agency when the evidence presented establishes that the employee committed at least one of the acts for which he/she was disciplined. *Hilliard v. Dept. of Correction*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

10. The case of *Warren v. North Carolina Dep’t of Crime Control & Public Safety* sets forth what this tribunal must consider as to the degree of discipline. It states:

This passage instructs us to consider the specific discipline imposed as well as the facts and circumstances of each case to determine whether the discipline imposed

was “just.” Based on this language, and the authorities relied upon by the Supreme Court, we hold that a commensurate discipline approach applies in North Carolina. (Citing *N.C. Dep’t of Env’t & Natural Resources v. Carroll*, 358 N.C. 649, 666, 599 S.E.2d 888, 898 (2004)) The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee’s conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee’s act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken. Just cause must be determined based “upon an examination of the facts and circumstances of each individual case.” (Internal cites omitted)

Warren v. North Carolina Dep’t of Crime Control & Public Safety, N. Carolina Highway Patrol, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) *review denied*, 735 S.E.2d 175 (N.C. 2012)

11. Petitioner did engage in the conduct alleged by his employer. His conduct does fall within a category of unacceptable personal conduct. His conduct does amount to just cause for the disciplinary action taken, *i.e.* dismissal.

12. Respondent met its burden of proof and established by substantial evidence in the record that it had just cause to dismiss Petitioner for unacceptable personal conduct that violated NCDPS’s Personal Conduct Policies. Petitioner’s admission to providing Mark Higgins with a copy of Susan Maney’s September 22, 2011, Pre-Disciplinary Conference Notification Letter and a copy of her written statement submitted at her Pre-Disciplinary Conference on September 23, 2011, is conduct for which no reasonable person should expect to receive prior warning, the willful violation of known or written work rules, and conduct unbecoming a state employee that is detrimental to state service. It is well settled that in cases where the employee admits to the misconduct for which he/she was disciplined, judgment should be rendered in favor of the employing State of North Carolina agency. *Hilliard*, 173 N.C. App. at 598, 620 S.E.2d at 17-18.

13. The Written Warning is relevant to determining whether Respondent had just cause to terminate Petitioner’s employment. The Written Warning was still active at the time of Petitioner’s discharge.

14. Therefore, Respondent has met its burden of proof and established by substantial evidence in the record that it had just cause to demote the Petitioner for unacceptable personal conduct.

15. N.C. Gen. Stat. § 126-85(a)(a1) provides that “No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee’s compensation, terms, conditions, location, or privileges of employment because the State

employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate. No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.”

16. Petitioner’s burden to prove retaliation requires him by the preponderance of the evidence to show “(1) that there was statutorily protected participation, (2) that an adverse employment action occurred, and (3) that there was a causal link between the participation and the adverse employment action.” *Whatley v Metropolitan Atlanta Rapid Transit Authority*, 632 F.2d. 1325 (5th Cir. 1980).

17. Petitioner has failed to prove by a preponderance of the evidence that his provision of Ms. Maney’s confidential personnel documents to Mr. Higgins for use during the appeal of his demotion by the Respondent was a statutorily protected act pursuant to N.C. Gen. Stat. §§ 126-84 and 126-85.

BASED UPON the above-noted Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

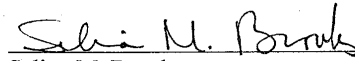
The Undersigned **AFFIRMS** Respondent’s dismissal of Petitioner in that Respondent had just cause for this disciplinary action per N.C. Gen. Stat. § 126-35.

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 thirty (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, North Carolina 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.** 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 thirty (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 6th day of February, 2014.



Selina M. Brooks
Administrative Law Judge

STATE OF NORTH CAROLINA Filed
2013 NOV -8 PM 4: 24 IN THE OFFICE OF
Office of ADMINISTRATIVE HEARINGS
 COUNTY OF PITT Administrative Hearings 12 OSP 12403

SHANISE MONCRIEFT,)	
)	
Petitioner,)	
)	
v.)	<u>FINAL DECISION</u>
)	
NORTH CAROLINA DEPARTMENT)	
OF PUBLIC SAFETY,)	
MAURY CORRECTIONAL,)	
)	
Respondent.)	

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on May 29, 2013 in Ayden, North Carolina. After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals after receipt of the official transcript. Mailing time was allowed for submission including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. No materials were received from either party and on October 22, 2013, the Undersigned permanently closed the record. By Order of the Chief Administrative Law Judge the decision in this matter was set to be filed no later than November 29, 2013.

APPEARANCES

For Petitioner: Shanise Moncrieft, Pro Se
 580 Carson Edwards Road
 Ayden, North Carolina 28513

For Respondent: Lisa Y. Harper
 Assistant Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, NC 27602

WITNESSES

For Petitioner:

1. Fernando Harris, Corrections Officer, Eastern Correctional Institution
2. Chineta Williams, Captain, Maury Correctional Institution

For Respondent:

1. Shanise Moncrieft, Petitioner
2. Sitina Watkins, Sergeant, Maury Correctional Institution
3. Johnny Briley, Corrections Officer, Maury Correctional Institution
4. Ginger Barnes, Corrections Officer, Maury Correctional Institution
5. David Rose, Corrections Officer, Maury Correctional Institution
6. Mark Fleming, Lieutenant, Maury Correctional Institution
7. Dennis Daniels, Correctional Administrator, Maury Correctional Institution
8. Donny Safrut, Eastern Region Director, N.C. Department of Public Safety, Division of Prisons
9. Roderick Watson, Captain, Maury Correctional Institution

EXHIBITS

For Respondent:

1. Dismissal Letter, dated August 27, 2012
2. Pre-Disciplinary, Conference Notice dated July 18, 2012
3. Pre-Disciplinary, Conference Letter dated July 19, 2012
4. Internal Investigation Report, dated June 12, 2012
5. Appendix to Disciplinary Policy and Procedures, Section 6, pp. 38-41, dated October 1, 1995
6. Department of Correction Policy, Conduct of Employees, Chapter A, Section .200, pp. 1-8, dated August 16, 2010
7. Internal Investigation Report, dated June 13, 2012
8. Department of Correction Policy, Conduct of Employees, Section .400, p 10, dated May 10, 2006
9. Written Statement of Shanise Moncrieft, dated May 21, 2012
10. Written Statement of Johnny Briley, dated May 21, 2012
11. Written Statement of David Rose, dated June 6, 2012
12. Written Statement of Sitina Watkins, dated May 19 and May 21, 2012
13. Written Statement of Ginger Barnes, dated June 7, 2012
14. Written Statement of Shanise Moncrieft, dated June 8, 2012
15. Written Statement of Mark Fleming, dated June 4, 2012

ISSUE

Whether just cause existed to dismiss Petitioner for unacceptable personal conduct.

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 (ALJ) makes the following Findings of Fact. In making the findings of fact, the Undersigned has weighed all the evidence, or the lack thereof, 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, and 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. From the sworn testimony and the admitted evidence, the Undersigned makes the following findings of fact.

FINDINGS OF FACT

1. Before her dismissal, Petitioner had been employed with the Department of Public Safety (DPS) for approximately six (6) years. Petitioner began working for Respondent in 2006 as a Correctional Officer at Bertie Correctional Institution. In mid-2008, Petitioner was transferred to Maury Correctional Institution, where she was employed for four (4) years as a Correctional Officer.
2. While employed by Respondent, Petitioner was at all times operating under the strictures of a chain of command. Petitioner reported to a superior at all times while employed by Respondent and was subordinate to numerous superiors she did not report to while employed by Respondent at Maury Correctional facility.
3. Petitioner was aware that workplace superiors are to be treated with a high degree of respect by all subordinates.
4. While employed by Respondent at Maury Correctional Institution, Petitioner was subject to routine searches of personal belongings upon entering the Institution as well as carrying out searches of others when assigned. The purpose of the search is to ensure that no employee or other entrant to the facility is carrying prohibited contraband. Every entrant to the facility is screened. Personal belongings are also screened.
5. On May 19, 2012 Petitioner was assigned to the morning shift for entrance/exit searches at Maury Correctional Institution. Sergeant Ellis came up to the entrance with a cup of coffee in a clear container that was about one quarter full. Petitioner told him he could no

longer bring that into the institution. Sergeant Sitina Watkins came in, went through the metal detectors and was standing next to Sergeant Ellis. Sgt. Watkins told Sgt. Ellis that he could have the coffee and upon hearing that, Petitioner stated that he could not have the coffee, telling Sgt. Watkins it was not her shift and she should not be interfering with what Petitioner was telling Sgt. Ellis. Petitioner informed Sgt. Watkins that if she had a problem with her, Sgt. Watkins should contact Petitioner's supervisor.

6. Petitioner next spoke to Sgt. Watkins in a very loud tone while waiving her hands, moving her neck and pointing her index finger. Sgt. Watkins testified that Petitioner also used profanity towards her. Specifically, Petitioner stated to Sgt. Watkins, "I don't know who the fuck you think you is." (Tr. 44). Petitioner denied using profanity and no other witness specifically heard the words used by Petitioner during the exchange.
7. Correctional Officer Johnny Briley witnessed the exchange between Petitioner and Sgt. Watkins and testified that Petitioner seemed hostile and that her tone was very derogatory.
8. Sergeant Sitina Watkins is in a superior position to that of Petitioner. Petitioner's confrontation with Sergeant Watkins was disrespectful and argumentative.
9. The morning exchange between Petitioner and Sergeant Watkins ended when Respondent's employee, Lieutenant Williams, entered the area and ordered that the controversy cease. Lt. Williams did not hear any verbal communication but saw non-verbal communication between Petitioner and Sgt. Watkins and told Petitioner to stop.
10. On the evening of May 19, 2012 there was a second altercation in the gatehouse between Sgt. Watkins and Petitioner. At this point, Sgt. Watkins was assisting the gatehouse lobby officer with entrance/exit screening and Petitioner was entering the facility.
11. Petitioner was sensitive to other persons touching her belongings. Petitioner objected to Sgt. Watkins removing items from Petitioner's purse or physically touching her personal belongings for any reason. When Petitioner came into the gatehouse, she put some items in a bin but placed her bag on a desk.
12. The altercation escalated, and Petitioner physically snatched Petitioner's purse out of the hands of Sgt. Watkins, and stated that Sgt. Watkins would not be searching her bag. Petitioner told Sgt. Watkins that she was not going to deal with her and wanted to contact Lt. Williams. Petitioner commented to Sgt. Watkins, a superior officer, "you sitting here showing your teeth, being unprofessional." (Tr. 25) Petitioner also made verbal derogatory and insulting comments regarding Sgt. Watkins's oral hygiene during this time. Petitioner stated to Sgt. Watkins, "You think you somebody with your rotten teeth. You need to go get them fixed." (Tr. 48).
13. Correctional Officer Ginger Barnes witnessed the exchange between Petitioner and Sgt. Watkins and testified that she observed Petitioner's body movements and saw her pull

her bag away, and could tell that she was being disrespectful to Sgt. Watkins. Correctional Officer David Rose also witnessed the exchange between Petitioner and Sgt. Watkins and testified that he observed Petitioner tell Sgt. Watkins in a high pitched argumentative voice that she did not need to be touching her bag.

14. The Department of Correction Personnel Manual, Section 6, states, "All employees of the Department of Correction shall maintain personal conduct of an acceptable standard as an employee and member of the community. Violations of this policy may result in disciplinary action including dismissal without prior warning."
15. In an event unrelated to the gatehouse confrontations with Sgt. Watkins, on May 26, 2012 at 4:00 a.m., Petitioner was operating a motor vehicle when she was pulled over by a N.C. State Trooper after the trooper observed Petitioner's vehicle making erratic movements (swerving).
16. Petitioner was confronted and arrested, and eventually charged with driving with an expired license tag and driving while intoxicated (DWI). The legal blood alcohol content (BAC) limit for driving a motor vehicle in North Carolina is .08. Petitioner's BAC was .12 at the time of arrest. Petitioner affirmatively stated to the officer that she had consumed alcohol prior to operating the vehicle.
17. Petitioner reported the charge of driving with expired tags to the Officer in Charge (OIC), Lieutenant Mark Fleming, at approximately 9:00 a.m. on May 26, 2012. Petitioner asserted she also told him of the driving while intoxicated charge.
18. Fernando Harris testified for Petitioner stating he picked Petitioner up at her cousin's house following Petitioner's DWI arrest. Mr. Harris stated while in the car Petitioner called who she identified to him as Lieutenant Fleming and was told he was busy. Mr. Harris testified that he heard Petitioner relay over the phone that she "received a citation and that she had a DWI." (Tr. 224) Mr. Harris stated he was fearful to come forward and did not do so during the initial investigation at Maury Correctional as he testified he had been unjustly dismissed and Maury had been required to hire him back.
19. Lt. Fleming stated that Petitioner called to tell that she had received a citation for driving with expired tags but he positively affirmed that Petitioner did not inform him that she had also been charged with a DWI. Had she done so he would have required her to bring a copy of her citation and provide a statement that day, and would not have advised her to wait until she returned to work upon her shift as would be the case with only expired tags.
20. The preponderance of all of the evidence supports a finding that Petitioner failed to adequately report the arrest and DWI charge on May 26 and did not fully, clearly and completely do so until May 28, 2012.
21. The Maury Correctional Institution Standard Operating Procedures (SOP) Section .0400, Conduct of Employees, p. 10, states, "All criminal charges and/or traffic violations

imposed upon an employee shall be reported in writing within twenty-four (24) hours of receiving notice.”

22. By letter dated July 18, 2012 signed by Dennis Daniels, Maury Correctional Institution Administrator, and received by Petitioner on that same day, Petitioner was notified of a Pre-Disciplinary Conference scheduled for July 19, 2012 regarding Respondent’s intention to recommend disciplinary action up to and including dismissal for unacceptable personal conduct. A Pre-Disciplinary Conference was conducted and Petitioner was given the opportunity to respond to the allegations against her.
23. In response to Petitioner’s conduct on May 19, 2012 and her failure to report the DWI received on May 26, 2012 in a timely manner as well as her decision to operate a motor vehicle after consuming a sufficient amount of alcohol to register a .12, a recommendation for dismissal was approved by the Department of Public Safety effective August 27, 2012.

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.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. Petitioner timely filed her petition for contested case hearing pursuant to N.C. Gen. Stat. § 150B-23. The parties received proper notice of the hearing in the matter.
2. 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.
3. A court need not make findings as to every fact that arises from the evidence and need only find those facts which 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).
4. At the time of the termination of her employment, Petitioner was subject to the State Personnel Act in accord with N.C. Gen. Stat. § 126-5. The Petitioner was a “career state employee” as defined by N.C. Gen. Stat. § 126-1.1 and is subject to and governed by the provisions of the State Personnel Act, codified at N.C. Gen. Stat. § 126-1 *et seq.*
5. The Petitioner’s claim is that Respondent lacked just cause to dismiss her for one or more alleged acts of unacceptable personal conduct.

6. N.C. Gen. Stat. § 126-35 only permits disciplinary action against career state employees for "just cause." Although "just cause" is not defined in the statute, 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). "Just cause, like justice itself, is not susceptible of precise definition. 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." *N. Carolina Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004).
7. N.C. Gen. Stat. §126-35 states that in contested cases pursuant to Chapter 150B of the General Statutes, the burden of showing that a career employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the department or agency employer.
8. Administrative regulations provide two grounds for discipline or dismissal based on just cause: unsatisfactory job performance and unacceptable personal conduct. 25 NCAC 1J .0604.
9. Unacceptable personal conduct includes, inter alia, "conduct for which no reasonable person should expect to receive prior warning," "the willful violation of known or written work rules," and "conduct unbecoming a state employee that is detrimental to state service." 25 NCAC 01J .0614.
10. In determining whether a public employer has just cause to discipline its employees requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes just cause for the disciplinary action taken. See *Early v. County of Durham Dept. of Social Services*, 172 N.C. App. 344, 616 S.E.2d 553 (2005) (quoting *N.C. Dep't of Env't & Natural Res v. Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004)).
11. A single act of unacceptable personal conduct can constitute just cause for any discipline, up to and including dismissal. *Hilliard v. N.C. Dep't of Correction*, 173 N.C. App. at 597, 620 S.E.2d 17 (2005).
12. The preponderance of the evidence supports Respondent's finding that one or more of Petitioner's actions met the elements for unacceptable personal conduct which is just cause for dismissal pursuant to N.C. Gen. Stat. § 126-35.
13. Respondent's employees are charged with upholding the laws of the state of North Carolina. The importance of Petitioner refraining from drinking and driving as well as Respondent's policy mandating that employees report an arrest within 24 hours is self-evident. A preponderance of the evidence established that Petitioner violated Respondent's policy.
14. In analyzing unacceptable personal conduct, *Warren v. N.C. Dep't of Crime Control and Pub. Safety*, 726 S.E.2d 920, 924 (N.C. App. 2012) holds, "the proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges.

The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken."

15. Petitioner knowingly engaged in two occasions of verbal confrontation having the effect of disrespecting a superior officer. Each of these was disruptive to the agency. Petitioner's conduct was conduct unbecoming a state employee and was detrimental to state service.
16. In this case, the greater weight of the testimony and admitted exhibits supports the conclusion that Respondent met its burden of proof and established by a preponderance of the evidence in the record that it had just cause to terminate its employment of Petitioner for unacceptable personal conduct.
17. Respondent complied with the procedural requirements for dismissing Petitioner from employment with the Department of Public Safety.

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

FINAL 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. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency as required by N.C. Gen. Stat. § 150B.

Based on those conclusions and the facts in this case, the Undersigned holds that the Respondent has carried its burden of proof by a greater weight of the evidence that the Petitioner's dismissal from employment with Respondent based on unacceptable personal conduct was not erroneous, was not arbitrary or capricious, and was in accordance with the applicable laws, rules and State standards.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.


Under the provisions of North Carolina General Statutes Chapter 150B, Article 4, 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 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. N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

In conformity with the Office of Administrative Hearings' Rules, 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.

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.

IT IS SO ORDERED.

This is the 8th day of November, 2013.


Augustus B. Elkins II
Administrative Law Judge