

NORTH CAROLINA REGISTER

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October 1, 2014

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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 |
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| 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 |
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EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

- (1) temporary rules;
- (2) 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.

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 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce/Credit Union Division intends to amend the rules cited as 04 NCAC 06C .0203 and .0205.

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

- ☒ OSBM certified on: June 5, 2014
☐ RRC certified on:
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccud.org>

Fiscal Note if prepared posted at:
http://www.osbm.state.nc.us/files/pdf_files/COM06052014.pdf

Proposed Effective Date: February 1, 2015

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A public hearing may be demanded by written request to Tony Knox, Deputy Administrator of the North Carolina Credit Union Division, 205 W. Millbrook Road, Raleigh, NC 27609 within 15 days of the publication of the Notice of Text. The final date to receive the request will be October 16, 2014.

Reason for Proposed Action:

04 NCAC 06C .0203 – Fields of Membership, amend to eliminate the reference to (IRPS) 89-1 and to clarify that the Division follows the laws of G.S. 54-109.1-109.7 and 04 NCAC 06C .0201-.0204 to charter new credit unions.

04 NCAC 06C .0205 – Loans to Credit Union Officials, amend to clarify the inclusion of outside attorneys and outside accountants to ensure that there is no conflict of interest.

Comments may be submitted to: Tony Knox, Deputy Administrator, 205 W. Millbrook Road, Suite 105, Raleigh, NC 27609; phone (919) 571-4888; fax (919) 420-7919; email tknox@nccud.org

Comment period ends: December 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 06 – CREDIT UNION DIVISION

SUBCHAPTER 06C – CREDIT UNIONS

SECTION .0200 – ORGANIZATION OF CREDIT UNIONS

04 NCAC 06C .0203 FIELDS OF MEMBERSHIP

(a) Parity. To preserve and protect the welfare of state chartered credit union, the Administrator may approve fields of membership and allow state chartered credit unions the same latitude with regard to membership limitations and restrictions as is available to federally chartered credit unions. unions, as set forth in 12 CFR Part 701.1.

(b) New charters and expansion request shall be reviewed and approved in conformity with credit unions organized under Articles 14A to 14L of Chapter 54-109 of the North Carolina General Statutes.

~~(b) New Charters. The field(s) of membership of an applicant for a new credit union shall be reviewed and approved or disapproved in conformity with criteria and policies set out in Chapter 1 of the National Credit Union Administration's Interpretative Ruling and Policy Statement 89-1, entitled CHARTERING AND FIELD OF MEMBERSHIP POLICY, which are adopted by reference pursuant to G.S. 150B-14(e).~~

(c) Expansion Requests. Requests for expanded multiple fields of membership for existing credit unions shall be reviewed and approved or disapproved in conformity with criteria and policies set out in Chapter 1, Part 2, pages 2-312.45 to 2-312.56 of the National Credit Union Administration's Interpretative Ruling and Policy Statement 89-1, entitled CHARTERING AND FIELD OF MEMBERSHIP POLICY (Rel. 20-2/90 Pub. 161), which are adopted by reference pursuant to G.S. 150B-14(e).

~~(d)~~ (c) In allowing an expansion of the field of membership, any such credit union ~~would~~ shall be bound by membership limitations or restrictions contained in its charter or bylaws as

amended and approved by the ~~Administrator.~~ Administrator, as set forth in G.S. 54-109.4.

Authority G.S. 54-109.1; 54-109.2(e); 54-109.3(3); 54-109.4; 54-109.11(3); 54-109.12; 54-109.21(25); 54-109.22; 54-109.26; 54-109.27; 54-109.28.

04 NCAC 06C .0205 LOANS TO CREDIT UNION OFFICIALS

(a) Officials. For purposes of this Rule, an "official" is a member of the board of directors, credit committee, or supervisory committee; the President, Chief Executive Officer, Chief Financial Officer, Comptroller, General Manager, ~~Treasurer/Manager~~ Treasurer/Manager, or Executive Vice President; and outside attorneys and outside accountants of the credit union.

(b) For the purpose of this Section, the following definitions apply:

- (1) "outside attorneys" means independent attorneys or law firms that are retained to provide 25 percent or more of the legal services for the credit union, where the percentage is determined by the amount of the credit union's legal expense annually; and
- (2) "outside accountants" means independent accountants or accounting firms that are retained to provide accounting or audit services for the credit union.

~~(b)(c)~~ Loans to Officials. A loan or line of credit extended to an official as the borrower, direct obligor, endorser, ~~cosigner~~ cosigner, or guarantor with direct or indirect pecuniary interest in the loan shall be reviewed, by the Board of Directors or a duly appointed committee thereof, as provided in Paragraph ~~(e)(d)~~ of this Rule, at the next regular meeting following the date of such extension of credit, provided the following computation produces a total amount in excess of ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000) including limits of credit cards.

- (1) Add:
 - (A) the loan amount extended for the current loan;
 - (B) the outstanding balances of loans, including the used portion of an approved line of credit, extended to or endorsed, cosigned or guaranteed by the official; and
 - (C) the total unused portion of approved lines of credit extended to or endorsed, cosigned or guaranteed by the official.
- (2) Subtract from the above total:
 - (A) the amount of shares pledged by the official on loans or lines of credit extended to, or endorsed, cosigned or guaranteed by the official; and
 - (B) the amount of shares pledged by the official on the current loan or line of credit.

~~(e)(d)~~ Review of Loans to Officials by Duly Appointed Committee. The board of directors may appoint a committee to review and report on loans made to officials. All members of the committee shall be on the board of directors. The committee shall meet before the regular monthly board meeting to review all officials' loans that have been approved since the previous meeting. The committee shall make a report to the board ~~which~~ that shall consist of at least the official's loan number, his or her title or position, the amount of the loan, purpose of the loan, aggregate amount of indebtedness to the credit ~~union~~ union, and a statement regarding compliance with loan policies. Each credit union's board of directors ~~must~~ shall review this loan approval report on a monthly basis. This review may be done at the regular monthly board meeting. In the event the board does not meet monthly, a procedure ~~must~~ shall be established whereby a written report ~~will~~ shall be sent to each director on a monthly basis.

~~(d)(e)~~ Nonpreferential treatment. The rates, terms and conditions on a loan or line of credit made to or endorsed, cosigned or guaranteed by:

- (1) an official;
- (2) an immediate family member of an official; or
- (3) any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official, shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. For the purpose of this Rule: "Immediate family members" means a spouse or other family member living in the same household.

~~(e)(f)~~ Avoidance of conflicts. No official or any employee of the credit Union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

~~(f)(g)~~ Indirect Benefits. It shall be unlawful for an official or employee to:

- (1) have any interest ~~whatsoever~~ or to benefit in any manner in the proceeds of a loan or from the sale by the credit union of any real or personal property unless the official or employee has disclosed to the board of directors of the credit union the nature and extent of the benefit ~~which will~~ that may be received and such loan or sale, regardless of the amount of money involved, has been approved by a vote of at least two thirds of the directors of the credit union; or
- (2) to have any interest direct or indirect, in the purchase at less than its face value of any savings account or evidence of indebtedness issued by a credit union.

~~(g)(h)~~ Penalty. A violation of the provisions of this Rule shall be sufficient basis for removal of any official or employee by the ~~Administrator.~~ Administrator, as set forth in G.S. 54-109.19.

Authority G.S. 54-109.12; 54-109.19; 54-109.39.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce/Credit Union Division intends to amend the rules cited as 04 NCAC 06C .0301-.0302 and repeal the rule cited as 04 NCAC 06C .0303.

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

- ☒ OSBM certified on: May 1, 2014
☐ RRC certified on:
☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.nccud.org>

Fiscal Note if prepared posted at:
http://www.osbm.state.nc.us/files/pdf_files/COM06052014.pdf

Proposed Effective Date: February 1, 2015

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A public hearing may be demanded by written request to Tony Knox, Deputy Administrator of the North Carolina Credit Union Division, 205 W. Millbrook Road, Raleigh, NC 27609 within 15 days of the publication of the Notice of Text. The final date to receive the request will be October 16, 2014.*

Reason for Proposed Action:

04 NCAC 06C .0301 – General Provisions, the amendments are being made to remove reference to the Handbook and Accounting Manual for State Chartered Credit Unions. Also there are words being updated to current terms.

04 NCAC 06C .0302 – Procedures, changes made are to update the terms and modernize names of equipment.

04 NCAC 06C .0301 – Depreciation and amortization schedules, the recommendation is to repeal the rule; it is no longer used by credit unions.

Comments may be submitted to: Tony Knox, Deputy Administrator, 205 W. Millbrook Road, Suite 105, Raleigh, NC 27609; phone (919) 571-4888; fax (919) 420-7919; email tknox@nccud.org

Comment period ends: December 1, 2014

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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 06 – CREDIT UNION DIVISION

SUBCHAPTER 06C – CREDIT UNIONS

**SECTION .0300 – BASIC INTERNAL CONTROLS:
ACCOUNTING PROCEDURES AND OPERATION
STANDARDS FOR STATE-CHARTERED CREDIT
UNIONS**

04 NCAC 06C .0301 GENERAL PROVISIONS

(a) Internal controls, ~~bookkeeping~~ accounting procedures, and operational standards ~~reasonably~~ adequate to safeguard the assets shall be established by all credit unions.

(b) ~~Each credit union shall use the procedures in either the "Handbook and Accounting Manual for State Chartered Credit Unions" or the federal manuals "Accounting Manual for Federal Credit Unions," NCUA 8022, and the "Data Processing Guidelines for Federal Credit Unions," NCUA 8009. If the federal manuals are used, those portions in conflict with state law shall be modified to conform with state law. The Administrator shall be informed as to which manuals the Credit Union is using.~~ Credit Unions with ten million dollars (\$10,000,000) or more in assets shall follow generally accepted accounting principles (GAAP) for financial statement and report preparation. Credit Unions with less than ten million dollars (\$10,000,000) in assets may follow GAAP or use the procedures in the "Accounting Manual for Federal Credit Unions" posted on the National Credit Union Administration website (www.ncua.gov).

(c) At least 60 days before a credit union converts its records from a manual to an EDP system through an outside servicer or changes EDP services, a copy of the proposed contract and a description of the data processing system shall be submitted to the Administrator for review and approval. If an in-house EDP system or the sponsoring company's EDP facilities are to be used, the Administrator ~~should~~ shall be notified in writing of the proposed change before extensive planning and system programming begins.

~~(d) Contracts and agreements, procedures and minimum data bases for EDP systems should conform with conditions as specified in the "Handbook and Accounting Manual for State Chartered Credit Unions" or NCUA 8009.~~

~~(e)~~(d) Fully justified requests Requests for modification of the rules and regulations in regard to the general provisions should be submitted in writing to the Administrator.

Authority G.S. 54-109.12; 54-109.16; 54-109.17(a),(b).

04 NCAC 06C .0302 PROCEDURES

The basic internal controls, ~~bookkeeping~~ accounting procedures, and operation standards for all credit unions are as follows:

- (1) An adequate general ledger and detailed cash journal shall be maintained as necessary for the ~~proper~~ control of all transactions of the Credit Union.
- (2) A ~~detailed and complete~~ record of all correcting and adjusting entries, with a ~~full~~ explanation of each entry, shall be maintained.
- (3) For manual and ~~machine~~ computerized accounting systems, all receipts and disbursements shall be recorded and posted daily to cash journal and subsidiary accounts. ~~Systems using EDP shall be posted no less frequently than monthly.~~
- (4) Deposits in the bank or credit union shall consist of an entire day's receipts as entered in the journal and cash record. If amounts are less than three hundred dollars (\$300.00), more than one day's total receipts may be combined in a single deposit provided that no funds are held more than three banking days.
- (5) ~~Adequate security~~ Security shall be provided (cash drawer and lockbox for ~~overnight~~) at a minimum for storage of funds.
- (6) Credit union funds ~~must~~ shall be kept separate from all other funds.
- (7) Cash shall be balanced at the end of each working day, and a record made ~~thereof~~ by each teller (~~detailing~~ detailing specie, currency, ~~checks~~ checks, and other items counted as ~~cash~~) cash.
- (8) A "cash over and short" account shall be maintained in the expense ledger, with a record showing the name of each person responsible for each difference.
- (9) A pre-numbered receipt slip or other original record shall be made and preserved covering each payment received.
- (10) All bank or credit union accounts shall be reconciled at least monthly and such reconciliations preserved.
- (11) A duplicate of itemized bank or credit union deposit slips, or other comparable detailed item record, shall be preserved.
- (12) The exact status of all the credit union's funds, including investments ~~and/or~~ and funds held by agents or attorneys, ~~must~~ shall be determinable at all ~~times without detailed search.~~ times.
- (13) Checks must be pre-numbered by the printer and not signed in blank in advance of issue. Facsimile signature plates shall be ~~adequately~~ controlled.
- (14) Disbursements ~~must~~ shall be supported by invoices, vouchers, or other explanations of record, each ~~clearly~~ showing the nature or purpose of each disbursement.
- (15) Dual control ~~must~~ shall be maintained over all negotiable investment securities.
- (16) Members' accounts shall be posted currently and balanced not less frequently than monthly and supported by ~~EDP listing~~ member trial balance or adding machine tapes, identified, dated, and preserved.
- (17) A trial balance of the general ledger should be prepared within 15 working days from the close of business of the last day of each month and financial statements prepared therefrom.
- (18) Erasures and eradications for correction of errors in records are prohibited; corrections must be approved by an authorized person.
- (19) Members' passbooks shall be held in the Credit Union office only ~~for temporary periods.~~ if authorized by the board of directors.
- (20) A signed membership card file covering all accounts shall be ~~properly~~ maintained.
- (21) Payment of dividends or interest on accounts shall be accomplished by check or by credit to the individual account. ~~Adding machine proof tape or other detailed~~ A record, in support of dividend or interest paid by check or credited to accounts shall be preserved.
- (22) A cross-index card record ~~should~~ shall be maintained for each co-maker showing the date, name, and original amount of each note on which the individual appears as co-maker.
- (23) Minutes of meetings of the Board of directors shall record in detail all of its business transactions and be signed by the presiding officer and the secretary. ~~Such directors at such times as they are meeting as a board of directors, shall require the secretary of such board or some duly designated agent, to make a matter of record in the minutes of the meetings of such board of directors, all letter communications from the Division. Upon meeting as a board of directors; the secretary or designated member, shall make a matter of record in the minutes of the meeting all written communications from the Division.~~
- (24) The supervisory committee shall have work papers to support its audit report. The reports and work papers shall be retained and made available for review by the state examiners.
- (25) A report of actions taken by the credit committee ~~and/or~~ or loan officers shall be prepared, signed and preserved.
- (26) Minutes of each annual meeting of the members of the Credit Union shall record in detail all business transacted.
- (27) All books and records of the Credit Union shall have ~~adequate and proper~~ protection from

fire and other hazards at all times. Active books and records of the Credit Union should be located at the principal office at all times.

- (28) Dormant accounts shall be controlled to prevent improper withdrawal.
- (29) Annual vacation of at least five consecutive work days ~~(occasionally during~~ (during periods when proofs of subsidiary ledgers are being made) shall be taken by each employee having access to ~~cash~~ cash and general ledger. During the vacation the employee shall remain continuously absent.
- (30) A record shall be maintained ~~which will that~~ may at all times show the tax and insurance status of each piece of real estate securing the ~~Credit Union's credit union's~~ investment of funds in real estate mortgage loans.
- (31) All tax liabilities shall be determined and paid in accordance with the law.

Authority G.S. 54-109.11(4); 54-109.12; 54-109.16; 54-109.17.

04 NCAC 06C .0303 DEPRECIATION AND AMORTIZATION SCHEDULES

- ~~(a) Each credit union shall maintain a schedule of all items of real and personal property owned by the Credit Union. At the option of the Board of directors, personal and real property may be charged off as an operating expense over a reasonable period of time.~~
- ~~(b) The expense of conversion, excluding equipment, from one accounting system to another may be amortized over a period not exceeding three years.~~
- ~~(c) The expense of organizing a new credit union shall be amortized over a period not exceeding two years.~~

Authority G.S. 54-109.12.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Health and Human Services, Secretary (Director, Division of Health Service Regulation) intends to adopt the rules cited as 10A NCAC 14L .0101 and .0201.

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

- ☒ **OSBM certified on:** August 28, 2014
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: February 1, 2015

Public Hearing:

Date: November 18, 2014

Time: 10:00 a.m.

Location: Room 131, Wright Building, Dorothea Dix Campus, 1201 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: Under authority of Gen. Stat. § 143B-10, the Department of Health and Human Services (Department) has delegated the promulgation of these rules to the Division of Health Service Regulation (DHSR). This set of rules reflects the requirement of S.L. 2013-44, Gen. Stat. 131E-78.5, to create a process by which hospitals licensed by the DHSR can submit documentation of stroke center certification by a national accrediting authority to the Office of Emergency Medical Services (OEMS) to qualify for stroke center designation by the Department. Once designation is granted, the OEMS will reflect the hospital's information on the Department's Internet Web site and update this list of designated hospitals in June of each calendar year. The Department has recognized national accreditation organizations that will be used to qualify the hospital(s) for stroke center designation, although confirmation of additional accrediting organizations may be deemed acceptable if the certification standards are determined by the Department to meet those identified in these rules. These organizations are the Joint Commission (JC); the American Heart Association (AHA) Primary Stroke Center Designation or the JC and AHA Comprehensive Stroke Center, Disease Specific Certification Program; "Healthcare Facilities Accreditation Program," or the Det Norske Veritas (DNV) accreditation program.

Comments may be submitted to: Megan Lamphere, Rule-making Coordinator, 2701 Mail Service Center, Raleigh, NC 27699-2701; fax (919) 733-7021; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: December 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 14 – DIRECTOR, DIVISION OF HEALTH
SERVICE REGULATION**

SUBCHAPTER 14L – STROKE CENTER DESIGNATION

SECTION .0100 – DEFINITIONS

10A NCAC 14L .0101 DEFINITIONS

The following definitions apply throughout this Subchapter:

- (1) "Acute Stroke Care" means the process for the rapid assessment and treatment of patients experiencing an acute cerebrovascular accident.
- (2) "Catchment Area" means the geographical area from which a hospital's patients are drawn.
- (3) "Comprehensive Stroke Care" means state-of-the-art infrastructure, staff and training to receive and treat patients with the most complex stroke cases, including advanced imaging capabilities, 24 hours per day, seven days per week availability of specialized treatments, and staff with the unique education and competencies to care for complex stroke patients.
- (4) "Comprehensive Stroke Center" means a hospital that has satisfied all requirements for certification from a nationally recognized hospital certifying organization for the provision of comprehensive stroke care.
- (5) "Conditional Designation" means a hospital that is pursuing certification but has not satisfied all certification requirements of the national accrediting body to qualify for Primary Stroke Center or Comprehensive Stroke Center designation.
- (6) "Department" means the Department of Health and Human Services.
- (7) "Designated Stroke Center" means a hospital that has presented evidence to the Department of current certification by a national accrediting organization as a Comprehensive or Primary Stroke Center.
- (8) "Designation" means the recognition by the Department of a hospital's certification by a nationally recognized hospital certifying organization for the provision of comprehensive or acute stroke care.
- (9) "EMS System" means a coordinated arrangement of local resources under the authority of the county government (including all agencies, personnel, equipment, and facilities) organized to respond to medical emergencies and integrated with other health care providers and networks including public health, community health monitoring activities, and special needs populations, that are approved by the Department in accordance

with the EMS and Trauma Rules of the North Carolina Medical Care Commission 10A NCAC 13P .0201.

- (10) "EMS Provider" means those entities defined in G.S. 131E-155(13a) that hold a current license issued by the Department pursuant to G.S. 131E-155.1.
- (11) "Office of Emergency Medical Services (OEMS)" means a section of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services located at 1201 Umstead Drive, Raleigh, North Carolina 27603.
- (12) "Primary Stroke Center" means a hospital that has satisfied all requirements for certification from a nationally recognized hospital accrediting organization for the provision of acute stroke care.

Authority G.S. 131E-78.5; 143B-10.

SECTION .0200 – STROKE CENTER DESIGNATION

10A NCAC 14L .0201 STROKE CENTER DESIGNATION REQUIREMENTS

(a) The Department shall designate hospitals licensed by the Division of Health Service Regulation pursuant to G.S. 131E-78.5 as certified "Designated Stroke Centers," as defined in Rule .0101(7) of this Subchapter, upon receipt of evidence provided by the hospital as defined in Paragraph (b) of this Rule that the hospital has received Primary or Comprehensive Stroke Center certification by any of the following:

- (1) the "Joint Commission," "American Heart Association," and "American Stroke Association" Comprehensive Stroke Center, Disease Specific Certification Program; "Healthcare Facilities Accreditation Program" (HFAP);
- (2) "Det Norske Veritas" (DNV); or
- (3) other nationally recognized hospital certifying body as determined by the Department.

(b) Hospitals designated as a Primary or Comprehensive Stroke Center shall notify the Office of Emergency Medical Services within 90 days of certification of the following information:

- (1) the name of the accrediting organization issuing certification to the hospital;
- (2) the date of certification;
- (3) the level of certification (Primary or Comprehensive);
- (4) the date of renewal of the certification; and
- (5) the name and phone number of the primary contact person at the hospital who is responsible for obtaining the certification.

(c) The Department shall maintain a list of all Primary and Comprehensive Stroke Centers on its Internet website at <http://www.ncdhhs.nc.gov>.

(d) Each designated Primary or Comprehensive Stroke Center shall coordinate the provision of acute stroke care with other

hospitals in their catchment area through written agreements that address the following minimum requirements:

- (1) transportation of acute stroke patients to the designated Primary or Comprehensive Stroke Center; and
- (2) acceptance of patients initially treated at hospitals incapable of providing appropriate management of the acute stroke patient.

(e) The Office of Emergency Medical Services shall provide written notification annually through email to the medical directors of each EMS system and EMS provider a list of all Primary and Comprehensive Stroke Centers contained on the Department's Internet website.

(f) Hospitals shall notify the Office of Emergency Medical Services within 30 days of any change to the hospital's Primary or Comprehensive Stroke Center certification.

(g) Hospitals that have received a conditional certification are ineligible for designation by the Department as a Primary or Comprehensive Stroke Center until the hospital receives Primary or Comprehensive Stroke Center certification by the accrediting body issuing the certification.

(h) Hospitals that fail to maintain certification shall be removed from the Department's Internet website by the Office of Emergency Medical Services within 30 days following receipt of written notification from the affected hospital.

(i) Non-certified hospitals shall not advertise or utilize signage representing the hospital as a Primary or Comprehensive Stroke Center if the hospital has not received that designation by the Department.

Authority G.S. 131E-78.5; 143B-10.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 03I .0122; 03K .0111, .0507-.0508; 03R .0202, amend the rules cited as 15A NCAC 03I .0101; 03J .0207-.0209, .0301; 03K .0501, .0502; 03L .0101, .0103, .0105; 03M .0101, .0510, .0513; 03O .0101, .0106, .0112-.0113, .0501, .0503; 03Q .0202; 03R .0114-.0115, and repeal the rules cited as 15A NCAC 03K .0206, .0303.

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

- ☒ **OSBM certified on:** May 5, 2014; June 11, 2014; June 27, 2014; July 18, 2014; July 31, 2014
- ☐ **RRC certified on:**
- ☐ **Not Required**

Pursuant to G.S. 150B-19.1(c), the agency has posted on its website the following:

Text of proposed rule posted at:

<http://portal.ncdenr.org/web/mf/mfc-proposed-rules-links>

Explanation and reason for proposed rule posted at:

<http://portal.ncdenr.org/web/mf/mfc-proposed-rules-links>

Instructions for oral and written comments posted at:

<http://portal.ncdenr.org/web/mf/mfc-proposed-rules-links>

Fiscal Note if prepared posted at:

http://osbm.nc.gov/files/pdf_files/DENR05052014_a.pdf;
http://osbm.state.nc.us/files/pdf_files/DENR05052014_b.pdf;
http://osbm.nc.gov/files/pdf_files/DENR06112014.pdf;
http://osbm.nc.gov/files/pdf_files/DENR06272014.pdf;
http://osbm.nc.gov/files/pdf_files/DENR07182014.pdf;
http://osbm.nc.gov/files/pdf_files/DENR07312014a.pdf;
http://osbm.nc.gov/files/pdf_files/DENR07312014b.pdf; AND
http://osbm.nc.gov/files/pdf_files/DENR07312014c.pdf

Proposed Effective Date: May 1, 2015

Public Hearing:

Date: Tuesday, October 28, 2014

Time: 6:00 p.m.

Location: Dept. of Environment and Natural Resources, 943 Washington Square Mall, Highway 17, Washington, NC 27889

Date: Wednesday, October 29, 2014

Time: 6:00 p.m.

Location: Dept. of Environment and Natural Resources, 127 Cardinal Drive, Wilmington, NC 28405

Reason for Proposed Action:

15A NCAC 03I .0101 – DEFINITIONS

[FOR-HIRE ISSUE AND SHRIMP FMP]

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting for-hire licensing. In order to improve fisheries data from the for-hire industry, logbooks detailing catch and discard will be required from licensed charter and guide captains. In support of that, proposed amendments to this rule add a definition for logbook and modify the definition of trip ticket for consistency. Also, in accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments modify the definition of mesh length so that it can be applied to diamond-mesh nets as well as square-mesh nets. This change is in support of a management strategy to require one additional bycatch reduction device in all skimmer and otter trawls, which can include a diamond-mesh "T-90" panel.

15A NCAC 03I .0122 – USER CONFLICT RESOLUTION

This rule is proposed for adoption to improve organization and public clarity by updating and relocating the procedure for resolving user conflicts concerning public trust resources from Subchapter 03J, Fishing Devices (see 15A NCAC 03J .0301.)

15A NCAC 03J .0207 – DUKE ENERGY PROGRESS

BRUNSWICK NUCLEAR PLANT INTAKE CANAL

Proposed amendments update the name of a canal in Brunswick County.

15A NCAC 03J .0208 – NEW RIVER

In accordance with the 2006 N.C. Shrimp Fishery Management Plan and Amendment 1 to the plan, proposed amendments prohibit the use of otter trawls above the Highway 172 Bridge in Onslow County by moving restrictions from proclamation into rule to continue reducing bycatch and protecting the New River Special Secondary Nursery Area.

15A NCAC 03J .0209 – ALBEMARLE SOUND/CHOWAN RIVER RIVER HERRING MANAGEMENT AREAS

In accordance with the N.C. River Herring Fishery Management Plan Amendment 2, proposed amendments relocate the description and boundaries of the Albemarle Sound and Chowan River River Herring Management Areas from Subchapter 03J to Subchapter 03R for improved organization and public clarity (see 15A NCAC 03R .0202.)

15A NCAC 03J .0301 – POTS

[AMERICAN EEL FMP AND USER CONFLICT ISSUE]

In accordance with Addendum III to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Eel, proposed amendments implement a minimum mesh length requirement of one-half by one-half inch mesh for eel pots, allowing for a phase-in period until January 1, 2017. Also, proposed amendments remove the paragraph concerning user conflicts concerning public trust resources so that it can be moved to Subchapter 03I, General Rules for improved organization and public clarity (see 15A NCAC 03I .0122.) Additional proposed amendments correct capitalization of proper names and clarify the Fisheries Director's proclamation authority for crab pot escape ring requirements by making the rule consistent with other rules containing proclamation authority; there is no change in the management of blue crabs.

15A NCAC 03K .0111 – PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, this rule is proposed for adoption to create a permit to use mechanical methods on shellfish leases or franchises for all shellfish species, instead of having multiple species-specific permits (see 15A NCAC 03K .0206 and .0303.)

15A NCAC 03K .0206 – PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, this rule is proposed for repeal in order to have only a single rule to permit the use of mechanical methods on shellfish leases or franchises for all shellfish species (see 15A NCAC 03K .0111.)

15A NCAC 03K .0303 – PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES REQUIREMENT

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, this rule is proposed for repeal in order to have only a single rule to permit the use of mechanical methods on shellfish leases or franchises for all shellfish species (see 15A NCAC 03K .0111.)

15A NCAC 03K .0501 – BAY SCALLOP HARVEST MANAGEMENT

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, proposed amendments eliminate the open season from August 1 through September 15, adjust the maximum daily commercial harvest possession limit to be consistent with the adaptive management trip limit measures, and clarify proclamation authority of the Fisheries Director to manage bay scallop harvest. Additional amendments clarify the seasons and harvest limits for bay scallops are only for public bottom, not shellfish leases and franchises.

15A NCAC 03K .0502 – TAKING BAY SCALLOPS AT NIGHT AND ON WEEKENDS

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, proposed amendments allow harvest of bay scallops on weekends from shellfish leases and franchises.

15A NCAC 03K .0507 – MARKETING SCALLOPS TAKEN FROM PRIVATE SHELLFISH BOTTOM

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, this rule is proposed for adoption to include a certification requirement to market scallops during closed public harvest seasons and prohibit the take or possession of scallops from public bottom while possessing scallops from shellfish leases and franchises.

15A NCAC 03K .0508 – SCALLOP SEASON AND HARVEST LIMIT EXEMPTION

In accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, this rule is proposed for adoption to exempt shellfish lease and franchise holders and aquaculture operations from seasons and harvest limit restrictions.

15A NCAC 03L .0101 – SHRIMP HARVEST RESTRICTIONS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments clarify the Fisheries Director's proclamation authority for shrimp harvest restrictions by making the rule consistent with other rules containing proclamation authority.

15A NCAC 03L .0103 – PROHIBITED NETS, MESH LENGTHS AND AREAS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments establish a maximum combined headrope length of 220 feet in all internal coastal waters where there are no existing maximum combined headrope requirements; a phase-out period is provided until January 1, 2017.

15A NCAC 03L .0105 – RECREATIONAL SHRIMP LIMITS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments allow cast-netting of shrimp in all areas otherwise closed to shrimping and increase the harvest limit.

15A NCAC 03M .0101 – MUTILATED FINFISH

In accordance with the N.C. River Herring Fishery Management Plan Amendment 2, proposed amendments remove blueback herring and alewife (river herring) from the exemption for possession of mutilated finfish, supporting proposed amendments to 15A NCAC 03M .0513.

15A NCAC 03M .0510 – AMERICAN EEL

In accordance with Addendum III to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Eel, proposed amendments implement a nine-inch minimum size limit, a 25-fish recreational possession limit, and a no-possession requirement for American eels from September 1 to December 31 unless they are taken with baited pots.

15A NCAC 03M .0513 – RIVER HERRING

In accordance with the N.C. River Herring Fishery Management Plan Amendment 2, proposed amendments make it unlawful to take or possess river herring from North Carolina Coastal Fishing Waters and limit possession of river herring less than or equal to six inches total length, while fishing or boating.

15A NCAC 03O .0101 – PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES,

ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS

[FOR-HIRE ISSUE AND OCEAN PIER ISSUE]

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting for-hire licensing. In order to broaden options for licensees and improve the Division's fisheries statistics, rule changes are proposed to eliminate the current For-Hire Permit and blanket licenses and replace them with a captain's for-hire license, a blanket for-hire vessel license, and a non-blanket for-hire vessel license. Proposed changes also implement a for-hire endorsement on the commercial fishing vessel registration and require weekly logbook reporting from for-hire licensees. In support of that, proposed amendments to this rule update the names of the for-hire licenses and amend requirements to obtain a for-hire license. Also, in accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting pier licensing by combining two separate ocean pier licenses into one Ocean Fishing Pier License with the same net cost. In support of that, proposed amendments to this rule remove references to the outdated licenses.

15A NCAC 030 .0106 – DISPLAY OF LICENSES AND REGISTRATIONS

[FOR-HIRE ISSUE AND OCEAN PIER ISSUE]

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting for-hire licensing. One proposed change implements a for-hire endorsement on the commercial fishing vessel registration. In support of that, proposed amendments to this rule add the requirement to display a current For-Hire License decal on the vessel. Also, in accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting pier licensing by combining two separate ocean pier licenses into one Ocean Fishing Pier License with the same net cost. In support of that, proposed amendments to this rule remove a reference to an outdated license.

15A NCAC 030 .0112 – FOR HIRE COASTAL RECREATIONAL FISHING

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting for-hire licensing. In order to broaden options for licensees and improve the Division's fisheries statistics, rule changes are proposed to eliminate the current For-Hire Permit and blanket licenses and replace them with a captain's for-hire license, a blanket for-hire vessel license, and a non-blanket for-hire vessel license. Proposed changes also implement a for-hire endorsement on the commercial fishing vessel registration and require weekly logbook reporting from for-hire licensees. In support of that, proposed amendments to this rule modify the names of the for-hire licenses and remove references to an outdated license.

15A NCAC 030 .0113 – OCEAN FISHING PIER REPORTING REQUIREMENTS

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting pier licensing by combining two separate ocean pier licenses into one Ocean Fishing Pier License with the same net cost. In support of that, proposed amendments to this rule remove references to the outdated licenses.

15A NCAC 030 .0501 – PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

[FOR-HIRE ISSUE, ATLANTIC OCEAN STRIPED BASS COMMERCIAL GEAR PERMIT CHANGES, AND BAY SCALLOP FMP]

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting for-hire licensing. In order to broaden options for licensees and improve the Division's fisheries statistics, rule changes are proposed to eliminate the current For-Hire Permit and blanket licenses and replace them with a captain's for-hire license, a blanket for-hire vessel license, and a non-blanket for-hire vessel license. In support of that, proposed amendments to this rule remove references to the For-Hire Fishing Permit. Additional proposed amendments remove the permit fee for the Atlantic Ocean Striped Bass Commercial Gear Permit since it is provided in statute; the November 1 deadline to purchase the annual permit is also removed. Also, in accordance with the N.C. Bay Scallop Fishery Management Plan Amendment 2, this rule is proposed for amendment to align rule cross-references with changes made in accordance with the fishery management plan and to update the name of a shellfish permit.

15A NCAC 030 .0503 – PERMIT CONDITIONS; SPECIFIC [FOR-HIRE ISSUE AND RIVER HERRING FMP]

In accordance with Session Law 2013-360, proposed amendments implement statutory changes affecting for-hire licensing. In order to broaden options for licensees and improve the Division's fisheries statistics, rule changes are proposed to eliminate the current For-Hire Permit and blanket licenses and replace them with a captain's for-hire license, a blanket for-hire vessel license, and a non-blanket for-hire vessel license. In support of that, proposed amendments to this rule remove the For Hire Fishing Permit. Also, in accordance with the N.C. River Herring Fishery Management Plan Amendment 2, proposed amendments update a cross-reference to the rule found in the description and boundaries of the Albemarle Sound Management Area for River Herring.

15A NCAC 03Q .0202 – DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

Proposed amendments correct an error in the Inland/Coastal Waters boundary line in Queens Creek, Onslow County that was discovered during a review of boundary coordinates. Additional amendments correct inconsistent punctuation, spacing and wording and also update the name of a canal in Brunswick County.

15A NCAC 03R .0114 – SHRIMP TRAWL PROHIBITED AREAS

In accordance with the N.C. Shrimp Fishery Management Plan Amendment 1, proposed amendments prohibit shrimp trawling in the Intracoastal Waterway channel from the Sunset Beach Bridge to the South Carolina state line, including Shallotte River, Eastern Channel and lower Calabash River. These areas are proposed to be closed to protect small shrimp.

15A NCAC 03R .0115 – ANADROMOUS FISH SPAWNING AREAS

In accordance with the N.C. River Herring Fishery Management Plan Amendment 2, proposed amendments change the boundary coordinates of the Anadromous Fish Spawning Area to reflect companion changes previously made to the Albemarle Sound

and Roanoke River management areas, helping maintain consistency for management and enforcement purposes. Additional proposed amendments correct capitalization of proper names.

15A NCAC 03R .0202 – RIVER HERRING MANAGEMENT AREAS

In accordance with the N.C. River Herring Fishery Management Plan Amendment 2, this rule is proposed for adoption to relocate the description and boundaries of the Albemarle Sound and Chowan River River Herring Management Areas from Subchapter 03J to Subchapter 03R for improved organization and public clarity (see 15A NCAC 03J .0209.)

Comments may be submitted to: Catherine Blum, P.O. Box 769, Morehead City, NC 28557; phone (252) 808-8014; fax (252) 726-0254; email Catherine.Blum@ncdenr.gov

Comment period ends: Monday, December 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** 15A NCAC 03I .0101; 03J .0208; 03L .0101, .0103, .0105; 03O .0101, .0106, .0112, .0501, .0503; 03R .0114
- ☐ **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** 15A NCAC 03I .0122; 03J .0207, .0209, .0301; 03K .0111, .0206, .0303, .0501, .0502, .0507, .0508; 03M .0101, .0510, .0513; 03O .0113; 03Q .0202; 03R .0115, .0202

CHAPTER 03 – MARINE FISHERIES

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

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

- (1) Enforcement and management terms:

- (a) Commercial Quota. Total quantity of fish allocated for harvest by commercial fishing operations.
- (b) Educational Institution. A college, university or community college accredited by an accrediting agency recognized by the U.S. Department of Education; an Environmental Education Center certified by the N.C. Department of Environment and Natural Resources Office of Environmental Education and Public Affairs; or a zoo or aquarium certified by the Association of Zoos and Aquariums.
- (c) Internal Coastal Waters or Internal Waters. All Coastal Fishing Waters except the Atlantic Ocean.
- (d) Length of finfish.
 - (i) Curved fork length. A length determined by measuring along a line tracing the contour of the body from the tip of the upper jaw to the middle of the fork in the caudal (tail) fin.
 - (ii) Fork length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin, except that fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
 - (iii) Pectoral fin curved fork length. A length of a beheaded fish from the dorsal insertion of the pectoral fin to the fork of the tail measured along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.
 - (iv) Total length. A length determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (e) Recreational Possession Limit. Restrictions on size, quantity, season, time period, area, means, and

- methods where take or possession is for a recreational purpose.
 - (f) Recreational Quota. Total quantity of fish allocated for harvest for a recreational purpose.
 - (g) Regular Closed Oyster Season. March 31 through October 15, unless amended by the Fisheries Director through proclamation authority.
 - (h) Scientific Institution. One of the following entities:
 - (i) An educational institution as defined in this Item;
 - (ii) A state or federal agency charged with the management of marine or estuarine resources; or
 - (iii) A professional organization or secondary school working under the direction of, or in compliance with mandates from, the entities listed in Subitems (h)(i) and (ii) of this Item.
 - (i) Seed Oyster Management Area. An open harvest area that, by reason of poor growth characteristics, predation rates, overcrowding or other factors, experiences poor utilization of oyster populations for direct harvest and sale to licensed dealers and is designated by the Marine Fisheries Commission as a source of seed for public and private oyster culture.
- (2) Fishing Activities:
 - (a) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from permitted sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment.
 - (b) Attended. Being in a vessel, in the water or on the shore, and immediately available to work the gear and be within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
 - (c) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following:
 - (i) food;
 - (ii) predator protection;
 - (iii) salinity;
 - (iv) temperature controls; or
 - (v) water circulation, utilizing technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
 - (d) Depuration. Purification or the removal of adulteration from live oysters, clams, or mussels by any natural or artificially controlled means.
 - (e) Long Haul Operations. Fishing a seine towed between two vessels.
 - (f) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a white, pink, or red-line or rim on the outer edge of the back fin or flipper.
 - (g) Possess. Any actual or constructive holding whether under claim of ownership or not.
 - (h) Recreational Purpose. A fishing activity that is not a commercial fishing operation as defined in G.S. 113-168.
 - (i) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, or mussels from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
 - (j) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
 - (k) Shellfish production on leases and franchises:
 - (i) The culture of oysters, clams, scallops, or mussels on shellfish leases and franchises from a sublegal

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

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

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

- that characterize the environment suitable for growth of SAV. The past presence of SAV may be demonstrated by aerial photography, SAV survey, map, or other documentation. An extension of the past 10 annual growing seasons criteria may be considered when average environmental conditions are altered by drought, rainfall, or storm force winds.
- This habitat occurs in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In defining SAV habitat, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition, or this Rule or Rules 03K .0304 and .0404, to apply to or conflict with the non-development control activities authorized by that Act.
- (5) Licenses, permits, leases and franchises, and record keeping:
- (a) Assignment. Temporary transferal to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, and is still the responsible party for the license.
 - (b) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
 - (c) For Hire Vessel. As defined by G.S. 113-174, when the vessel is fishing in state waters or when the vessel originates from or returns to a North Carolina port.
 - (d) Logbook. Paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by persons engaged in commercial or recreational fishing or for-hire operators.
 - ~~(d)(e)~~ Holder. A person who has been lawfully issued in his or her name a license, permit, franchise, lease, or assignment.
 - ~~(e)(f)~~ Land:
 - (i) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
 - (ii) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
 - (iii) For recreational fishing operations, when fish are retained in possession by the fisherman.
 - ~~(f)(g)~~ Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
 - ~~(g)(h)~~ Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
 - ~~(h)(i)~~ New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
 - ~~(i)~~ ~~North Carolina Trip Ticket. Paper forms provided by the Division, and electronic data files generated from software provided by the Division, for the reporting of fisheries statistics that include quantity, method, and location of harvest.~~
 - (j) Office of the Division. Physical locations of the Division conducting license and permit transactions in Wilmington, Washington, Morehead City, Roanoke Island and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses or Coastal Recreational Fishing Licenses are not considered Offices of the Division.
 - (k) Responsible party. Person who coordinates, supervises, or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations, and the person responsible for use of the issued

- license in compliance with applicable statutes and rules.
- (l) Tournament Organizer. The person who coordinates, supervises, or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
 - (m) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed, or landed.
 - (n) Transfer. Permanent transferal to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
 - (o) Trip Ticket. Paper forms provided by the Division and electronic data files generated from software provided by the Division for the reporting of fisheries statistics by licensed fish dealers.

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

15A NCAC 03I .0122 USER CONFLICTS

(a) In order to address user conflicts, the Fisheries Director may, by proclamation, impose any or all of the following restrictions:

- (1) specify time;
- (2) specify areas;
- (3) specify means and methods;
- (4) specify seasons; and
- (5) specify quantity.

This authority may be used based on the Fisheries Director's own findings or on the basis of a valid request in accordance with Paragraph (b) of this Rule. The Fisheries Director shall hold a public meeting in the area of the user conflict prior to issuance of a proclamation based on his or her own findings.

(b) Request for user conflict resolution:

- (1) Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, NC 28557-0769. Such requests shall contain the following information:
 - (A) a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;
 - (B) identification of the user conflict causing a need for user conflict resolution;
 - (C) recommended solution for resolving user conflict; and

- (D) name and address of the person(s) requesting user conflict resolution.
- (2) Within 90 days of the receipt of the information required in Subparagraph (b)(1) of this Rule, the Fisheries Director shall review the information and determine if user conflict resolution is necessary. If user conflict resolution is not necessary, the Fisheries Director shall deny the request. If user conflict resolution is necessary, the Fisheries Director or designee shall hold a public meeting in the area of the user conflict. The requestor shall present his or her request at the public meeting. Other parties affected may participate at the discretion of the Fisheries Director.
- (3) Following the public meeting as described in Subparagraph (b)(2) of this Rule, the Fisheries Director shall refer the users in the conflict for mediation or deny the request. If the user conflict cannot be resolved through mediation, the Fisheries Director shall submit for approval a proclamation to the Marine Fisheries Commission that addresses the conflict.
- (4) Proclamations issued under this Rule shall suspend appropriate rules or portions of rules under the authority of the Marine Fisheries Commission as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under this Rule.

Authority G.S. 113-134; 113-181; 113-182; 113-221.1; 143B-289.52.

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0200 – NET RULES, SPECIFIC AREAS

15A NCAC 03J .0207 DUKE ENERGY PROGRESS BRUNSWICK NUCLEAR PLANT INTAKE CANAL

It is unlawful to use any commercial fishing equipment in the ~~Carolina Power and Light~~ Duke Energy Progress Brunswick Nuclear Plant Intake Canal between the fish diversion screen and the ~~Carolina Power and Light~~ Duke Energy Progress Brunswick nuclear power plant. Nuclear Plant.

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

15A NCAC 03J .0208 NEW RIVER

- (a) It is unlawful to use trawl nets except skimmer trawls upstream of the Highway 172 Bridge over New River.
- (b) It is unlawful to use ~~trawl nets~~ skimmer trawls upstream of the Highway 172 Bridge over New River from 9:00 P.M.

through 5:00 A.M. ~~when opened by proclamation~~ from August 16 through November 30.

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

15A NCAC 03J .0209 ALBEMARLE SOUND/CHOWAN RIVER RIVER HERRING MANAGEMENT AREAS

~~(a) The Albemarle Sound Herring Management Area is defined as Albemarle Sound and all its joint water tributaries; Currituck Sound; Roanoke and Croatan sounds and all their joint water tributaries, including Oregon Inlet, north of a line beginning on the west shore at a point 35° 48.5015' N 75° 44.1228' W on Roanoke Marshes Point; running southeasterly to the east shore to a point 35° 44.1710' N 75° 31.0520' W on the north point of Eagles Nest Bay.~~

~~(b) The Chowan River Herring Management Area is defined as that area northwest of a line beginning on the west shore at a point 35° 59.9267' N 76° 41.0313' W on Black Walnut Point; running northeasterly to the east shore to a point 36° 02.2140' N 76° 39.3240' W on Reedy Point, to the North Carolina/Virginia state line; including the Meherrin River.~~

~~(c) It is unlawful to use drift gill nets in the Albemarle Sound and Chowan River river herring management areas with a mesh length less than three inches from January 1 through May 15, 15 in the Albemarle Sound and Chowan River river herring management areas defined in 15A NCAC 03R .0202.~~

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

SECTION .0300 – POTS, DREDGES, AND OTHER FISHING DEVICES

15A NCAC 03J .0301 POTS

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

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

- (3) From May 1 through November 30 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.

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

(b) It is unlawful to use pots:

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

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

- (1) gear owner's current motorboat registration number; or
- (2) gear owner's U.S. vessel documentation name; or
- (3) gear owner's last name and initials.

(d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

(e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths-inch bar.

(f) It is unlawful to use ~~eel~~ pots to take eels with mesh ~~sizes~~ lengths smaller than ~~one inch by one half inch unless such pots contain one-half inch by one-half inch, except until January 1, 2017 eel pots of any mesh length with~~ an escape panel that is at least four inches square with a mesh ~~size~~ length of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical ~~pots~~; ~~except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait. pots are~~ allowed.

(g) It is unlawful to use crab pots in ~~coastal fishing waters~~ Coastal Fishing Waters unless each pot contains no less than two unobstructed escape rings that are at least two and five-sixteenths inches inside diameter and located in the opposite outside panels of the upper chamber of the pot, except the following are exempt from the escape ring requirements:

- (1) unbaited pots;
- (2) pots baited with a male crab; and
- (3) pots set in areas and during time periods described in 15A NCAC 03R .0118.

(h) The Fisheries Director may, by proclamation, exempt the escape ring requirements described in Paragraph (g) of this Rule in order to allow the harvest of mature female crabs and may impose any or all of the following restrictions:

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

- (2) specify areas;
- (3) specify means and methods;
- (4) specify seasons; and
- (5) specify quantity.

(i) It is unlawful to use more than 150 crab pots per vessel in Newport River.

(j) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

(k) User Conflicts:

- (1) ~~In order to address user conflicts, the Fisheries Director may by proclamation impose any or all of the following restrictions:~~
 - (A) ~~specify areas;~~
 - (B) ~~specify time periods; and~~
 - (C) ~~specify means and methods.~~

~~The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.~~
- (2) ~~Any person(s) desiring user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769. Such requests shall contain the following information:~~
 - (A) ~~a map of the affected area including an inset vicinity map showing the location of the area with detail sufficient to permit on-site identification and location;~~
 - (B) ~~identification of the user conflict causing a need for user conflict resolution;~~
 - (C) ~~recommended solution for resolving user conflict; and~~
 - (D) ~~name and address of the person(s) requesting user conflict resolution.~~
- (3) ~~Upon the requestor's demonstration of a user conflict to the Fisheries Director and within 90 days of the receipt of the information required in Subparagraph (k)(2) of this Rule, the Fisheries Director shall issue a public notice of intent to address a user conflict. A public meeting shall be held in the area of the user conflict. The requestor shall present his or her request at the public meeting, and other parties affected may participate.~~
- (4) ~~The Fisheries Director shall deny the request or submit a proclamation that addresses the results of the public meeting to the Marine Fisheries Commission for their approval.~~
- (5) ~~Proclamations issued under Subparagraph (k)(1) of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC 03R .0107 as specified in the proclamation. The provisions of 15A NCAC 03I .0102 terminating suspension of a rule pending the next Marine Fisheries Commission meeting~~

~~and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under Subparagraph (k)(1) of this Rule.~~

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

~~(m)(1)~~ It is unlawful to use pots with leads or leaders to take shrimp. For the purpose of this Rule, leads or leaders are defined as any fixed or stationary net or device used to direct fish into any gear used to capture fish. Any device with leads or leaders used to capture fish is not a pot.

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

SUBCHAPTER 03K – OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 – SHELLFISH, GENERAL

15A NCAC 03K .0111 PERMITS TO USE MECHANICAL METHODS FOR SHELLFISH ON SHELLFISH LEASES OR FRANCHISES

(a) Permits to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.

(b) It is unlawful to harvest shellfish by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Shellfish on Shellfish Leases or Franchises.

Authority G.S. 113-134; 113-169.1; 113-182; 143B-289.52.

SECTION .0200 – OYSTERS

15A NCAC 03K .0206 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES

(a) ~~Permits to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.~~

(b) ~~It is unlawful to harvest oysters by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises.~~

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

SECTION .0300 – HARD CLAMS (MERCENARIA)

15A NCAC 03K .0303 PERMITS TO USE MECHANICAL METHODS FOR OYSTERS OR CLAMS ON SHELLFISH LEASES OR FRANCHISES REQUIREMENT

~~(a) Permits to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises shall be issued in compliance with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.~~

~~(b) It is unlawful to harvest hard clams by the use of mechanical methods from shellfish leases or franchises without first obtaining a Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises.~~

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

SECTION .0500 – SCALLOPS

15A NCAC 03K .0501 BAY SCALLOP HARVEST MANAGEMENT

~~(a) The Fisheries Director may, by proclamation, specify open seasons and methods for the taking of bay scallops during the following periods:~~

- ~~(1) From the last Monday in January through the last Friday in May; and~~
- ~~(2) From August 1 through September 15 by hand harvest methods only as described by proclamation.~~

~~(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions for any commercial or recreational open season: bay scallop harvest from public bottom:~~

- ~~(1) Specify number of days; specify time;~~
- ~~(2) Specify areas; specify area;~~
- ~~(3) Specify means and methods which may be employed in the taking; specify means and methods;~~
- ~~(4) Specify time period; and specify open seasons for the taking of bay scallops during the period beginning the last Monday in January and ending the last Friday in May;~~
- ~~(5) specify size; and~~
- ~~(5)(6) Specify the specify quantity, but shall not exceed possession of more than 20 15 standard U.S. bushels per person per day or a total of 40 30 standard U.S. bushels in any combined commercial fishing operation per day.~~

Authority G.S. 113-134; 113-182; 113-201; 113-221.1; 143B-289.52.

15A NCAC 03K .0502 TAKING BAY SCALLOPS AT NIGHT AND ON WEEKENDS

~~(a) It is unlawful to take bay scallops between sunset and sunrise, or on Saturdays or Sundays, except as provided in 15A NCAC 03K .0105.~~

~~(b) Bay scallops taken on Saturdays or Sundays from shellfish leases or franchises in accordance with G.S. 113-208 are exempt from this Rule.~~

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

15A NCAC 03K .0507 MARKETING SCALLOPS TAKEN FROM SHELLFISH LEASES OR FRANCHISES

(a) It is unlawful to sell, purchase or possess scallops during the closed season without the lease or franchise holder delivering to the purchaser or other recipient a certification, on a form provided by the Division, that the scallops were taken from a valid shellfish lease or franchise. Certification forms shall be furnished by the Division to lease and franchise holders upon request.

(b) It is unlawful for lease or franchise holders or their designees to take or possess scallops from public bottom while possessing aboard a vessel scallops taken from shellfish leases or franchises.

Authority G.S. 113-134; 113-182; 113-201; 143B-289.52.

15A NCAC 03K .0508 SCALLOP SEASON AND HARVEST LIMIT EXEMPTION

The following exemptions and restrictions shall apply to the possession, sale, purchase or transport of scallops produced in an aquaculture operation:

- (1) Possession and sale of scallops by a scallop aquaculture operation shall be exempt from restrictions set under 15A NCAC 03K .0501, .0504, and .0505.
- (2) Purchase and possession of scallops from a scallop aquaculture operation shall be exempt from restrictions set under 15A NCAC 03K .0501, .0504, and .0505.
- (3) It is unlawful for a person to possess, sell, purchase, or transport scallops described in Sub-Items (1) and (2) of this Rule unless in compliance with all conditions of the Aquaculture Operation Permit.

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

SUBCHAPTER 03L – SHRIMP, CRABS, AND LOBSTER

SECTION .0100 – SHRIMP

15A NCAC 03L .0101 SHRIMP HARVEST RESTRICTIONS

~~(a) It is unlawful to take shrimp with nets until the Fisheries Director, by proclamation, opens the season season, in various waters. Proclamations may specify any hours of day or night or both and any other conditions appropriate to management of the fishery. If sampling indicates primarily undersized shrimp or juveniles of any other species of major economic importance, the Fisheries Director may close such waters to shrimping and prohibit the use of nets for any purpose except cast nets as provided in 15A NCAC 3L .0102. Prominent landmarks or other permanent type markers shall be considered when establishing closure lines even if such lines extend beyond the area of concern.~~

(b) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of shrimp:

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

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

15A NCAC 03L .0103 PROHIBITED NETS, MESH LENGTHS AND AREAS

(a) It is unlawful to take shrimp with nets with mesh lengths less than the following:

- (1) Trawl net - one and one-half inches;
- (2) Fixed nets, channel nets, float nets, butterfly nets, and hand seines - one and one-fourth inches; and
- (3) Cast net - no restriction.

(b) It is unlawful to take shrimp with a net constructed in such a manner as to contain an inner or outer liner of any mesh ~~size~~ length. Net material used as chafing gear shall be no less than four inches mesh length except that chafing gear with smaller mesh may be used only on the bottom one-half of the tailbag. Such chafing gear shall not be tied in a manner that forms an additional tailbag.

(c) It is unlawful to take shrimp with trawls which have a combined headrope of greater than 90 feet in ~~internal coastal waters except~~ Internal Coastal Waters in the following areas:

- (1) Pamlico Sound; North of the 35° 46.3000' N latitude line;
- (2) Core Sound south of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line;
- ~~(2)(3)~~ Pamlico River ~~downstream~~ upstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and
- ~~(3)(4)~~ Neuse River ~~northeast~~ southwest of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to ~~Adam's Creek~~ Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

(d) Effective January 1, 2017 it is unlawful to take shrimp with trawls which have a combined headrope of greater than 220 feet in Internal Coastal Waters in the following areas:

- (1) Pamlico Sound south of the 35° 46.3000' N latitude line and north of a line beginning at a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks;
- (2) Pamlico River downstream of a line from a point 35° 18.5882' N - 76° 28.9625' W at

Pamlico Point; running northerly to a point 35° 22.3741' N - 76° 28.6905' W at Willow Point; and

- ~~(3)~~ Neuse River northeast of a line from a point 34° 58.2000' N - 76° 40.5167' W at Winthrop Point on the eastern shore of the entrance to Adams Creek; running northerly to a point 35° 01.0744' N - 76° 42.1550' W at Windmill Point at the entrance of Greens Creek at Oriental.

~~(d)(e)~~ It is unlawful to use a shrimp trawl in the areas described in 15A NCAC 03R .0114.

~~(e)(f)~~ It is unlawful to use channel nets except as provided in 15A NCAC 03J .0106.

~~(f)(g)~~ It is unlawful to use shrimp pots except as provided in 15A NCAC 03J .0301.

~~(g)(h)~~ It is unlawful to use a shrimp trawl that does not conform with the federal rule requirements for Turtle Excluder Devices (TED) as specified in 50 CFR Part 222.102 Definitions, 50 CFR Part 223.205 (a) and Part 223.206 (d) Gear Requirements for Trawlers, and 50 CFR Part 223.207 Approved TEDs. Copies of these rules are available via the Code of Federal Regulations posted on the Internet at <http://www.gpoaccess.gov/cfr/index.html> and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

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

15A NCAC 03L .0105 RECREATIONAL SHRIMP LIMITS

It is unlawful to:

- (1) Possess from areas open to the harvest of shrimp more than 48 quarts, heads on or 30 quarts, heads off, of shrimp per person per day or if a vessel is used, per vessel per day for recreational purposes except as provided in 15A NCAC 03O .0303 (e) and (f).
- ~~(2) Take or possess shrimp from areas closed to the taking of shrimp except two quarts of shrimp per person per day may be taken while fishing in a closed area with a cast net.~~
- ~~(2)~~ Take or possess more than four quarts, heads on or two and one-half quarts, heads off, of shrimp per person per day with a cast net from areas closed to the taking of shrimp in accordance with 15A NCAC 03L .0101.

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

SUBCHAPTER 03M – FINFISH

SECTION .0100 – FINFISH, GENERAL

15A NCAC 03M .0101 MUTILATED FINFISH

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

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

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

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0510 AMERICAN EEL

It is unlawful to:

- (1) Possess, sell or take American eels less than ~~six~~ nine inches in length; and
- (2) Possess more than ~~50~~ 25 American eels per person per day for recreational ~~purposes~~ purposes, except the master and each mate of for-hire vessels that hold a valid for-hire license may possess 50 eels each per day; and
- (3) Possess American eels from September 1 through December 31 except when taken by baited pots.

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

15A NCAC 03M .0513 RIVER HERRING

It is unlawful to take or possess river herring taken from coastal fishing waters unless the river herring season is open. from North Carolina Coastal Fishing Waters. Possession of river herring from sources other than North Carolina Coastal Fishing Waters shall be limited to fish less than or equal to six inches total length aboard a vessel or while engaged in fishing.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 030 – LICENSES, LEASES, FRANCHISES AND PERMITS

SECTION .0100 – LICENSES

15A NCAC 030 .0101 PROCEDURES AND REQUIREMENTS TO OBTAIN LICENSES, ENDORSEMENTS AND COMMERCIAL FISHING VESSEL REGISTRATIONS

(a) To obtain any Marine Fisheries licenses, endorsements, commercial fishing vessel registrations except Recreational Fishing Tournament Licenses to Sell Fish and Land or Sell Licenses, the following information is required for the application by the licensee, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the licensee on the application. If the licensee is not appearing before a license agent or a representative of the

Division, the licensee's signature on the application shall be notarized;

- (2) Current picture identification of licensee or responsible party; acceptable forms of picture identification are driver's license, state identification card, military identification card, resident alien card (green card) or passport or if purchased by mail, a copy thereof;
- (3) Certification that the applicant does not have four or more marine or estuarine resource violations during the previous three years, except Blanket Coastal Recreational Fishing Licenses;
- (4) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted;
- (5) Current articles of incorporation and a current list of corporate officers when purchasing a license or commercial fishing vessel registration in a corporate name. In the case of incorporation of an individual fishing vessel, the name of the master of that vessel shall also be specified. It is unlawful to fail to notify the Morehead City Office of the Division of Marine Fisheries within five days of change of the master specified for that vessel;
- (6) An affirmation of liability insurance and that the operator is knowledgeable of United States Coast Guard (USCG) safety requirements for the vessel(s) used in the operation in accordance with G.S. 113-168.6 when purchasing a commercial fishing vessel registration with a for-hire endorsement.
- ~~(6)~~(7) If a partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when purchasing a license, endorsement or commercial fishing vessel registration in a partnership name;
- ~~(7)~~(8) For nonresidents, certification of the state of residency;
- ~~(8)~~(9) In addition to the information required in G.S. 113-169.4, linear length of pier when purchasing an Ocean Fishing Pier License;
- ~~(9)~~(10) In addition to the information required in G.S. 113-171.1, current aircraft registration and list of operator(s) when purchasing a Spotter Plane License;
- ~~(10)~~(11) In addition, for fish dealers licenses, the physical address of the established location where business is conducted and, if different, the address where records are kept;
- ~~(11)~~(12) When purchasing a Fish Dealer License with clam or oyster categories or a consolidated license, the applicant shall provide valid

certification as a North Carolina certified shellfish dealer;

~~(12) In addition, for the Ocean Fishing Pier Blanket Coastal Recreation Fishing License, a valid Ocean Fishing Pier License issued in the name of the applicant or copy thereof.~~

(13) In addition, for the ~~For Hire~~ Blanket For-Hire Captain's Coastal Recreational Fishing License, License (CRFL), the applicant shall ~~provide:~~ provide a valid certification from the USCG that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and

~~(A) A valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers; and~~

~~(B) Valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

(14) In addition, for the Blanket For-Hire Vessel CRFL or the Non-Blanket For-Hire Vessel License, valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for-hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.

(b) License to Land Flounder from the Atlantic Ocean.

(1) To qualify for a License to Land Flounder from the Atlantic Ocean, the applicant shall:

(A) have landed in North Carolina at least 1,000 pounds of flounder from a single vessel each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, 1994-95 license years for which the person had a vessel that was licensed to land in North Carolina; and

(B) have been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years; and

(C) hold a valid Standard or Retired Standard Commercial Fishing License or valid Land or Sell License.

(2) It is lawful for a person to hold Licenses to Land Flounder from the Atlantic Ocean equal to the number of vessels that he owns that individually met the eligibility requirements of Parts (b)(1)(A) and (b)(1)(B) of this Rule.

(3) The License to Land Flounder from the Atlantic Ocean is only valid when used on the vessel specified at the time of license issuance.

(4) At the time of issuance, the applicant for the License to Land Flounder from the Atlantic Ocean shall specify the name of the master of the vessel for each License to Land Flounder from the Atlantic Ocean issued.

(5) Applicants for a License to Land Flounder from the Atlantic Ocean shall complete an application form provided by the Division of Marine Fisheries and submit it to the Morehead City Office of the Division of Marine Fisheries for processing.

(6) It is unlawful for the holder of the License to Land Flounder from the Atlantic Ocean to fail to notify the Morehead Office of the Division of Marine Fisheries within five days of change as to the master identified on the license.

(7) Licenses to Land Flounder from the Atlantic Ocean are issued for the current license year and expire on June 30.

(c) To obtain a Recreational Fishing Tournament License to Sell Fish, the tournament organizer shall apply with the Division of Marine Fisheries at least 30 days prior to the starting date of the tournament with the following required information:

(1) Full name, physical address, mailing address, date of birth, signature of the tournament organizer, name of tournament, and dates of tournament on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature shall be notarized on the application.

(2) Current picture identification of tournament organizer; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport, or if purchased by mail, a copy thereof.

(d) To obtain a Land or Sell License, the following information is required for a proper application:

(1) Full name, physical address, mailing address, date of birth, and signature of the responsible party or master for the vessel on the license application. If the licensee is not appearing before a representative of the Division, the licensee's signature on the application shall be notarized on the application;

(2) Current picture identification of responsible party or master; acceptable forms of picture identification are driver's license, state identification card, military identification card, or passport or if applying by mail, a copy thereof;

(3) Valid documentation papers or current motor boat registration or copy thereof when purchasing a commercial fishing vessel registration. If an application for transfer of documentation is pending, a copy of the

pending application and a notarized bill of sale may be submitted.

Fees shall be based on the vessel's homeport as it appears on the U.S. Coast Guard documentation papers or the State in which the vessel is registered.

(e) Proof of residency in North Carolina for:

- (1) Standard Commercial Fishing License or Retired Standard Commercial Fishing License shall require a notarized certification from the applicant that the applicant is a resident of the State of North Carolina as defined by G.S. 113-130(4); and
 - (A) a notarized certification from the applicant that a North Carolina State Income Tax Return was filed for the previous calendar or tax year as a North Carolina resident; or
 - (B) a notarized certification that the applicant was not required to file a North Carolina State Income Tax Return for the previous calendar or tax year; or
 - (C) military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.
- (2) All other types of licenses:
 - (A) North Carolina voter registration card; or
 - (B) Current North Carolina Driver's License; or
 - (C) Current North Carolina Certificate of Domicile; or
 - (D) Current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles; or
 - (E) Military identification, military dependent identification and permanent change of station orders or assignment orders substantiating individual's active duty assignment at a military facility in North Carolina.

(f) Applications submitted without complete and required information shall be deemed incomplete and shall not be considered further until resubmitted with all required information.

(g) It is unlawful for a license or registration holder to fail to notify the Division of Marine Fisheries within 30 days of a change of address.

(h) Licenses are available at Offices of the Division or by mail from the Morehead City Office, unless otherwise specified. In addition, Recreational Commercial Gear Licenses are available at Wildlife Service Agents who have been designated as agents of the Department.

(i) To renew any Marine Fisheries licenses, endorsements, and commercial fishing vessel registration, except Recreational Commercial Gear Licenses, the following is required for the

renewal application by the licensee, a responsible party or person holding a power of attorney;

- (1) The information required in Subparagraphs (a)(4), (a)(5), and (a)(6) of this Rule are only required if a change has occurred since the last issuance of license, endorsement or commercial fishing vessel registration.
- (2) Certification that articles of incorporation and list of corporate officers, if incorporated, written partnership agreement, if written partnership, or documentation papers or motor boat registration previously provided for initial license purchase are still valid and current for renewal.
- (3) Current and valid state driver's license or state identification picture identification numbers and expiration dates shall be verified on mail license renewal applications or any other electronic license renewal process, otherwise the licensee shall provide a photocopy for renewal by mail or visit a Division License Office and present a current and valid picture identification pursuant to Subparagraph (a)(2) of this Rule.
- (4) The licensee's or responsible party's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.
- (5) The Division of Marine Fisheries may require current copies of documentation for licenses, endorsements, commercial fishing vessel registration on renewal when necessary to verify inconsistent information or the information cannot be verified by independent sources.
- (6) If the linear length of the pier has not changed for the Ocean Fishing Pier License renewal, the responsible party shall certify that the length is accurate; otherwise, a Marine Patrol Officer's signature is required to certify the linear length before the license can be renewed.
- (7) Certification that shellfish dealer certification by North Carolina previously provided for issuance of Fish Dealer License with clam or oyster categories or consolidated license is still valid and current for renewal.

Authority G.S. 113-134; 113-168; 113-168.1-6; 113-169; 113-169.2-5; 113-171.1; 113-174.3; 143B-289.52.

15A NCAC 030 .0106 DISPLAY OF LICENSES AND REGISTRATIONS

(a) It is unlawful:

- (1) For any person to use a vessel required to be registered under the provisions of G.S. 113-168.6 in a commercial fishing operation without a current commercial fishing vessel registration decal mounted on an exterior

surface so as to be plainly visible when viewed from the port side; and

- (2) To display any commercial fishing vessel registration decal not issued for the vessel displaying it.

(b) It is unlawful to fail to display any fish dealer's licenses required by G.S. 113-169.3, ocean fishing pier license required by G.S. 113-169.4, or ~~Ocean Fishing Pier Blanket Coastal Recreational Fishing License (CRFL) pursuant to G.S. 113-174.4~~ G.S. 113-169.4 in prominent public view in each location subject to licensing.

(c) It is unlawful to fail to display a current For-Hire License decal on the exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for-hire recreational fishing.

Authority G.S. 113-168.6; 113-169.3; 113-169.4; 143B-289.52.

15A NCAC 030 .0112 FOR HIRE COASTAL RECREATIONAL FISHING

~~(a) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel or a Division of Marine Fisheries For Hire Fishing Permit for the vessel as provided in 15A NCAC 030 .0503(k).~~

~~(b)(a) It is unlawful for a For Hire Vessel for-hire operator to operate under the For Hire Blanket CRFL without:~~

- (1) Holding the USCG United States Coast Guard certification required in 15A NCAC 030 .0101(a)(13);
- (2) Having ~~the For Hire Blanket CRFL for the vessel or copy thereof~~ a copy of the for-hire license in possession and ready at hand for inspection; and
- (3) Having current picture identification in possession and ready at hand for inspection.

~~(c) It is unlawful for the holder of the For Hire Blanket CRFL to fail to participate in and provide accurate information as requested by the Division for biological sampling and survey programs.~~

~~(d) It is unlawful to fail to display a current For Hire Blanket CRFL decal mounted on an exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for-hire recreational fishing.~~

(b) It is unlawful to operate a vessel in a for-hire operation without the vessel having a valid Commercial Fishing Vessel Registration with a for-hire endorsement, a Blanket For-Hire Vessel Coastal Recreational Fishing License or a Non-Blanket For-Hire Vessel License.

(c) It is unlawful for the responsible party of a for-hire license to fail to provide to the Division of Marine Fisheries by Monday of each week a completed for-hire logbook detailing the fishing activity, or a no-activity report, for the previous week. For the purposes of this Paragraph, week is defined as Sunday through Saturday.

Authority G.S. 113-134; 113-174.3; 143B-289.52.

15A NCAC 030 .0113 OCEAN FISHING PIER LICENSE REPORTING REQUIREMENTS

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

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

Authority G.S. 113-134; 113-169.4; 113-174.1; 143B-289.52.

SECTION .0500 – PERMITS

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

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

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application shall be notarized;
- (2) Unexpired picture identification of applicant, responsible party and, when applicable, person holding a power of attorney. Acceptable forms of picture identification are driver's license, North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who will be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;

- (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit; and
- (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable; and
- (6) Additional information as required for specific permits.
- (b) A permittee shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
 - (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean; or
 - (3) Atlantic Ocean Striped Bass Commercial Gear Permit.
- (c) A permittee and his designees shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
 - (1) Permit to Transplant Prohibited (Polluted) Shellfish;
 - (2) Permit to Transplant Oysters from Seed Oyster Management Areas;
 - (3) Permit to Use Mechanical Methods for ~~Oysters or Clams~~ Shellfish on Shellfish Leases or Franchises;
 - (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
 - (5) Depuration Permit.
- (d) A permittee shall hold a valid:
 - (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
 - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
 - (1) A permittee shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
 - (2) The permittee or designees shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Atlantic Ocean Striped Bass Commercial Gear Permit:
 - (1) ~~Application for an Atlantic Ocean Striped Bass Commercial Gear Permit must be made prior to November 1 of each year. A person shall declare one of the following gears for an initial Atlantic Ocean Striped Bass Commercial Gear~~

Permit Upon application for an Atlantic Ocean Striped Bass Commercial Gear Permit, a person shall declare one of the following gears for an initial permit and at intervals of three consecutive license years thereafter:

- (A) gill net;
- (B) trawl; or
- (C) beach seine.

For the purpose of this Rule, a beach seine is defined as a swipe net constructed of multi-filament or multi-fiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place.

Gear declarations are binding on the permittee for three consecutive license years without regard to subsequent annual permit issuance.

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

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

~~(g) For Hire Fishing Permit:~~

- ~~(1) The permittee shall hold a valid certification from the United States Coast Guard (USCG) that allows carrying six or fewer passengers or a certification from the USCG that allows carrying more than six passengers;~~

- ~~(2) The permittee shall provide valid documentation papers or current motor boat registration or copies thereof for the vessel engaged as for hire. If an application for transfer of documentation is pending, a copy of the pending application and a notarized bill of sale may be submitted.~~

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

~~(i)(h)~~ A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to abide by the permit general and specific conditions established under ~~15A NCAC 03J .0501, 03J .0505, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503~~ 15A NCAC 03J .0501, .0505; 03K .0103, .0104, .0107, .0111, .0401; 03O .0502, and .0503 as applicable to the requested permit.

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

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
- (2) Applicant's demonstration of a valid justification for the permit and a showing of

responsibility as determined by the Fisheries Director;

- (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.

~~(4)(j)~~ The Division of Marine Fisheries shall notify the applicant in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.

~~(4)(k)~~ Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.

~~(4)(l)~~ For permit renewals, the permittee's signature on the application shall certify all information as true and accurate. Notarization of signature on renewal applications is not required.

~~(4)(m)~~ For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in this Chapter.

~~(4)(n)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

~~(4)(o)~~ It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

~~(4)(p)~~ Permit applications are available at all Division Offices.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

**15A NCAC 030 .0503 PERMIT CONDITIONS;
SPECIFIC**

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year. Such reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.
- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Interstate

Fishery Management Plan for Horseshoe Crab monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission or the Division of Marine Fisheries' Morehead City Headquarters Office, P.O. Box 769, 3441 Arendell St., Morehead City, North Carolina 28557-0769.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for the fish dealers issued such permit to fail to:

- (A) fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee shall call in the previous day's landings to the dealer contact designated on the permit but shall maintain a log furnished by the Division;
- (B) submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) contact the dealer contact designated on the permit daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred; and
- (E) record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

(2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:
 - (i) Atlantic Ocean;
 - (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201; and

- (iii) the Joint and Coastal Fishing Waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
- (B) No permittee shall possess, buy, sell, or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags shall not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.
- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell, or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring as defined in ~~15A NCAC 03J .0209~~, 15A NCAC 03R .0202.
- (4) Atlantic Ocean Flounder Dealer Permit:
 - (A) It is unlawful for a fish dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location shall be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
 - (B) It is unlawful for a fish dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- (5) Black Sea Bass North of Cape Hatteras Dealer Permit. It is unlawful for a fish dealer to purchase or possess more than 100 pounds of black sea bass taken from the Atlantic Ocean north of Cape Hatteras (35° 15.0321' N) per day per commercial fishing operation during the open season unless the dealer has a Black Sea Bass North of Cape Hatteras Dealer Permit.
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
 - (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling shall be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (e) Pound Net Set Permits. Rule 15A NCAC 03J .0505 sets forth the specific conditions for pound net set permits.
- (f) Aquaculture Operations/Collection Permits:
 - (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
 - (2) It is unlawful:
 - (A) to take marine and estuarine resources from Coastal Fishing Waters for

- (B) aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) to sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) to fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.

(3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.

(4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.

(5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees acting under an Aquaculture Collection Permit at the time of application.

(g) Scientific or Educational Activity Permit:

 - (1) It is unlawful for institutions or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect, hold, culture or exhibit for scientific or educational purposes any marine or estuarine species without first obtaining a Scientific or Educational Activity Permit.
 - (2) The Scientific or Educational Activity Permit shall only be issued for scientific or educational purposes and for collection methods and possession allowances approved by the Division of Marine Fisheries.
 - (3) The Scientific or Educational Activity Permit shall only be issued for approved activities conducted by or under the direction of Scientific or Educational institutions as defined in Rule 15A NCAC 03I .0101.
 - (4) It is unlawful for the responsible party issued a Scientific or Educational Activity Permit to fail to submit a report on collections and, if authorized, sales to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. The reports shall be filed on forms provided by the Division. Scientific or Educational Activity permits shall be issued on a calendar year basis.
 - (5) It is unlawful to sell marine or estuarine species taken under a Scientific or Educational Activity Permit without:
 - (A) the required license(s) for such sale;
 - (B) authorization stated on the permit for such sale; and
 - (C) providing the information required in Rule 15A NCAC 03I .0114 if the sale is to a licensed fish dealer.

(6) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees acting under a Scientific or Educational Activity Permit at the time of application.

(7) The permittee or designees utilizing the permit shall call the Division of Marine Fisheries Communications Center at 800-682-2632 or 252-726-7021 not later than 24 hours prior to use of the permit, specifying activities and location.

(h) Under Dock Oyster Culture Permit:

 - (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
 - (2) An Under Dock Oyster Culture Permit shall be issued only in accordance with provisions set forth in G.S. 113-210(c).
 - (3) The applicant shall complete and submit an examination, with a minimum of 70 percent correct answers, based on an educational package provided by the Division of Marine Fisheries pursuant to G.S. 113-210(j). The examination demonstrates the applicant's knowledge of:
 - (A) the application process;
 - (B) permit criteria;
 - (C) basic oyster biology and culture techniques;
 - (D) shellfish harvest area closures due to pollution;
 - (E) safe handling practices;
 - (F) permit conditions; and
 - (G) permit revocation criteria.
 - (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in Coastal Fishing Waters shall result in permit revocation.

(i) Atlantic Ocean Striped Bass Commercial Gear Permit:

 - (1) It is unlawful to take striped bass from the Atlantic Ocean in a commercial fishing operation without first obtaining an Atlantic Ocean Striped Bass Commercial Gear Permit.
 - (2) It is unlawful to use a single Standard Commercial Fishing License, including assignments, to obtain more than one Atlantic Ocean Striped Bass Commercial Gear Permit during a license year.

(j) Coastal Recreational Fishing License Exemption Permit:

 - (1) It is unlawful for the responsible party seeking exemption from recreational fishing license requirements for eligible individuals to conduct an organized fishing event held in

Joint or Coastal Fishing Waters without first obtaining a Coastal Recreational Fishing License Exemption Permit.

- (2) The Coastal Recreational Fishing License Exemption Permit shall only be issued for recreational fishing activity conducted solely for the participation and benefit of one of the following groups of eligible individuals:

- (A) individuals with physical or mental limitations;
- (B) members of the United States Armed Forces and their dependents, upon presentation of a valid military identification card, for military appreciation;
- (C) individuals receiving instruction on recreational fishing techniques and conservation practices from employees of state or federal marine or estuarine resource management agencies, or instructors affiliated with educational institutions; and
- (D) disadvantaged youths.

For purposes of this Paragraph, educational institutions include high schools and other secondary educational institutions.

- (3) The Coastal Recreational Fishing License Exemption Permit is valid for the date(s), time and physical location of the organized fishing event for which the exemption is granted and the time period shall not exceed one year from the date of issuance.

- (4) The Coastal Recreational Fishing License Exemption Permit shall only be issued when all of the following, in addition to the information required in 15A NCAC 030 .0501, is submitted to the Fisheries Director in writing a minimum of 30 days prior to the event:

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

~~(k) For Hire Fishing Permit:~~

- ~~(1) It is unlawful to operate a For Hire Vessel unless the vessel operator possesses either the For Hire Blanket Coastal Recreational Fishing License (CRFL) for the vessel as provided in 15A NCAC 030 .0112 or a Division of Marine Fisheries For Hire Fishing Permit for the vessel.~~

~~(2) It is unlawful for a For Hire vessel operator to operate under the For Hire Fishing Permit without:~~

- ~~(A) holding the USCG certification required in 15A NCAC 030 .0501(g)(1);~~
- ~~(B) having the For Hire Fishing Permit for the vessel or copy thereof in possession and ready at hand for inspection; and~~
- ~~(C) having current picture identification in possession and ready at hand for inspection.~~

~~(3) It is unlawful for the permittee to fail to notify the Division within five days of any changes to information provided on the permit.~~

~~(4) It is unlawful to fail to display a current For Hire Fishing Permit decal mounted on an exterior surface of the vessel so as to be visible when viewed from the port side while engaged in for hire recreational fishing.~~

~~(5) The For Hire Fishing Permit is valid for one year from the date of issuance.~~

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

SUBCHAPTER 3Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

SECTION .0200 - BOUNDARY LINES: COASTAL-JOINT-INLAND FISHING WATERS

15A NCAC 03Q .0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

Descriptive boundaries for Coastal-Joint-Inland Waters referenced in 15A NCAC 03Q .0201 are as follows:

- (1) Beaufort County:
 - (a) Pamlico - Tar River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 32.2167' N - 77° 02.8701' W; running southwesterly along the east side of the railroad bridge to a point on the south shore 35° 32.0267' N - 77° 03.5179' W.
 - (i) All Manmade tributaries - All manmade tributaries within Pamlico - Tar River in Beaufort County are designated as Joint.
 - (b) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line

beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.

- (i) Flax Pond Bay - All waters within this waterbody are designated as Coastal.
- (ii) Upper Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 31.8946' N - 76° 32.1231' W; running northeasterly to a point on the east shore 35° 31.9656' N - 76° 32.0114' W.
- (iii) Lower Dowry Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.4188' N - 76° 35.3924' W; running northeast to a point on the east shore 35° 32.4691' N - 76° 35.2748' W.
- (iv) George Best Creek - All waters within this waterbody are designated as Coastal.
- (v) Toms Creek - All waters within this waterbody are designated as Coastal.
- (vi) Pantego Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 31.9908' N - 76° 36.6105' W; running southerly along the Breakwater to a point 35° 31.6628' N - 76° 36.9840' W; running southwesterly to a point on the south shore 35° 31.5653' N - 76° 37.3832' W.
- (vii) Pungo Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 29.9986' N - 76° 40.3564' W; running southerly to a point on the south shore 35° 29.8887' N - 76° 40.3262' W.
- (A) Vale Creek - Inland Waters north and Coastal Waters south of a line beginning at a point

on the west shore 35° 31.0370' N - 76° 38.9044' W; running northeasterly to a point on the east shore 35° 31.0528' N - 76° 38.8536' W.

(B) Scotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 30.4264' N - 76° 40.1156' W; running easterly to a point on the east shore 35° 30.4264' N - 76° 39.9430' W.

(C) Smith Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 30.2844' N - 76° 40.2941' W; running southerly to a point on the south shore 35° 30.1982' N - 76° 40.2621' W.

- (viii) Woodstock (Little) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 30.5291' N - 76° 38.1600' W; running easterly to a point on the east shore 35° 30.4852' N - 76° 38.0278' W.
- (ix) Jordan Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 27.7256' N - 76° 36.2159' W; running southerly to a point 35° 27.5587' N - 76° 36.2704' W; following the eastern shore to a point 35° 27.4651' N - 76° 36.3294' W; running southerly to a point on the south shore 35° 27.3429' N - 76° 36.4498' W.
- (x) Satterthwaite Creek - Inland Waters northwest and Coastal Waters southeast of

- a line beginning at a point on the north shore 35° 25.2994' N - 76° 35.4281' W; running southerly to a point on the south shore 35° 25.1284' N - 76° 35.4949' W.
- (xi) Wright Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the west shore 35° 24.8664' N - 76° 35.4240' W; running southeasterly to a point on the east shore 35° 24.7995' N - 76° 35.3086' W.
- (c) North Creek - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.1667' N - 76° 40.1042' W; running easterly to a point on the east shore 35° 25.0971' N - 76° 39.6340' W.
- (d) St. Clair Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.7691' N - 76° 42.6406' W; running easterly to a point on the east shore 35° 25.7695' N - 76° 42.5967' W.
- (e) Mixon Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.7601' N - 76° 46.5971' W; running easterly to a point 35° 25.7304' N - 76° 46.2547' W; following the southern shoreline to a point 35° 25.6878' N - 76° 46.2034' W; running southeasterly to a point 35° 25.6606' N - 76° 46.1892' W; following the southern shoreline to a point 35° 25.6267' N - 76° 46.1494' W; running southeasterly to a point on the east shore 35° 25.6166' N - 76° 46.1361' W.
- (f) Bath Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.1685' N - 76° 49.4087' W; running northeasterly to a point on the east shore 35° 27.2371' N - 76° 49.0969' W.
- (g) Duck Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 27.5395' N - 76° 52.0074' W; running southerly to a point on the east shore 35° 27.4401' N - 76° 51.9827' W.
- (h) Mallard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 27.6461' N - 76° 53.6398' W; running easterly to a point on the east shore 35° 27.6425' N - 76° 53.5816' W.
- (i) Upper Goose Creek - Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the west shore 35° 28.5346' N - 76° 56.0229' W; running southeasterly to a point on the east shore 35° 28.4014' N - 76° 55.8714' W.
- (j) Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 29.1023' N - 76° 57.3738' W; running easterly to a point on the east shore 35° 29.1059' N - 76° 57.1188' W.
- (k) Herring Run (Runyan Creek) - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 32.1615' N - 77° 02.3606' W; running southeasterly to a point on the east shore 35° 32.1340' N - 77° 02.3438' W.
- (l) Chocowinity Bay - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 35° 29.4751' N - 77° 01.8507' W; running northeasterly to a point on the east shore 35° 29.8780' N - 77° 01.3169' W.
- (m) Calf Tree Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 29.2268' N - 77° 01.2973' W; running southeasterly to a point on the south shore 35° 29.2115' N - 77° 01.2831' W.
- (n) Hills Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 28.5227' N - 77° 00.2664' W; running easterly to a point on the east shore 35° 28.5193' N - 77° 00.2270' W.
- (o) Blounts Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 26.2010' N - 76° 58.1716' W; running southerly to a point on the south shore 35° 26.1369' N - 76° 58.1671' W.

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| <p>(p) Nevil Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 26.1117' N - 76° 54.5233' W; running southeasterly to a point on the east shore 35° 26.0966' N - 76° 54.5045' W.</p> <p>(q) Barris Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 24.8423' N - 76° 49.9928' W; running easterly to a point on the east shore 35° 24.8451' N - 76° 49.9745' W.</p> <p>(r) Durham Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 23.7824' N - 76° 49.3016' W; running easterly to a point on the east shore 35° 23.7821' N - 76° 48.8703' W.</p> <p>(s) Huddles Cut - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 22.5817' N - 76° 44.8727' W; running easterly to a point on the east shore 35° 22.5782' N - 76° 44.8594' W.</p> <p>(t) Huddy Gut - All waters within this waterbody are designated as Coastal.</p> <p>(u) South Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 18.9589' N - 76° 47.4298' W; running easterly to a point on the east shore 35° 18.9994' N - 76° 47.3007' W.</p> <p>(i) Tooleys Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.7080' N - 76° 44.8937' W; running northeasterly to a point on the east shore 35° 20.7440' N - 76° 44.8324' W.</p> <p>(ii) Drinkwater Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 20.1441' N - 76° 45.8262' W; running easterly to a point on the east shore 35° 20.1333' N - 76° 45.7530' W.</p> <p>(iii) Jacobs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on</p> | <p>the north shore 35° 20.1420' N - 76° 45.8395' W; running southwesterly to a point on the south shore 35° 20.0692' N - 76° 45.8912' W.</p> <p>(iv) Jacks Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 19.5455' N - 76° 47.0155' W; running southwesterly to a point on the south shore 35° 19.4986' N - 76° 47.0741' W.</p> <p>(v) Whitehurst Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.2878' N - 76° 47.4778' W; running southerly to a point on the south shore 35° 19.2295' N - 76° 47.4430' W.</p> <p>(vi) Little Creek - Inland Waters south and Coastal waters north of a line beginning at a point on the west shore 35° 18.9873' N - 76° 45.9292' W; running easterly to a point on the east shore 35° 19.0209' N - 76° 45.8258' W.</p> <p>(vii) Short Creek - Inland Waters southeast and Coastal Waters northwest of a line beginning at a point on the north shore 35° 20.1228' N - 76° 44.6031' W; running southwesterly to a point on the south shore 35° 20.0527' N - 76° 44.6667' W.</p> <p>(viii) Long Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.3050' N - 76° 44.3444' W; running northeasterly to a point on the east shore 35° 20.4185' N - 76° 43.8949' W.</p> <p>(ix) Bond Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4231' N - 76° 42.0469' W; running southeasterly to a point on the east shore 35° 20.2539' N - 76° 41.8254' W.</p> |
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- (x) Muddy Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.1523' N - 76° 41.2074' W; running northeasterly to a point on the east shore 35° 20.2413' N - 76° 41.0572' W.
- (v) Davis Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.7032' N - 76° 40.3404' W; running easterly to a point on the east shore 35° 20.7112' N - 76° 40.1637' W.
- (w) Strawhorn Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 20.4091' N - 76° 39.0998' W; running northeasterly to a point on the east shore 35° 20.4750' N - 76° 38.8874' W.
- (x) Lower Goose Creek - All waters within this waterbody are designated as Coastal.
 - (i) Lower Spring Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 19.7932' N - 76° 37.5347' W; running southerly to a point on the south shore 35° 19.4670' N - 76° 37.4134' W.
 - (ii) Peterson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 35° 18.7722' N - 76° 37.5059' W; running northeasterly to a point on the east shore 35° 18.8406' N - 76° 37.4111' W.
 - (iii) Snode Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 18.2787' N - 76° 37.4679' W; running southwesterly to a point on the south shore 35° 18.0821' N - 76° 37.5544' W.
 - (iv) Campbell Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 17.1203' N - 76° 37.9248' W; running southerly to a point on the south shore 35° 16.8807' N - 76° 37.9101' W.
- (A) Smith Creek - All waters within this waterbody are designated as Inland.
- (v) Hunting Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W.
- (2) Bertie County:
 - (a) Albemarle Sound - All waters in this waterbody are designated as Coastal.
 - (i) All Manmade Tributaries - All manmade tributaries within this waterbody for Bertie County are designated as Joint.
 - (ii) Roanoke River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore of the Roanoke River 35° 56.5068' N - 76° 41.8858' W; running easterly to a point on the east shore 35° 56.5324' N - 76° 41.5896' W.
 - (A) Sandy Run (Norfleet Gut) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.
 - (B) Quinine - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 09.6041' N - 77° 15.9091' W; running easterly to a point on the east

- shore 36° 09.6068' N - 77° 15.8912' W.
- (C) Wire Gut - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 00.9580' N - 77° 13.0755' W; running easterly to a point on the east shore 36° 00.9542' N - 77° 13.0320' W.
- (D) Apple Tree Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 00.4174' N - 77° 12.3252' W; running southeasterly to a point on the south shore 36° 00.3987' N - 77° 12.3088' W.
- (E) Indian Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 59.0794' N - 77° 11.4926' W; running southerly to a point on the south shore 35° 59.0597' N - 77° 11.4967' W.
- (F) Coniott Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 56.6562' N - 77° 04.2860' W; running southwesterly to a point on the south shore 35° 56.6397' N - 77° 04.3066' W.
- (G) Conine Creek - All waters in this waterbody are designated as Joint.
- (H) Old Mill Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 53.9483' N - 76° 55.3921' W; running southeasterly to a point on the east shore 35° 53.9378' N - 76° 55.3710' W.
- (I) Cut Cypress Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 35° 51.9465' N - 76° 53.5762' W; running southeasterly to a point on the south shore 35° 51.9229' N - 76° 53.5556' W.
- (J) Broad Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 52.5191' N - 76° 50.4235' W; running southerly to a point on the south shore 35° 52.4262' N - 76° 50.3791' W.
- (K) Thorofare - All waters within this waterbody are designated as Joint.
- (iii) Cashie River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 54.7865' N - 76° 49.0521' W; running southerly to a point on the south shore 35° 54.6691' N - 76° 49.0553' W. Joint Waters south and west and Coastal Waters north and east of a line beginning at a point on the west shore 35° 56.2934' N - 76° 44.1769' W; running easterly to a point on the north shore of an island in the mouth of the river 35° 56.2250' N - 76°

- 43.9265' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the south shore of an island in the mouth of the river 35° 56.1254' N - 76° 43.9846' W; running southerly to a point on the south shore 35° 56.0650' N - 76° 43.9599' W.
- (A) Cashoke Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 56.2934' N - 76° 44.1769' W; running southwesterly to a point on the south shore 35° 56.2623' N - 76° 44.1993' W.
- (B) Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.0568' N - 76° 45.2632' W; running easterly to a point on the east shore 35° 55.0543' N - 76° 45.1309' W.
- (C) Grinnel Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 55.3147' N - 76° 44.5010' W; running southerly to a point on the south shore 35° 55.2262' N - 76° 44.5495' W.
- (iv) Middle River - All waters within this waterbody are designated Joint.
- (v) Eastmost River - Joint Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.5024' N - 76° 42.4877' W; running westerly to a point on the east shore 35° 56.4070' N - 76° 42.7647' W.
- (vi) Mud Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 53.2880' N - 76° 45.4463' W; running southwesterly to a point on the south shore 35° 53.2527' N - 76° 45.4678' W.
- (b) Black Walnut Swamp - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 59.4680' N - 76° 40.9556' W; running southerly to a point on the south shore 35° 59.3946' N - 76° 40.9629' W.
- (c) Salmon Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 36° 00.4648' N - 76° 42.3513' W; running southeasterly to a point on the south shore 36° 00.3373' N - 76° 42.1499' W.
- (d) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
- (i) Barkers Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 14.0709' N - 76° 44.2451' W; running southerly to a point on the south shore 36° 14.0492' N - 76° 44.2456' W.
- (ii) Willow Branch - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 04.7206' N - 76° 43.7667' W; running southeasterly to a point on the south shore 36° 04.7138' N - 76° 43.7580' W.
- (iii) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east

- shore 36° 14.0899' N - 76° 43.8533' W.
- (3) Bladen County:
- (a) Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2628' N - 78° 17.6390' W; running northeasterly along the Lock and Dam # 1 to a point on the east shore 34° 24.2958' N - 78° 17.5634' W.
- (i) Natmore Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 24.2841' N - 78° 16.4405' W; running easterly to a point on the east shore 34° 24.2852' N - 78° 16.4039' W.
- (4) Brunswick County:
- (a) Calabash River And Tributaries - All waters within this waterbody in Brunswick County are designated as Coastal.
- (b) Saucepan Creek - All waters within this waterbody are designated as Coastal.
- (c) Shallotte River - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore 33° 58.3412' N - 78° 23.1948' W; running northeasterly to a point on the north shore 33° 58.3518' N - 78° 23.1816' W.
- (i) Mill Dam Branch - All waters within this waterbody are designated as Coastal.
- (ii) Squash Creek - All waters within this waterbody are designated as Coastal.
- (iii) Mill Pond - All waters within this waterbody are designated as Coastal.
- (iv) Charles Branch - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 58.6276' N - 78° 21.2919' W; running easterly to a point on the east shore 33° 58.6257' N - 78° 21.2841' W.
- (v) Grisset Swamp - All waters within this waterbody are designated as Coastal.
- (vi) Little Shallotte River And Tributaries - All waters within this waterbody are designated as Coastal.
- (d) Lockwood Folly River- Inland Waters northeast and Coastal Waters southwest of a line beginning at a point on the north shore 34° 00.6550' N - 78° 15.8134' W; running southeasterly along the south side of NC Hwy 211 bridge to a point on the south shore 34° 00.6285' N - 78° 15.7928' W.
- (i) Stanberry Creek - All waters within this waterbody are designated as Coastal.
- (ii) Pompeys Creek - All waters within this waterbody are designated as Coastal.
- (iii) Maple Creek - All waters within this waterbody are designated as Coastal.
- (iv) Rubys Creek - All waters within this waterbody are designated as Coastal.
- (v) Big Doe Creek - All waters within this waterbody are designated as Coastal.
- (vi) Lennons Creek - All waters within this waterbody are designated as Coastal.
- (vii) Mercers Mill Pond Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 33° 57.7498' N - 78° 12.3532' W; running southeasterly to a point on the east shore 33° 57.7439' N - 78° 12.3440' W.
- (e) Elizabeth River - All waters within this waterbody are designated as Coastal.
- (i) Ash Creek - All waters within this waterbody are designated as Coastal.
- (f) Beaverdam Creek - All waters within this waterbody are designated as Coastal.
- (g) Dutchman Creek - All waters within this waterbody are designated as Coastal.
- (i) Calf Gully Creek - All waters within this waterbody are designated as Coastal.
- (ii) Jumpin Run - All waters within this waterbody are designated as Coastal.
- (iii) Fiddlers Creek - All waters within this waterbody are designated as Coastal.

- (h) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side $34^{\circ} 13.6953' \text{ N} - 77^{\circ} 57.2396' \text{ W}$; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side $34^{\circ} 13.6214' \text{ N} - 77^{\circ} 57.0341' \text{ W}$.
- (i) ~~Carolina Power And Light Duke Energy Progress Brunswick Nuclear Plant~~ Intake Canal - All waters within this waterbody are designated as Coastal.
- (ii) Walden Creek - All waters within this waterbody are designated as Coastal.
- (iii) Orton Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore $34^{\circ} 02.8436' \text{ N} - 77^{\circ} 56.7498' \text{ W}$; running southerly to a point on the south shore $34^{\circ} 02.8221' \text{ N} - 77^{\circ} 56.7439' \text{ W}$.
- (iv) Lilliput Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore $34^{\circ} 04.1924' \text{ N} - 77^{\circ} 56.5361' \text{ W}$; running southerly to a point on the south shore $34^{\circ} 04.1487' \text{ N} - 77^{\circ} 56.5447' \text{ W}$.
- (v) Sandhill Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore $34^{\circ} 06.9584' \text{ N} - 77^{\circ} 57.0085' \text{ W}$; running southeasterly to a point on the south shore $34^{\circ} 06.9371' \text{ N} - 77^{\circ} 56.9943' \text{ W}$.
- (vi) Town Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore $34^{\circ} 07.7492' \text{ N} - 77^{\circ} 57.3445' \text{ W}$; running southerly to a point on the south shore $34^{\circ} 07.7034' \text{ N} - 77^{\circ} 57.3431' \text{ W}$.
- (vii) Mallory Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore $34^{\circ} 09.9868' \text{ N} - 77^{\circ} 58.2023' \text{ W}$; running southerly to a point on the south shore $34^{\circ} 09.9618' \text{ N} - 77^{\circ} 58.2133' \text{ W}$.
- (viii) Brunswick River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the south shore $34^{\circ} 10.7281' \text{ N} - 77^{\circ} 57.7793' \text{ W}$; running northeasterly to a point on the north shore $34^{\circ} 10.9581' \text{ N} - 77^{\circ} 57.6452' \text{ W}$.
- (A) Alligator Creek - For the southernmost entrance into the Brunswick River: Inland Waters east and Joint Waters west of a line beginning at a point on the south shore $34^{\circ} 13.5040' \text{ N} - 77^{\circ} 58.6331' \text{ W}$; running northwesterly to a point on the north shore $34^{\circ} 13.5472' \text{ N} - 77^{\circ} 58.6628' \text{ W}$. For the northernmost entrance into the Brunswick River: Inland Waters east and Joint Waters west of a line beginning at a point on the south shore $34^{\circ} 14.4300' \text{ N} - 77^{\circ} 59.2346' \text{ W}$; running northerly to a point on the north shore $34^{\circ} 14.4618' \text{ N} - 77^{\circ} 59.2300' \text{ W}$.
- (B) Jackeys Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the south shore $34^{\circ} 11.9400' \text{ N} - 77^{\circ} 58.5859' \text{ W}$; running northerly to a point on the north shore $34^{\circ} 11.9565' \text{ N} - 77^{\circ} 58.5859' \text{ W}$.
- (C) Sturgeon Creek - Inland Waters west and Joint Waters

- east of a line beginning at a point on the north shore 34° 14.6761' N - 77° 59.4145' W; running southerly to a point on the south shore 34° 14.6404' N - 77° 59.4058' W.
- (ix) Cartwheel Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 15.7781' N - 77° 59.3852' W; running southerly to a point on the south shore 34° 15.7564' N - 77° 59.3898' W.
 - (x) Indian Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 17.0441' N - 78° 00.3662' W; running southwesterly to a point on the south shore 34° 17.0006' N - 78° 00.3977' W.
 - (xi) Hood Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 20.3713' N - 78° 04.7492' W; running southwesterly to a point on the south shore 34° 20.3393' N - 78° 04.7373' W.
 - (xii) Northwest Creek - All waters within this waterbody are designated as Inland.
- (5) Camden County:
- (a) Albemarle Sound - All waters within this waterbody are designated Coastal.
 - (i) All Manmade Tributaries - All waters within this waterbody are designated as Joint.
 - (ii) Pasquotank River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.0768' N - 76° 13.0979' W; running easterly along the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore 36° 08.7563' N - 76° 03.6991' W.
 - (A) Raymond Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.0746' N - 76° 03.3952' W; running easterly to a point on the east shore 36° 14.0711' N - 76° 03.3668' W.
 - (B) Portohonk Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 15.0519' N - 76° 05.2793' W; running southeasterly to a point on the east shore 36° 15.0391' N - 76° 05.2532' W.
 - (C) Areneuse Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 17.3133' N - 76° 08.1655' W; running southeasterly to a point on the east shore 36° 17.1328' N - 76° 07.6269' W.
 - (iii) North River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703' N - 75° 58.7384' W; running southerly to a point on the south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east

shore 36° 10.0108' N - 75° 52.0431' W.

- (A) Wading Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 10.6054' N - 75° 55.9529' W; running southeasterly to a point on the east shore 36° 10.5777' N - 75° 55.8654' W.
- (B) Little Broad Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 11.6530' N - 75° 57.2035' W; running southeasterly to a point on the east shore 36° 11.5587' N - 75° 56.9160' W.
- (C) Broad Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 12.2197' N - 75° 57.2685' W; running southerly to a point on the south shore 36° 11.6766' N - 75° 57.2254' W.
- (D) Hunting Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 15.0480' N - 75° 57.5820' W; running southeasterly to a point on the south shore 36° 14.9308' N - 75° 57.4635' W.
- (E) Abel Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north

shore 36° 15.9530' N - 75° 58.0348' W; running southerly to a point on the south shore 36° 15.8553' N - 75° 58.0842' W.

- (F) Back Landing Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 36° 16.4746' N - 76° 07.6377' W; running southwesterly to a point on the south shore 36° 16.2030' N - 76° 57.8897' W.
- (G) Public Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.2462' N - 75° 58.2774' W; running southerly to a point on the south shore 36° 17.2121' N - 75° 58.2788' W.
- (H) Cow Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 17.8667' N - 75° 58.3483' W; running southerly to a point on the marsh island 36° 17.7600' N - 75° 58.3300' W; running southerly following the eastern shoreline of the island to a point 36° 17.7122' N - 75° 58.3273' W; running southwesterly to a point on the south shore 36° 17.6522' N - 75° 58.3543' W.
- (I) Great Creek - Mouth: Inland

- Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.1045' N - 75° 58.4289' W; running southerly to a point on the south shore 36° 17 9882' N - 75° 58.4458' W. On north shore of Great Creek within the fourth tributary: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 18.1729' N - 75° 58.9137' W; running southeasterly to a point on the south shore 36° 18.1640' N - 75° 58.9022' W.
- (J) Indiantown Creek - All waters within this waterbody are designated as Inland.
- (6) Carteret County:
- (a) Neuse River - All waters in this waterbody are designated as Coastal.
- (i) Adams Creek - All waters in this waterbody are designated as Coastal.
- (A) Back (Black) Creek - All waters in this waterbody are designated as Coastal.
- (B) Cedar Creek - All waters in this waterbody are designated as Coastal.
- (ii) Garbacon Creek - All waters in this waterbody are designated as Coastal.
- (iii) South River - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 34° 53.5068' N - 76° 31.1233' W; running northeasterly to a point on the east shore 34° 53.4494' N - 76° 31.3032' W.
- (A) Big Creek - All waters in this waterbody are designated as Coastal.
- (B) Southwest Creek - All waters in this waterbody are designated as Coastal.
- (C) West Fork - All waters in this waterbody are designated as Inland.
- (D) East Creek - All waters in this waterbody are designated as Inland.
- (E) Eastman Creek - All waters in this waterbody are designated as Coastal.
- (iv) Browns Creek - All waters in this waterbody are designated as Coastal.
- (b) North River - All waters in this waterbody are designated as Coastal.
- (i) Panter Cat Creek - All waters in this waterbody are designated as Coastal.
- (ii) Cypress Creek - All waters in this waterbody are designated as Coastal.
- (c) Newport River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 45.2478' N - 76° 46.4479' W; running southerly to a point on the south shore 34° 45.1840' N - 76° 46.4488' W.
- (i) Core Creek - All waters in this waterbody are designated as Coastal.
- (ii) Harlowe Creek - All waters in this waterbody are designated as Coastal.
- (iii) Bogue Sound And Tributaries - All waters in this waterbody are designated as Coastal.
- (d) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running easterly to a point on the

- east shore 34° 48.1620' N -77° 11.4244' W.
- (i) Pettiford Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 42.6935' N - 77° 04.0745' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 42.6569' N - 77° 04.0786' W.
 - (ii) Little Hadnotts Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.0839' N - 77° 06.5931' W; running northerly to an easterly point on the east shore 34° 45.0867' N - 77° 06.5780' W.
 - (iii) Hadnotts Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 45.9908' N - 77° 05.7847' W; running along the west side of the Highway 58 bridge to a point on the south shore 34° 45.9738' N - 77° 05.7810' W.
 - (iv) Neds Creek - All waters in this waterbody are designated as Coastal.
 - (v) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N -77° 09.9160' W.
- (7) Chowan County:
- (a) Albemarle Sound - All waters within this waterbody in Chowan County are designated as Coastal.
 - (i) All Manmade Tributaries - All manmade tributaries are designated as Joint.
 - (ii) Yeopim River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.4526' N - 76° 27.7651' W; running southerly to a point on the south shore at Norcum Point 36° 05.1029' N - 76° 27.7120' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 04.7426' N - 76° 24.2536' W; running southwesterly to a point on the south shore 36° 04.1136' N - 76° 24.5365' W.
 - (iii) Queen Anne Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 03.3757' N - 76° 36.3629' W; running southerly to a point on the south shore 36° 03.3551' N - 76° 36.3574' W.
 - (iv) Pembroke Creek (Pollock Swamp) - Inland Waters west and Coastal Waters east of a line beginning at a point on the west shore 36° 03.2819' N - 76° 37.0138' W; running northeasterly to a point on the east shore 36° 03.4185' N - 76° 36.6783' W.
 - (v) Chowan River - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the west shore 36° 02.3162' N - 76° 42.4896' W; running northeasterly to a point on the east shore 36° 03.1013' N - 76° 40.8732' W.
 - (A) Rocky Hock Creek - Inland Waters east and Joint Waters west of a line beginning on the west shore at a point 36° 06.5662' N - 76° 41.3108' W; running southeasterly to a point on the east shore at 36° 06.6406' N - 76° 41.4512' W.
 - (B) Dillard (Indian) Creek - Inland Waters east and Joint Waters west of a line beginning

- at a point on the north shore 36° 14.2234' N - 76° 41.5901' W; running southerly to a point on the south shore 36° 14.2023' N - 76° 41.5855' W.
- (C) Stumpy Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 16.6440' N - 76° 40.4251' W; running southerly to a point on the south shore 36° 16.6255' N - 76° 40.4196' W.
- (D) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
- (8) Columbus County:
- (a) Cape Fear River - All waters within this waterbody of Columbus County are designated as Joint.
- (i) Livingston Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.1518' N - 78° 12.0358' W; running easterly to a point on the east shore 34° 21.1420' N - 78° 12.0018' W.
- (ii) Waymans Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 34° 22.9861' N - 78° 14.5266' W; running southeasterly to a point on the east shore 34° 22.9838' N - 78° 14.5236' W.
- (9) Craven County:
- (a) Neuse River - Inland Waters west and Joint Waters east of a line at Pitch Kettle Creek beginning at a point on the north shore 35° 16.9793' N - 77° 15.5529' W; running south to a point on the south shore 35° 16.9237' N - 77° 15.5461' W. Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the east shore 35° 07.7096' N - 77° 01.6749' W; running southwesterly along the southern side of the Southern Railroad bridge to a point on the west shore 35° 07.1530' N - 77° 02.5570' W.
- (i) Adams Creek - All waters in this waterbody are designated as Coastal.
- (A) Back Creek - All waters in this waterbody are designated as Coastal.
- (ii) Courts Creek - Inland Waters east Joint Waters west of a line beginning at a point on the north shore 34° 56.6958' N - 76° 42.7175' W; running southwesterly to a point on the south shore 34° 56.6606' N - 76° 42.7450' W.
- (iii) Long Branch - Inland Waters south and Coastal Waters north of a line beginning on the west shore 34° 55.6189' N - 76° 43.8180' W; running easterly to a point on the east shore 34° 55.6175' N - 76° 43.7846' W.
- (iv) Clubfoot Creek - All waters in this waterbody are designated as Coastal.
- (A) Gulden Creek - All waters in this waterbody are designated as Coastal.
- (B) Mitchell Creek - All waters in this waterbody are designated as Coastal.
- (C) Morton Mill Pond - Inland Waters west and Coastal Waters east of a line

- beginning at a point
on the north shore
34° 51.9245' N -
76° 45.7754' W;
running southerly
to a point on the
south shore 34°
51.7799' N - 76°
45.8184' W.
- (v) Hancock Creek - Coastal Waters east and Inland Waters west of a line beginning on the north shore at 34° 56.3420' N - 76° 51.2809' W; running southerly to a point on the south shore at 34° 56.2731' N - 76° 51.3034' W.
- (vi) Slocum Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore at 34° 57.1875' N - 76° 53.7648' W; running southwesterly to a point on the south shore 34° 57.1334' N - 76° 53.8069' W.
- (vii) Scott Creek - Inland Waters west and Coastal Waters east of a line from a point on the north shore 35° 05.5723' N - 77° 02.0677' W; running southerly to a point on the south shore 35° 05.5316' N - 77° 02.0745' W.
- (viii) Trent River - Inland Waters west and Joint Waters east of a line at Wilson Creek beginning at a point on the north shore 35° 04.05490' N - 77° 06.0987' W; running southerly to a point on the south shore 35° 04.3837' N - 77° 06.1230' W. Joint Waters west and Coastal Waters east of a line on the western side of the Highway 70 Trent River Bridge beginning at a point on the north shore 35° 06.2136' N - 77° 02.1968' W; running southerly to a point on the south shore 35° 05.9351' N - 77° 02.2645' W.
- (A) Brice Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 04.5114' N - 77° 03.6433' W; running easterly to a point on the east shore 35° 04.5634' N - 77° 03.4469' W.
- (ix) Jack Smith Creek - Inland Waters southwest and Joint Waters northeast of a line beginning on the west shore 35° 07.5482' N - 77° 03.1613' W; running southeasterly to a point on the east shore 35° 07.5320' N - 77° 03.1338' W.
- (x) Bachelor Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 09.0099' N - 77° 04.5858' W; running southerly to a point on the south shore 35° 08.9085' N - 77° 04.7172' W.
- (xi) Dollys Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 13.6303' N - 77° 09.9847' W; running southerly to a point on the south shore 35° 13.5937' N - 77° 09.9778' W.
- (xii) Greens Thoroughfare - Easternmost entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 13.7807' N - 77° 09.9224' W; running southwesterly to a point on the south shore 35° 13.7587' N - 77° 09.9728' W. Westernmost entrance: Inland Waters south and Joint Waters north of a line beginning on the west shore 35° 14.1398' N - 77° 11.5530' W; running easterly to a point on the east shore 35° 14.1481' N - 77° 11.5036' W.
- (xiii) Greens Creek - Inland Waters west and Joint Waters east of a line beginning on the north shore 35° 14.1883' N - 77° 11.8862' W; running southeasterly to a point on

- the south shore 35° 14.1389' N - 77° 11.7535' W.
- (xiv) Turkey Quarter Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 15.6738' N - 77° 14.6823' W; running southeasterly to a point on the east shore 35° 15.6534' N - 77° 14.6470' W.
- (xv) Pitch Kettle Creek - All waters within this waterbody are designated as Inland.
- (xvi) Taylors Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 14.3719' N - 77° 10.8050' W; running southwesterly to a point on the south shore 35° 14.3300' N - 77° 10.8352' W.
- (xvii) Pine Tree Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 12.6663' N - 77° 07.4285' W; running southwesterly to a point on the south shore 35° 12.7033' N - 77° 07.3594' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 12.8553' N - 77° 07.8300' W; running easterly to a point on the east shore 35° 12.8372' N - 77° 07.7934' W. Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 13.2012' N - 77° 08.7753' W; running southeasterly to a point on the east shore 35° 13.1714' N - 77° 08.7071' W.
- (xviii) Stumpy Creek - Southern entrance: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the north shore 35° 11.5752' N - 77° 06.1866' W; running southwesterly to a point on the south shore 35° 11.5550' N - 77° 06.2411' W. Northern entrance: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.9377' N - 77° 06.7263' W; running southeasterly to a point on the south shore 35° 11.9169' N - 77° 06.7044' W.
- (xix) Swift Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 11.5972' N - 77° 06.0562' W; running easterly to a point on the east shore 35° 11.5816' N - 77° 05.9861' W.
- (xx) Mill Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 35° 08.5041' N - 77° 02.3400' W; running south easterly to a point on the south shore 35° 08.4711' N - 77° 02.3176' W.
- (xxi) Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the north shore 35° 05.7648' N - 77° 00.5191' W; running south easterly to a point on the south shore at 35° 05.6803' N - 77° 00.4179' W.
- (xxii) Northwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.5096' N - 76° 58.2604' W; running northeasterly to a point on the east shore at 35° 03.5948' N - 76° 58.0297' W.
- (xxiii) Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - 76° 56.5269' W; running easterly along the Tidelands EMC power lines to a point on the east shore at 35° 04.4705' N - 76° 56.2115' W.
- (10) Currituck County:
- (a) Albemarle Sound - All waters within Albemarle Sound in Currituck County are designated as Coastal.

- | | | | |
|--|--|---|--|
| <p>(i) All Manmade Tributaries - All Manmade Tributaries to Albemarle Sound in Currituck County are designated as Joint.</p> | | <p>shore 36° 14.4948' N - 75° 55.1989' W.</p> | |
| <p>(ii) North River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.7703' N - 75° 58.7384' W; running southerly to a point on the south shore 36° 18.4130' N - 75° 58.7228' W. Joint Waters north and Coastal Waters south of a line beginning on the west shore 36° 09.8986' N - 75° 54.6771' W; running easterly to a point on the east shore 36° 10.0108' N - 75° 52.0431' W.</p> | <p>(A) Duck Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 12.4056' N - 75° 54.2967' W; running southeasterly to a point on the east shore 36° 12.1865' N - 75° 54.0298' W.</p> | <p>(D) Goose Pond - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 15.5152' N - 75° 57.0936' W; running easterly to a point on the east shore 36° 15.4016' N - 75° 56.7842' W. Also south of a line beginning at a point on the west shore 36° 16.0334' N - 75° 57.1018' W; running easterly to a point on the east shore 36° 16.0301' N - 75° 57.0629' W.</p> | <p>(E) Deep Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 17.1576' N - 75° 56.7594' W; running southerly to a point on the south shore 36° 16.9846' N - 75° 56.6802' W.</p> |
| <p>(B) Barnett Creek - Inland Waters northeast and Joint Waters southwest of line beginning at a point on the north shore 36° 14.2405' N - 75° 55.0112' W; running southeasterly to a point on the south shore 36° 14.0956' N - 75° 54.9774' W.</p> | <p>(C) Lutz Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 14.7397' N - 75° 55.4914' W; running southeasterly to a point on the east</p> | <p>(F) Narrow Ridges Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 18.3249' N - 75° 57.8910' W; running southerly to a point on the south shore 36° 18.1388' N - 75° 57.9029' W.</p> | <p>(G) Bump Landing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 19.3757' N - 75° 57.9057' W;</p> |

- running southerly to a point on the south shore 36° 19.2496' N - 75° 57.9107' W.
- (H) Taylor Bay - All waters within Taylor Bay are designated Joint.
- (I) Intracoastal Waterway From Taylor Bay To Coinjock Bay - All waters within the IWW are designated Joint.
- (J) Indiantown Creek - All waters within this waterbody are designated Inland.
- (b) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore of Currituck Sound 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
- (i) All Manmade Tributaries - All manmade tributaries within this waterbody are designated as Joint.
- (ii) Coinjock Bay - All waters within this waterbody are designated as Joint.
- (iii) Nelson (Nells) Creek - Northern entrance: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 16.5806' N - 75° 52.1168' W; running northeasterly to a point on the east shore 36° 16.6410' N - 75° 51.9580' W. Southern entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 15.9816' N - 75° 51.7245' W; running southerly to a point on the south shore 36° 15.8640' N - 75° 51.6897' W.
- (iv) Hog Quarter Creek - Northernmost entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 07.7400' N - 75° 48.6254' W; running southerly to a point on the south shore 36° 07.7210' N - 75° 48.6135' W. Southernmost entrance: Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 07.4118' N - 75° 48.4986' W; running southerly to a point on the south shore 36° 07.3532' N - 75° 48.5110' W.
- (v) Parkers Creek - Inland Waters northwest and Joint Waters southeast of a line beginning on the west shore 36° 22.1079' N - 75° 55.5459' W; running northeasterly to a point on the east shore 36° 22.1607' N - 75° 55.4512' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 22.3928' N - 75° 55.6970' W; running northeasterly to a point on the east shore 36° 22.4011' N - 75° 55.6782' W.
- (vi) North Landing River - All waters in this waterbody are designated as Joint.
- (A) Northwest River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore of 36° 30.8374' N - 76° 04.8770' W; running southerly to a point on the south shore 36° 30.7061' N - 76° 04.8916' W.
- (I) Gibbs Canal - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 32.2322' N - 76° 01.8923' W; running southerly to a

- point on the
south shore
36° 32.1997'
N - 76°
01.8937' W.
- (II) Tull Creek -
Inland Waters
southwest and
Joint Waters
northeast of a
line beginning
at a point on
the north
shore 36°
30.0991' N -
76° 04.8587'
W; running
southeasterly
to a point on
the south
shore 36°
29.9599' N -
76° 04.7126'
W.
- (B) West Landing -
Inland Waters north
and Joint Waters
south of a line
beginning at a point
on the west shore
36° 30.9867' N -
76° 02.5868' W;
running easterly to
a point on the east
shore 36° 31.0045'
N - 76° 02.3780' W.
- (11) Dare County:
- (a) Alligator River - Coastal Waters
north and Joint Waters south of a line
beginning at a point on the west shore
35° 54.2903' N - 76° 01.6818' W;
running along the south side of the
US 64 bridge to a point on the east
shore 35° 53.6835' N - 75° 58.8578'
W.
- (i) Whipping Creek - Inland
Waters east and Joint Waters
west of a line beginning at a
point on the north shore 35°
41.3930' N - 76° 00.2481'
W; running southerly to a
point on the south shore 35°
41.3717' N - 76° 00.2554'
W.
- (ii) Swan Creek and Lake -
Inland Waters east and Joint
Waters west of a line
beginning at a point on the
north shore 35° 40.2674' N -
- 76° 00.7360' W; running
southerly to a point on the
south shore 35° 40.2420' N -
76° 00.7548' W.
- (iii) Milltail Creek - Inland
Waters east and Joint Waters
west of a line beginning at a
point on the north shore 35°
50.5192' N - 75° 58.6134'
W; running southerly to a
point on the south shore 35°
50.4956' N - 75° 58.6158'
W.
- (iv) Laurel Bay Lake (Creek) -
Inland Waters east and Joint
Waters west of a line
beginning at a point on the
north shore 35° 52.4036' N -
75° 58.8560' W; running
southerly to a point on the
south shore 35° 52.3960' N -
75° 58.8528' W.
- (v) East Lake - Coastal Waters
west and Inland Waters east
of a line beginning at a point
on the north shore 35°
56.1676' N - 75° 55.2603'
W; running southerly to a
point on the south shore 35°
55.4727' N - 75° 55.5043'
W. Joint Waters north and
Inland Waters south of a line
beginning at a point on the
west shore 35° 58.6402' N -
75° 52.1855' W; running
easterly to a point on the east
shore 35° 58.5887' N - 75°
51.7080' W.
- (b) Albemarle Sound - All waters in this
waterbody in Dare County are
designated as Coastal.
- (i) All Manmade Tributaries -
All manmade tributaries in
Dare County for this
waterbody are designated as
Joint.
- (ii) Kitty Hawk Bay - Joint
Waters north and Coastal
Waters south of a line
beginning at a point on the
west shore 36° 03.1967' N -
75° 44.3087' W; running
easterly to a point on the east
shore 36° 03.1871' N - 75°
44.2716' W. Joint Waters
east and Coastal Waters west
of a line beginning at a point
on the north shore 36°
03.1338' N - 75° 44.2423'

- W; running southerly to a point on the south shore 36° 03.0919' N - 75° 44.2533' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.9960' N - 75° 44.2840' W; running southerly to a point on the south shore 36° 02.9592' N - 75° 44.2291' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 02.4964' N - 75° 44.2089' W; running southerly to a point on the south shore 36° 01.3270' N - 75° 43.6422' W.
- (iii) Peter Mashoes Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 57.2344' N - 75° 48.3087' W; running southerly to a point on the south shore 35° 56.7805' N - 75° 48.3563' W.
- (iv) Tom Mann Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 58.5296' N - 75° 52.8982' W; running easterly to a point on the east shore 35° 58.5175' N - 75° 53.6851' W.
- (v) Collington Harbor - Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 36° 01.0828' N - 75° 43.6070' W; running southerly to a point on the south shore 36° 01.0510' N - 75° 43.6015' W.
- (c) Croatan Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (ii) Spencer Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.4205' N - 75° 45.0645' W; running southerly to a point on the south shore 35° 51.3876' N - 75° 45.0640' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.5597' N - 75° 45.0141' W; running southerly to a point on the south shore 35° 51.4624' N - 75° 45.0498' W. Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.6783' N - 75° 44.9125' W; running southerly to a point on the south shore 35° 51.5693' N - 75° 45.0109' W.
- (iii) Calahan Creek (Callaghan Creek) - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 51.1312' N - 75° 45.1327' W; running southwesterly to a point on the south shore 35° 51.0953' N - 75° 45.1629' W.
- (d) Roanoke Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) Buzzard Bay - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 59.6662' N - 75° 41.8400' W; running easterly to a point on the east shore 35° 59.4376' N - 75° 40.5770' W.
- (e) Pamlico Sound - All waters in this waterbody in Dare County are designated as Coastal.
- (i) Stumpy Point Bay - All waters in this waterbody are designated as Coastal.
- (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (ii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' ~~W~~ W.

- (A) All Manmade Tributaries - All waters in this waterbody are designated as Joint.
- (B) Pains Bay - All waters in this waterbody are designated as Coastal.
 - (I) Pains Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 36.4464' N - 75° 49.0420' W; running easterly to a point on the east shore 35° 36.4439' N - 75° 49.0324' W.
 - (C) Deep Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 37.8971' N - 75° 51.3125' W; running easterly to a point on the east shore 35° 37.8840' N - 75° 51.2928' W.
- (f) Currituck Sound - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 04.8195' N - 75° 47.4101' W; running easterly to a point on the east shore 36° 05.5739' N - 75° 44.5729' W.
 - (i) All Manmade Tributaries - All manmade tributaries are designated as Joint.
 - (ii) Martin Point Creek (Jean Guite Creek) - Inland Waters south Joint Waters north of a line beginning at a point on the west shore 36° 07.6716' N - 75° 44.9656' W; running easterly to a point on the east shore 36° 07.7568' N - 75° 44.6823' W.
- (12) Gates County:
 - (a) Chowan River - All waters within this waterbody for Gates County are designated as Joint.
 - (i) Catherine (Warwick) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 36° 18.1011' N - 76° 41.1286' W; running southeasterly to a point on the east shore 36° 17.9413' N - 76° 40.8627' W.
 - (ii) Bennetts Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.3499' N - 76° 42.0286' W; running northeasterly to a point on the east shore 36° 18.4057' N - 76° 41.6986' W.
 - (iii) Beef Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 20.3235' N - 76° 44.6401' W; running easterly to a point on the east shore 36° 20.3070' N - 76° 44.5797' W.
 - (iv) Sarem Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 36° 21.7259' N - 76° 46.4085' W; running southerly to a point on the south shore 36° 21.6748' N - 76° 46.4392' W.
 - (v) Shingle (Island) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the north shore of the westernmost entrance into Chowan River 36° 21.8449' N - 76° 48.0940' W; running southeasterly to a point on the south shore 36° 21.7831' N - 76° 48.0427' W. At the easternmost entrance to the creek: Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 21.8469' N - 76° 47.2668' W; running northeasterly to a point on

- the east shore 36° 21.9062' N - 76° 47.1862' W.
- (vi) Barnes Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the western shore 36° 21.8820' N - 76° 48.6419' W; running easterly to a point on the east shore 36° 21.8978' N - 76° 48.5902' W.
- (vii) Spikes Creek - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 22.6515' N - 76° 50.8882' W; running northeasterly to a point on the east shore 36° 22.6684' N - 76° 50.8493' W.
- (viii) Buckhorn Creek (Run Off Swamp) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 22.9682' N - 76° 51.9172' W; running easterly to a point on the east shore 36° 22.9614' N - 76° 51.8870' W.
- (ix) Mud Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 23.5134' N - 76° 53.9131' W; running easterly to a point on the east shore 36° 23.5132' N - 76° 53.8815' W.
- (x) Somerton Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.7177' N - 76° 54.8327' W; running easterly to a point on the east shore 36° 31.7143' N - 76° 54.7810' W.
- (13) Halifax County:
- (a) Roanoke River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5264' N - 77° 23.0223' W; running northeasterly along the south side of the Highway 258 Bridge to a point on the east shore 36° 12.5674' N - 77° 22.9724' W.
- (i) Kehukee Swamp - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.1942' N - 77° 18.9596' W; running southwesterly to a point on the south shore 36° 05.1670' N - 77° 18.9761' W.
- (ii) Clarks Canal - Inland Waters north and Joint Waters south of a line of a line beginning at a point on the west shore 36° 04.6165' N - 77° 19.5817' W; running easterly to a point on the east shore 36° 04.6215' N - 77° 19.5643' W.
- (14) Hertford County:
- (a) Chowan River - All waters within this waterbody for Hertford County are designated as Joint.
- (i) Keel (Currituck) Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 14.1245' N - 76° 44.1961' W; running easterly to a point on the east shore 36° 14.0899' N - 76° 43.8533' W.
- (ii) Swain Mill (Taylor Pond) Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 18.5808' N - 76° 43.4729' W; running southerly to a point on the south shore 36° 18.5616' N - 76° 43.4706' W.
- (iii) Goose Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 19.5838' N - 76° 44.5971' W; running southerly to a point on the south shore 36° 19.5375' N - 76° 44.5925' W.
- (iv) Wiccacon River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 20.5439' N - 76° 45.4550' W; running southeasterly to a point on the south shore 36° 20.4684' N - 76° 45.3392' W.
- (v) Hodges Creek - Inland Waters west and Joint

- Waters east of a line beginning at a point on the north shore 36° 21.2459' N - 76° 46.3421' W; running southerly to a point on the south shore 36° 21.1823' N - 76° 46.3243' W.
- (vi) Catherine Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 36° 22.9579' N - 76° 53.1994' W; running southeasterly to a point on the east shore 36° 22.9456' N - 76° 53.1742' W.
- (vii) Harris (Hares) Mill Creek - All waters within this waterbody are designated as Inland.
- (viii) Meherrin River - All waters within this waterbody are designated as Joint.
- (A) Potecasi Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 36° 26.1234' N - 76° 57.5262' W; running southeasterly to a point on the east shore 36° 26.1005' N - 76° 57.4960' W.
- (B) Liverman Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 26.7244' N - 76° 58.2797' W; running easterly to a point on the east shore 36° 26.7086' N - 76° 58.2499' W.
- (C) Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the south shore 36° 28.3307' N - 77° 05.6369' W.
- (D) Banks Creek - All waters in this waterbody are designated as Inland.
- (ix) Buckhorn Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 31.9519' N - 76° 55.2580' W; running easterly to a point on the east shore 36° 31.9628' N - 76° 55.2429' W.
- (15) Hyde County:
- (a) Pamlico Sound - All waters within this waterbody in Hyde County are designated as Coastal.
- (i) Pungo River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 34.2702' N - 76° 30.1354' W; running northeasterly to a point on the east shore 35° 34.3192' N - 76° 30.0238' W. Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 32.0974' N - 76° 29.6067' W; running southerly to a point on the south shore 35° 30.2620' N - 76° 29.3843' W.
- (A) Rutman Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 33.1874' N - 76° 27.4090' W; running easterly to a point 35° 33.1759' N - 76° 27.2525' W; running northeasterly to a point on the east shore 35° 33.2455' N - 76° 26.9119' W.
- (B) Wilkerson Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 33.1251' N -

- 76° 27.2328' W;
running northerly to
a point 35° 33.1553'
N - 76° 27.2447'
W; running easterly
to a point on the
east shore 35°
33.3286' N - 76°
26.2019' W.
- (C) Atlantic
Intracoastal
Waterway From
Wilkerson Creek
To Alligator River
At Winn Bay - All
waters within this
part of the
Intracoastal
Waterway are
designated as Joint.
- (D) Horse Island Creek
- Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
35° 32.1965' N -
76° 28.0462' W;
running southerly
to a point on the
south shore 35°
32.1480' N - 76°
28.0705' W.
- (E) Tarklin Creek -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
35° 31.1553' N -
76° 28.1478' W;
running
southeasterly to a
point on the south
shore 35° 31.0974'
N - 76° 28.0984' W.
- (F) Scranton Creek -
Inland Waters east
and Joint Waters
west of line
beginning at a point
on the north shore
35° 30.0080' N -
76° 26.7759' W;
running southerly
to a point on the
south shore 35°
29.9574' N - 76°
26.7750' W.
- (G) Smith Creek -
Inland Waters south
and Coastal Waters
north of a line
beginning at a point
on the west shore
35° 30.2812' N -
76° 29.7546' W;
running
southeasterly to a
point on the east
shore 35° 30.1904'
N - 76° 29.4657' W.
- (H) Fishing Creek -
Inland Waters east
and Coastal Waters
west of a line
beginning at a point
on the west shore
35° 30.2400' N -
76° 35.0143' W;
running
southeasterly to a
point on the east
shore 35° 30.0645'
N - 76° 34.8211' W.
- (I) Slades Creek - All
waters within this
waterbody are
designated as
Coastal.
- (J) Fortescue Creek -
All waters within
this waterbody are
designated as
Coastal.
- (ii) Rose Bay - All waters within
this waterbody are
designated as Coastal.
- (A) Rose Bay Creek -
All waters within
this waterbody are
designated as
Coastal.
- (B) Rose Bay Canal -
Inland Waters east
and Joint Waters
west of a line
beginning at a point
on the north shore
35° 28.5607' N -
76° 19.6545' W;
running southerly
to a point on the
south shore 35°
28.5509' N - 76°
19.6572' W. Joint
Waters north and
Coastal Waters

- south of a line
beginning at a point
on the west shore
35° 27.8491' W -
76° 24.2198' W;
running easterly to
a point on the east
shore 35° 27.8404'
N - 76° 24.2065' W.
- (iii) Swan Quarter Bay - All waters within this waterbody are designated as Coastal.
- (A) Oyster Creek - All waters within this waterbody are designated as Coastal.
- (iv) Juniper Bay - All waters within this waterbody are designated as Coastal.
- (A) Juniper Bay Creek - Joint Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 23.2472' N - 76° 14.8754' W; running southwesterly to a point on the south shore 35° 23.1738' N - 76° 14.9794' W.
- (B) Juniper Bay Creek Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 23.8618' N - 76° 13.1044' W; running easterly to a point on the east shore 35° 23.8677' N - 76° 13.0888' W.
- (v) Lake Mattamuskeet - All waters in this waterbody are designated as Inland.
- (A) Outfall Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 26.6017' N - 76° 10.1715' W; running easterly to a point on the east shore 35° 26.6093' N - 76° 10.1513' W. Joint Waters north and Coastal waters south of a line beginning at a point on the west shore 35° 21.4945' N - 76° 06.5336' W; running northeasterly to a point on the east shore 35° 21.5480' N - 76° 06.4819' W.
- (B) Lake Landing Canal - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 28.7878' N - 76° 04.5867' W; running easterly to a point on the east shore 35° 28.7910' N - 76° 04.5726' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west 35° 25.9529' N - 76° 03.6785' W; running easterly to a point on the east shore 35° 25.9568' N - 76° 03.6566' W. Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 25.9666' N - 76° 03.5856' W; running easterly to a point on the east shore 35° 25.9819' N - 76° 03.5600' W.
- (C) Waupopin Canal - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 31.8413' N - 76° 01.7779' W; running southerly to a point on the

- south shore 35°
31.8283' N - 76°
01.7637' W. Joint
Waters west and
Coastal Waters east
of a line beginning
at a point on the
west shore 35°
31.5557' N - 75°
58.8725' W;
running easterly to
a point on the east
shore 35° 31.5648'
N - 75° 58.8555' W.
- (D) Rattlesnake Canal - Joint Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 26.6965' N - 76° 00.8079' W; running easterly to a point on the east shore 35° 26.7116' N - 76° 00.7749' W.
- (E) All Other Manmade Tributaries To Lake Mattamuskeet - All manmade tributaries of this waterbody are designated as Inland.
- (vi) Middletown Creek - All waters within this waterbody are designated as Coastal.
- (vii) Long Shoal River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 38.7661' N - 75° 53.4429' W; running easterly to a point on the east shore 35° 38.7641' N - 75° 53.4159' W.
- (A) All Manmade Tributaries - All manmade tributaries of this waterbody are designated as Joint.
- (B) Broad Creek - All waters within this waterbody are designated as Coastal.
- (C) Flag Creek - Inland Waters west and
- Coastal Waters east of a line beginning at a point on the west shore 35° 37.3782' N - 75° 53.0699' W; running easterly to a point on the east shore 35° 37.3894' N - 75° 53.0593' W.
- (D) Cumberland Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 38.3026' N - 75° 53.3010' W; running southerly to a point on the south shore 35° 38.2692' N - 75° 53.3038' W.
- (b) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W.
- Swan Creek and Lake - All waters within this waterbody are designated as Inland.
- (16) Jones County:
- (a) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running easterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Grants Creek - All waters within this waterbody are designated as Inland.
- (ii) Hunters Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the northwest shore 34° 47.1205' N - 77° 09.9462' W; running southeasterly to a point on the southeast shore 34° 47.0947' N - 77° 09.9160' W.
- (17) Martin County:
- (a) Roanoke River - All waters within this waterbody in Martin County are designated as Joint.

- (i) Prices Gut - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 57.3701' N - 77° 11.9815' W; running southerly to a point on the south shore 35° 57.3552' N - 77° 11.9796' W.

35° 50.1599' N - 76° 56.0211' W; running easterly to a point on the east shore 35° 50.1633' N - 76° 55.9899' W.
- (ii) Rainbow Gut - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 55.9334' N - 77° 11.3246' W; running easterly to a point on the east shore 35° 55.9275' N - 77° 11.3136' W.

(vi) Roses Creek - Inland Waters southeast and Joint Waters northwest of a line beginning at a point on the north shore 35° 50.1683' N - 76° 50.9664' W; running southwesterly to a point on the south shore 35° 50.1363' N - 76° 56.9907' W.
- (iii) Conoho Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 35° 52.5439' N - 77° 02.6673' W; running easterly to a point on the east shore 35° 52.5407' N - 77° 02.6280' W.

(vii) Welch Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the western shore 35° 51.8458' N - 76° 45.8381' W; running easterly along the shoreline and across the mouths of the three creek entrances to a point on the east shore 35° 51.8840' N - 76° 45.6207' W.
- (iv) Sweetwater Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the west shore 35° 51.6464' N - 77° 00.5090' W; running southeasterly to a point on the east shore 35° 51.6252' N - 77° 00.4879' W.

(18) New Hanover County:
- (A) Peter Swamp - All waters within this waterbody are designated as Inland.

(a) Cape Fear River - Joint Waters north and Coastal Waters south of a line beginning at a point on the western side 34° 13.6953' N - 77° 57.2396' W; running southeasterly along the southern side of US 17-74-76 bridge to a point on the eastern side 34° 13.6214' N - 77° 57.0341' W.
- (v) Devils Gut - All waters in this waterbody are designated as Joint.

(i) Lords Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 05.1562' N - 77° 55.3816' W; running southerly to a point on the south shore 34° 05.1303' N - 77° 55.4008' W.
- (A) Upper Deadwater Creek - All waters in this waterbody are designated Joint.

(ii) Todds Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 07.4791' N - 77° 55.5175' W; running southeasterly to a point on the south shore 34° 07.4578' N - 77° 55.5116' W.
- (B) Lower Deadwater Creek - All waters in this waterbody are designated Joint.

(iii) Barnards Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 09.4347' N -
- (C) Gardner Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore

- | | | | |
|-------|---|-----|---|
| | <p>77° 56.5969' W; running southerly to a point on the south shore 34° 09.3887' N - 77° 56.5791' W.</p> | | <p>beginning at a point on the north shore 34° 16.0366' N - 77° 56.8405' W; running southeasterly to a point on the south shore 34° 15.9919' N - 77° 56.7961' W.</p> |
| (iv) | <p>Greenfield Lake Outlet - Greenfield Lake Outlet Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 12.7210' N - 77° 57.2058' W; running southerly to a point on the south shore 34° 12.7075' N - 77° 57.2085' W.</p> | (B) | <p>Ness Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 17.1741' N - 77° 57.2460' W; running southeasterly to a point on the south shore 34° 17.1494' N - 77° 57.2044' W.</p> |
| (v) | <p>Tommer Creek - For the southernmost entrance into the Cape Fear: Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the west shore 34° 15.6397' N - 77° 58.9608' W; running northeasterly to a point on the east shore 34° 15.6589' N - 77° 58.9338' W. For the northernmost entrance into the Cape Fear: Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 16.6630' N - 77° 59.4699' W; running northeasterly to a point on the east shore 34° 16.6767' N - 77° 59.4506' W.</p> | (C) | <p>Dock Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 18.1274' N - 77° 57.3847' W; running southwesterly to a point on the south shore 34° 18.1173' N - 77° 57.3678' W.</p> |
| (vi) | <p>Catfish Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 16.7546' N - 77° 59.3751' W; running southeasterly to a point on the south shore 34° 16.7118' N - 77° 59.3870' W.</p> | (D) | <p>Fishing Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 19.1613' N - 77° 57.2460' W; running southwesterly to a point on the south shore 34° 19.1331' N - 77° 57.2245' W.</p> |
| (vii) | <p>Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.</p> | (E) | <p>Prince George Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 21.8481' N - 77° 57.0066' W; running northeasterly to a</p> |
| | <p>(A) Smiths Creek - Inland Waters east and Joint Waters west of a line</p> | | |

- south shore 36° 28.3307' N - 77° 05.6369' W.
- (F) Sturgeon Creek - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 34° 22.6796' N - 77° 51.6018' W; running northeasterly to a point on the east shore 34° 22.6931' N - 77° 51.5776' W.
- (G) Island Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 23.2509' N - 77° 47.3377' W; running northeasterly to a point on the north shore 34° 23.3322' N - 77° 49.3208' W.
- (19) Northampton County:
- (a) Roanoke River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.5264' N - 77° 23.0223' W; running northeasterly along the south side of the Highway 258 Bridge to a point on the east shore 36° 12.5674' N - 77° 22.9724' W.
- (i) Sandy Run (Norfleet Gut) - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.1119' N - 77° 17.5396' W; running northeasterly to a point on the east shore 36° 10.1172' N - 77° 17.5316' W.
- (b) Meherrin River - All waters of Meherrin River up to the Virginia state line within Northampton County are designated as Joint.
- (i) Vaughan's Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 28.3541' N - 77° 05.6259' W; running southerly to a point on the
- (20) Onslow County:
- (a) Beasleys Creek (Barlow Creek) - All waters within this waterbody are designated as Coastal.
- (b) Kings Creek - All waters within this waterbody are designated as Coastal.
- (c) Turkey Creek - All waters within this waterbody are designated as Coastal.
- (d) Mill Creek - All waters within this waterbody are designated as Coastal.
- (e) New River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 45.1654' N - 77° 26.1222' W; running easterly along the southern side of the US Hwy 17 bridge to a point on the east shore 34° 45.2007' N - 77° 25.9790' W.
- (i) Wheeler Creek - All waters within this waterbody are designated as Coastal.
- (ii) Everett Creek - All waters within this waterbody are designated as Coastal.
- (iii) Stones Creek - All waters within this waterbody are designated as Coastal.
- (iv) Muddy Creek - All waters within this waterbody are designated as Coastal.
- (v) Mill Creek - All waters within this waterbody are designated as Coastal.
- (vi) Lewis Creek - All waters within this waterbody are designated as Coastal.
- (vii) Southwest Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 40.8723' N - 77° 26.2399' W; running northeasterly to a point on the east shore 34° 40.9112' N - 77° 26.1758' W.
- (viii) Brinson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 44.0945' N - 77° 26.4335' W; running southerly to a point on the south shore 34° 44.0654' N - 77° 26.4239' W.
- (ix) Northeast Creek - Inland Waters northeast and Coastal Waters southwest of a line

- beginning at a point on the west shore 34° 44.0778' N - 77° 21.2640' W; running southeasterly along the southern side of the railroad bridge to a point on the east shore 34° 44.0446' N - 77° 21.2126' W.
- (x) Wallace Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 40.9604' N - 77° 21.5698' W; running southwesterly along the western side of the first bridge upstream from the mouth, to a point on the south shore 34° 40.8576' N - 77° 21.4787' W.
- (xi) Codels Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.8845' N - 77° 20.4533' W; running southerly to a point on the south shore 34° 38.8691' N - 77° 20.4515' W.
- (xii) French Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 34° 38.4059' N - 77° 20.2619' W; running southerly to a point on the south shore 34° 38.2566' N - 77° 20.3233' W.
- (xiii) Duck Creek - Inland Waters southwest and Coastal Waters northeast of a line beginning at a point on the north shore 34° 38.0179' N - 77° 20.5169' W; running southwesterly to a point on the south shore 34° 37.9172' N - 77° 20.6520' W.
- (f) Freeman (Browns) Creek - All waters within this waterbody are designated as Coastal.
- (g) Bear Creek - All waters within this waterbody are designated as Coastal.
- (h) Queens Creek - Inland Waters ~~north west~~ and Coastal Waters ~~south east~~ of a line beginning at a point on the ~~west north~~ shore 34° 42.1815' N - 77° 11.5690' W; 34° 42.5696' N - 77° 11.8550' W; running ~~easterly~~ southerly to a point on the ~~east south~~ shore 34° 42.2273' N - 77° 11.4193' W. 34° 42.4238' N - 77° 11.8550' W.
- (i) Parrotts Swamp - All waters within this waterbody are designated as Coastal.
- (i) White Oak River - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running northeasterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (i) Stevens Creek - All waters within this waterbody are designated as Coastal.
- (ii) Holland Mill (Mill Pond) Creek - All waters within this waterbody are designated as Coastal.
- (iii) Webbs Creek - Inland Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore 34° 45.7559' N - 77° 10.1321' W; running southwesterly to a point on the south shore 34° 45.7404' N - 77° 10.1486' W.
- (iv) Freemans Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 46.9791' N - 77° 10.3935' W; running southerly to a point on the south shore 34° 46.9663' N - 77° 10.3999' W.
- (v) Calebs Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 34° 48.1354' N - 77° 11.4688' W; running southeasterly to a point on the south shore 34° 48.1192' N - 77° 11.4546' W.
- (vi) Grants Creek - All waters within this waterbody are designated as Inland.
- (21) Pamlico County:
- (a) Pamlico River - All waters within this waterbody are designated as Coastal.
- (i) Lower Goose Creek - All waters within this waterbody are designated as Coastal.
- (A) Dixons Creek - All waters within this waterbody are

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| | designated as Coastal. | | designated as Coastal. |
| (B) | Patons Creek - All waters within this waterbody are designated as Coastal. | (B) | James Creek - All waters within this waterbody are designated as Coastal. |
| (C) | Wilson Creek - All waters within this waterbody are designated as Coastal. | (b) | Pamlico Sound - All waters within this waterbody are designated as Coastal. |
| (D) | Eastham Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 17.8205' N - 76° 35.1828' W; running southerly to a point on the south shore 35° 17.6797' N - 76° 35.1840' W. | (i) | Porpoise Creek - All waters within this waterbody are designated as Coastal. |
| (E) | Upper Spring Creek - All waters within this waterbody are designated as Coastal. | (ii) | Drum Creek - All waters within this waterbody are designated as Coastal. |
| (F) | Intracoastal Waterway from Upper Spring Creek To Gale Creek - All waters within this waterbody are designated as Coastal. | (iii) | Bay River - Inland Waters south and Coastal Waters north of a line beginning at a point on the north shore 35° 08.4601' N - 76° 45.9173' W; running southeasterly to a point on the south shore 35° 08.4436' N - 76° 45.8885' W. |
| (G) | Hunting Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 16.7523' N - 76° 36.8138' W; running easterly to a point on the east shore 35° 16.6779' N - 76° 36.5885' W. | (A) | Gale Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 13.3142' N - 76° 36.7089' W; running southwesterly to a point on the south shore 35° 13.2964' N - 76° 36.7222' W. |
| (ii) | Oyster Creek - All waters within this waterbody are designated as Coastal. | (B) | Chadwick Creek - All waters within this waterbody are designated as Coastal. |
| (iii) | Clark Creek - All waters within this waterbody are designated as Coastal. | (C) | Bear Creek - All waters within this waterbody are designated as Coastal. |
| (A) | Middle Prong - All waters within this waterbody are | (D) | Vandemere Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 12.0330' N - 76° 40.7460' W; running northeasterly to a point on the east |

- shore 35° 12.0433'
N - 76° 40.7235' W.
- (I) Long Creek - All waters within this waterbody are designated as Coastal.
 - (E) Smith Creek - All waters within this waterbody are designated as Coastal.
 - (F) Chapel Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 10.0076' N - 76° 42.4909' W; running easterly to a point on the east shore 35° 10.0096' N - 76° 42.4722' W.
 - (G) Raccoon Creek - All waters within this waterbody are designated as Coastal.
 - (H) Trent Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 06.2738' N - 76° 43.1071' W; running southeasterly to a point on the east shore 35° 06.2603' N - 76° 43.0741' W.
 - (I) Thomas Creek - Inland Waters east and Coastal Waters west of a line beginning at a point on the north shore 35° 07.2024' N - 76° 43.0929' W; running southerly to a point on the south shore 35° 07.1610' N - 76° 43.0947' W.
 - (iv) Masons Creek - All waters within this waterbody are designated as Coastal.
 - (v) Moore Creek - All waters within this waterbody are designated as Coastal.
 - (vi) Rices Creek - All waters within this waterbody are designated as Coastal.
 - (vii) Ball Creek - All waters within this waterbody are designated as Coastal.
 - (viii) Cabin Creek - All waters within this waterbody are designated as Coastal.
 - (ix) Riggs Creek - All waters within this waterbody are designated as Coastal.
 - (x) Spring Creek - All waters within this waterbody are designated as Coastal.
 - (xi) Long Creek - All waters within this waterbody are designated as Coastal.
 - (c) Neuse River - All waters within this waterbody are designated as Coastal.
 - (i) Swan Creek - All waters within this waterbody are designated as Coastal.
 - (ii) Lower Broad Creek - All waters within this waterbody are designated as Coastal.
 - (A) Greens Creek - All waters within this waterbody are designated as Coastal.
 - (B) Pittman Creek - All waters within this waterbody are designated as Coastal.
 - (C) Burton Creek - All waters within this waterbody are designated as Coastal.
 - (D) Brown Creek - All waters within this waterbody are designated as Coastal.
 - (I) Spice Creek - All waters within this waterbody are designated as Coastal.
 - (E) Gideon Creek - All waters within this waterbody are designated as Coastal.

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| | designated as Coastal. | (ix) | Gatlin Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.4165' N - 76° 47.4645' W; running easterly to a point on the east shore 34° 58.4154' N - 76° 47.4371' W. |
| (F) | Tar Creek - All waters within this waterbody are designated as Coastal. | (x) | Little Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 58.5175' N - 76° 49.5822' W; running southeasterly to a point on the east shore 34° 58.5086' N - 76° 49.5680' W. |
| (G) | Parris Creek - All waters within this waterbody are designated as Coastal. | (xi) | Mill Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 34° 59.6024' N - 76° 51.1276' W; running easterly to a point on the east shore 34° 59.5955' N - 76° 51.0864' W. |
| (iii) | Orchard Creek - All waters within this waterbody are designated as Coastal. | (xii) | Beard Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.3293' N - 76° 52.1855' W; running easterly to a point on the east shore 35° 00.3055' N - 76° 51.9012' W. |
| (iv) | Pierce Creek - All waters within this waterbody are designated as Coastal. | (xiii) | Lower Duck Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 01.5781' N - 76° 54.1580' W; running easterly to a point on the east shore 35° 01.5566' N - 76° 54.0248' W. |
| (v) | Whitaker Creek - All waters within this waterbody are designated as Coastal. | (xiv) | Goose Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 03.4414' N - 76° 55.1170' W; running easterly to a point on the east shore 35° 03.3567' N - 76° 54.9728' W. |
| (vi) | Smith Creek - Joint Waters northwest and Coastal Waters southeast of a line beginning at a point on the north shore at the Oriental Bridge 35° 01.5149' N - 76° 41.9549' W; running southwesterly to a point on the south shore 35° 01.3391' N - 76° 42.1774' W. | (xv) | Upper Broad Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 04.5050' N - |
| (vii) | Greens Creek - All waters within this waterbody are designated as Joint. | | |
| (A) | Kershaw Creek - All waters within this waterbody are designated as Joint. | | |
| (viii) | Dawson Creek - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 00.3371' N - 76° 45.6513' W; running southerly to a point on the south shore 35° 00.1492' N - 76° 45.6202' W. | | |
| (A) | Tarkiln Creek - Inland Waters north and Coastal Waters south of a line beginning at a point on the west shore 35° 00.4124' N - 76° 45.5392' W; running easterly to a point on the east shore 35° 00.4289' N - 76° 45.4472' W. | | |

- 76° 56.5269' W; running easterly to a point on the east shore 35° 04.4705' N - 76° 56.2115' W.
- (22) Pasquotank County:
- (a) Albemarle Sound - All waters within this waterbody in Pasquotank County are designated Coastal.
- (i) All Manmade Tributaries - All manmade tributaries of Pasquotank County are designated as Joint.
- (ii) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.2950' N - 76° 17.1405' W; running northeasterly to a point on the east shore 36° 12.5237' N - 76° 16.9418' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.
- (A) Symonds Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 10.2898' N - 76° 14.1801' W; running southeasterly to a point on the south shore 36° 10.2042' N - 76° 14.0368' W.
- (iii) Big Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 09.3267' N - 76° 08.2562' W; running southerly to a point on the south shore 36° 08.9730' N - 76° 08.3175' W. Joint waters north and Coastal Waters south of a line beginning at a point on the west shore 36° 07.9621' N - 76° 07.1818' W; running easterly to a point on the east shore 36° 08.2706' N - 76° 06.2525' W.
- (iv) Pasquotank River - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 18.0768' N - 76° 13.0979' W; running easterly along the south side of the Highway 158 Bridge to a point on the east shore 36° 18.0594' N - 76° 12.9620' W. Joint Waters west and Coastal Waters east of a line beginning on the north shore 36° 11.4282' N - 76° 01.2876' W; running southwesterly to a point on the south shore 36° 08.7563' N - 76° 03.6991' W.
- (A) Little Flatty Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 11.5209' N - 76° 04.6517' W; running southerly to a point on the south shore 36° 10.9973' N - 76° 04.5149' W.
- (B) New Begun Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 13.3298' N - 76° 08.2878' W; running southerly to a point on the south shore 36° 13.0286' N - 76° 08.1820' W.
- (I) Paling Creek - All waters in this waterbody are designated as Inland.
- (II) James Creek - All waters in this waterbody are designated as Inland.

- (23) Pender County:
- (a) Cape Fear River - All waters within this waterbody for Pender County are designated as Joint.
 - (i) Thorofare - For the easternmost entrance into the Black River: Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 34° 22.0493' N - 78° 04.4435' W; running northeasterly to a point on the east shore 34° 22.0783' N - 78° 04.4123' W. For the westernmost entrance into the Cape Fear River: Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 21.9197' N - 78° 07.0527' W; running southeasterly to a point on the south shore 34° 21.8618' N - 78° 06.9992' W.
 - (ii) Black River - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 34° 22.0783' N - 78° 04.4123' W; running southeasterly to a point on the south shore 34° 21.9950' N - 78° 04.2864' W.
 - (iii) Northeast Cape Fear River - Inland Waters north and Joint Waters south of a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of NC 210 bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.
 - (A) Cowpen Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 34° 22.1417' N - 77° 59.3357' W; running southerly to a point on the south shore 34° 22.1298' N - 77° 59.3426' W.
 - (B) Long Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the west shore 34° 22.7149' N - 77° 58.2797' W; running northeasterly to a point on the east shore 34° 22.7428' N - 77° 58.2348' W.
 - (C) Turkey Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 22.8465' N - 77° 57.4827' W; running southerly to a point on the south shore 34° 22.7895' N - 77° 57.4452' W.
 - (D) Old Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.5249' N - 77° 52.1493' W; running northeasterly to a point on the east shore 34° 22.5327' N - 77° 52.1278' W.
 - (E) Honey Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 34° 22.8627' N - 77° 51.0887' W; running easterly to

- a point on the east shore 34° 22.8609' N - 77° 51.0507' W.
- (F) Harrisons Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the north shore 34° 24.1859' N - 77° 48.6570' W; running southwesterly to a point on the south shore 34° 24.1387' N - 77° 48.6982' W.
- (G) Island Creek - Inland Waters east and Joint Waters west of a line beginning at a point on the south shore 34° 23.2509' N - 77° 47.3377' W; running northeasterly to a point on the north shore 34° 23.3322' N - 77° 49.3208' W.
- (b) Topsail Sound And Tributaries - All waters within this these waterbodies are designated as Coastal.
- (c) Beasleys (Barlow) Creek - All waters within this waterbody are designated as Coastal.
- (24) Perquimans County:
- (a) Albemarle Sound - All waters within this waterbody in Perquimans County are designated as Coastal.
- (i) All Manmade Tributaries - All waters within this water body are designated as Joint.
- (ii) Yeopim River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 05.4526' N - 76° 27.7651' W; running southerly to a point on the south shore at Norcum Point 36° 05.1029' N - 76° 27.7120' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 04.7426' N - 76° 24.2536' W; running southwesterly to a point on the south shore 36° 04.1136' N - 76° 24.5365' W.
- (A) Yeopim Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore of 36° 04.7206' N - 76° 24.8396' W; running easterly to a point on the east shore ~~36° 04.7426' N - 76° 24.2536' W~~ 36° 04.7426' N - 76° 24.2536' W.
- (iii) Perquimans River - Joint Waters west and Coastal Waters east of a line beginning at a point on the west shore 36° 05.9669' N - 76° 18.1791' W; running northeasterly to a point on the east shore 36° 06.7655' N - 76° 16.5953' W. Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the west shore 36° 11.6569' N - 76° 28.0055' W; running southeasterly to a point on the east shore 36° 11.6123' N - 76° 27.9382' W.
- (A) Walter's Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 11.1305' N - 76° 27.9185' W; running southeasterly to a point on the south shore 36° 11.0224' N - 76° 27.6626' W.
- (B) Mill Pond Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 11.9757' N - 76° 27.5752' W; running easterly to a point on the east shore 36° 11.9766' N - 76° 27.2511' W.

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| <p>(C) Suttons Creek - Inland Waters north and Joint Waters south of a line beginning at a point on the west shore 36° 10.0394' N - 76° 23.7945' W; running southeasterly to a point on the east shore 36° 09.9325' N - 76° 23.5263' W.</p> <p>(D) Jackson (Cove) Creek - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the north shore 36° 08.4642' N - 76° 20.3324' W; running southeasterly to a point on the east shore 36° 08.4159' N - 76° 20.2890' W.</p> <p>(E) Muddy Creek - Inland Waters northwest and Joint Waters southwest of a line beginning at a point on the north shore 36° 07.0381' N - 76° 17.1350' W; running southeasterly to a point on the east shore 36° 07.0218' N - 76° 17.1226' W.</p> <p>(iv) Little River - Inland Waters northwest and Joint Waters southeast of a line beginning at a point on the west shore 36° 12.2950' N - 76° 17.1405' W; running northeasterly to a point on the east shore 36° 12.5237' N - 76° 16.9418' W. Joint Waters west and Coastal Waters east of a line beginning at a point on the north shore 36° 07.5322' N - 76° 10.6901' W; running southwesterly to a point on the south shore 36° 06.4199' N - 76° 11.6047' W.</p> | <p>(A) Deep Creek - Inland Waters southwest and Joint Waters northeast of a line beginning at a point on the north shore 36° 11.0945' N - 76° 16.6717' W; running southeasterly to a point on the south shore 36° 10.7510' N - 76° 16.2258' W.</p> <p>(B) Davis Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 36° 12.2950' N - 76° 17.1405' W; running southerly to a point on the south shore 36° 12.2222' N - 76° 17.1153' W.</p> <p>(25) Tyrrell County:</p> <p>(a) Albemarle Sound - All waters within this waterbody in Tyrrell County are designated as Coastal.</p> <p>(i) All Manmade Tributaries - All manmade tributaries within this waterbody are designated as Joint.</p> <p>(ii) Banton (Maybell) Creek - Inland Waters south and Coastal Waters north of a line beginning at a point on the west shore 35° 56.0552' N - 76° 22.0664' W; running northeasterly to a point on the east shore 35° 56.1151' N - 76° 21.8760' W.</p> <p>(iii) Scuppernong River - Coastal Waters northwest and Joint Waters southeast of a line beginning at a point on the northeast shore 35° 56.7196' N - 76° 18.8964' W; running southwesterly to a point on the southwest shore at 35° 56.3351' N - 76° 19.6609' W. Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0158' N - 76° 15.4605' W; running easterly to a point on the east</p> |
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shore 35° 54.0406' N - 76° 15.3007' W.

(A) First Creek (Rider's Creek) - Inland Waters south and Joint Waters north of a line beginning at a point on the west shore 35° 54.0495' N - 76° 15.2842' W; running northeasterly to a point on the east shore 35° 54.0641' N - 76° 15.2554' W.

(B) Furlough Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 55.6391' N - 76° 18.9797' W; running southwesterly to a point on the south shore 35° 55.6322' N - 76° 18.9907' W.

(iv) Alligator River - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore at Cherry Ridge Landing 35° 42.2172' N - 76° 08.4686' W; running southerly to a point on the south shore 35° 42.1327' N - 76° 08.5002' W. Coastal Waters north and Joint Waters south of a line running along the north side of the Highway 64 Bridge beginning at a point on the west shore 35° 54.2903' N - 76° 01.6818' W; running easterly to a point on the east shore 35° 53.6835' N - 75° 58.8578' W.

(A) Little Alligator River - Inland Waters west and Coastal Waters east of a line beginning at a point on the north shore 35° 56.7640' N - 76° 01.0299' W; running southerly

to a point on the south shore 35° 55.9362' N - 76° 01.2492' W.

(B) Second Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 51.7616' N - 76° 03.5105' W; running southerly to a point on the south shore 35° 51.1317' N - 76° 03.8003' W.

(C) Goose Creek - Inland Waters west and Joint Waters east of a line beginning at a point on the north shore 35° 50.2658' N - 76° 03.9115' W; running southerly to a point on the south shore 35° 50.2123' N - 76° 03.9120' W.

(D) The Frying Pan - Joint Waters by connection with Alligator River.

(E) Gum Neck Landing Ditch - Inland Waters northeast and Joint Waters southwest of a line beginning at a point on the west shore 35° 41.6054' N - 76° 06.8215' W; running southeasterly to a point on the east shore 35° 41.5841' N - 76° 06.7991' W.

(26) Washington County:

(a) Albemarle Sound - All waters within this waterbody in Washington County are designated as Coastal.

(i) All Manmade Tributaries - All manmade tributaries of Albemarle Sound within Washington County are designated as Joint.

(ii) Mackeys (Kendrick) Creek - Inland Waters southeast and

Creek; running southerly to a point 33° 52.5942' N - 78° 28.6759' W at Tubbs Inlet; and south and west of a line beginning at a point 33° 53.6266' N - 78° 26.6262' W; running easterly to a point 33° 53.6501' N - 78° 26.5635' W.

- (6) Sunset Beach - all waters of the IWW west of a line beginning at a point 33° 52.9247' N - 78° 30.7041' W on the north end of the Highway 1172 Bridge; running southerly to a point 33° 52.8417' N - 78° 30.6490' W at the south end of the bridge.
- (7) Calabash River - all waters west of a line beginning at a point 33° 53.4368' N - 78° 32.9720' W on the north end of the Highway 1164 Bridge; running southerly to a point 33° 53.3534' N - 78° 32.9720' W at the south end of the bridge.

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

15A NCAC 03R .0115 ANADROMOUS FISH SPAWNING AREAS

The anadromous fish spawning areas as defined in 15A NCAC 03I .0101 and referenced in 15A NCAC 03N .0106 are delineated in the following ~~coastal waters~~: Coastal Fishing Waters:

- (1) Currituck Sound Area:
 - (a) Northwest River - all waters of the Northwest River and its tributaries east of a line beginning on the north shore at a point 36° 30.8374' N - 76° 04.8770' W; running southerly to the south shore to a point 36° 30.7061' N - 76° 04.8916' W.
 - (b) Tull Bay/Tull Creek - all waters of Tull Bay and its tributaries northeast of a line beginning on the north shore at a point 36° 30.0991' N - 76° 04.8587' W; running southeasterly to the south shore to a point 36° 29.9599' N - 76° 04.7126' W; and south of a line beginning on the west shore at a point 36° 30.9867' N - 76° 02.5868' W; running easterly to the east shore to a point 36° 31.0045' N - 76° 02.3780' W; and west of a line beginning on the north shore at a point 36° 30.8291' N - 76° 02.1329' W; running southwesterly to the south shore to a point 36° 30.1512' N - 76° 02.4982' W.
- (2) Albemarle Sound Area:
 - (a) Big Flatty Creek - all waters of Big Flatty Creek and its tributaries east of a line beginning on the north shore at a point 36° 09.3267' N - 76° 08.2562' W; running southerly to the south shore to a point 36° 08.9730' N - 76°

08.3175' W and north of a line beginning on the west shore at a point 36° 07.9621' N - 76° 07.1818' W; running easterly to the east shore to a point 36° 08.2706' N - 76° 06.2525' W.

- (b) Batchelor Bay - west of a line beginning on the north shore at a point 35° 58.2070' N - 76° 42.7267' W; running southeasterly to the south shore to a point 35° 56.5622' N - 76° 41.5506' W.
- (c) Bull Bay - southwest of a line beginning on the northwest shore at a point 35° 58.9002' N - 76° 23.9965' W; running southeasterly to the southeast shore at a point 35° 56.7198' N - 76° 18.8964' W.
- (3) North River - all waters of the North River and its tributaries east of a line beginning on the north shore at a point 36° 18.7703' N - 75° 58.7384' W; running southerly to the south shore to a point 36° 18.4130' N - 75° 58.7228' W; and north of a line beginning on the west shore at a point 36° 16.9952' N - 75° 57.0758' W; running easterly to the east shore to a point 36° 16.9801' N - 75° 56.6820' W.
- (4) Pasquotank River - all waters of the Pasquotank River and its tributaries south of a line beginning on the west shore at a point 36° 18.0768' N - 76° 13.0979' W; running easterly to the east shore along the south side of the Highway 158 Bridge to a point 36° 18.0594' N - 76° 12.9620' W; and northwest of a line beginning on the northeast shore at a point 36° 14.3294' N - 76° 04.7866' W; running southwesterly to the southwest shore to a point 36° 12.8147' N - 76° 07.0465' W.
- (5) Pasquotank River Area:
 - (a) Charles Creek - north of a line beginning on the west shore at a point 36° 17.8090' N - 76° 13.0732' W; running easterly to the east shore to a point 36° 17.8024' N - 76° 13.0407' W.
 - (b) New Begun Creek - east of a line beginning on the north shore at a point 36° 13.3298' N - 76° 08.2878' W; running southerly to the south shore to a point 36° 13.0286' N - 76° 08.1820' W.
- (6) Little River - all waters of the Little River and its tributaries southeast of a line beginning on the west shore at a point 36° 12.5237' N - 76° 16.9418' W; running southeasterly to the east shore to a point 36° 12.2950' N - 76° 17.1405' W; and north of a line beginning on the west shore at a point 36° 09.6537' N - 76° 15.0689'

- W; running northeast to the east shore to a point 36° 10.2112' N - 76° 14.0287' W.
- (7) Perquimans River - all waters of the Perquimans River and its tributaries northeast of a line beginning on the west shore at a point 36° 11.6569' N - 76° 28.0055' W; running southeasterly to the east shore to a point 36° 11.6123' N - 76° 27.9382' W; and northwest of a line beginning on the southwest shore at a point 36° 11.1512' N - 76° 27.4424' W; running northeasterly to the northeast shore to a point 36° 11.5124' N - 76° 26.7298' W.
- (8) Perquimans River Area:
- (a) Walter's Creek - northeast of a line beginning on the north shore at a point 36° 11.1305' N - 76° 27.9185' W; running southeasterly to the south shore to a point 36° 11.0224' N - 76° 27.6626' W.
- (b) Mill Creek - south of a line beginning on the west shore at a point 36° 11.9766' N - 76° 27.2511' W; running easterly to the east shore to a point 36° 11.9757' N - 76° 27.5752' W.
- (9) Yeopim River - all waters of the Yeopim River and its tributaries east of a line beginning on the north shore at a point 36° 05.4526' N - 76° 27.7651' W; running southerly to the south shore to a point on Norcum Point 36° 05.1029' N - 76° 27.7120' W; and west of a line beginning on the north shore at a point 36° 04.7426' N - 76° 24.2537' W; running southwesterly to the south shore to a point 36° 04.1137' N - 76° 24.5366' W.
- (10) Yeopim River Area, Yeopim Creek - south of a line beginning on the west shore at a point 36° 04.7206' N - 76° 24.8396' W; running easterly to the east shore to a point 36° 04.7426' N - 76° 24.2536' W.
- (11) Edenton Bay - all waters of Edenton Bay and its tributaries west of a line beginning on the north shore at a point 36° 03.3757' N - 76° 36.3629' W; running southerly to the south shore to a point 36° 03.3551' N - 76° 36.3574' W; and north of a line beginning on the west shore at a point 36° 02.1767' N - 76° 38.4058' W; running easterly to the east shore to a point 36° 02.0299' N - 76° 36.0445' W; and east of a line beginning on the west shore at a point 36° 03.2819' N - 76° 37.0138' W; running northeasterly to the east shore to a point 36° 03.4185' N - 76° 36.6783' W.
- (12) Chowan River - all waters of the Chowan River and tributaries northwest of a line beginning on the west shore at a point 36° 02.3162' N - 76° 42.4896' W; running northeasterly to the east shore to a point 36° 03.1013' N - 76° 40.8732' W; and south of a line beginning on the west shore at a point 36° 32.6293' N - 76° 55.3564' W; and running to the east shore to a point 36° 32.6284' N - 76° 55.1757' W.
- (13) Chowan River Area, Meherrin River - all waters of the Meherrin River and tributaries west of a line beginning on the north shore at a point 36° 25.9937' N - 76° 56.8884' W; running southerly to the south shore to a point 36° 25.7926' N - 76° 56.8966' W; and south of a line beginning on the west shore at a point 36° 32.7867' N - 77° 09.8885' W; running easterly to the east shore to a point 36° 32.7807' N - 77° 09.8565' W.
- (14) Cashie River - all waters of the Cashie River and tributaries east of a line beginning on the north shore at a point 35° 54.7865' N - 76° 49.0521' W; running southerly to the south shore at a point 35° 54.6691' N - 76° 49.0553' W; west of a line beginning on the ~~north west~~ shore at a point ~~35° 56.4598' N - 76° 43.8093' W~~; 35° 56.2934' N - 76° 44.1769' W; running ~~southerly~~ easterly to the north shore to a point on the north shore of an island in the mouth of the river 35° 56.2250' N - 76° 43.9265' W; west of a line beginning on the south shore at a point of an island in the mouth of the river 35° 56.1254' N - 76° 43.9846' W; running southerly to the south shore to a point 35° 56.0650' N - 76° 43.9599' W.
- (15) Middle River - all waters of the Middle River southwest of a line beginning on the west shore at a point 35° 55.4000' N - 76° 43.8259' W; running southeasterly to the east shore to a point 35° 55.3977' N - 76° 43.6797' W.
- (16) Eastmost River - all waters of the Eastmost River and its tributaries south of a line beginning on the west shore at a point 35° 56.5024' N - 76° 42.4877' W; running westerly to the east shore to a point 35° 56.4070' N - 76° 42.7647' W.
- (17) Roanoke River - all waters of the Roanoke River and tributaries south of a line beginning on the west shore at a point 35° 56.5068' N - 76° 41.8858' W; running easterly to the east shore to a point 35° 56.5324' N - 76° 41.5896' W; and southeast of a line beginning on the west shore at a point 36° 12.5264' N - 77° 23.0223' W; running northeasterly to the east shore along the south side of the Highway 258 Bridge to a point 36° 12.5674' N - 77° 22.9724' W.
- (18) Roanoke River Area:
- (a) Warren Neck Creek - all waters of Warren Neck Creek and its tributaries west of a line beginning on the northwest shore at a point 35° 52.1820' N - 76° 47.4855' W; running southerly to the southeast shore to a

- point 35° 52.1448' N - 76° 47.4237' W.
- (b) Thoroughfare - all waters of the Thoroughfare south of a line beginning on the west shore at a point 35° 54.0510' N - 76° 48.1206' W; running easterly to the east shore to a point 35° 54.0684' N - 76° 48.0613' W; and north of a line beginning on the west shore at a point 35° 53.2842' N - 76° 48.8650' W; running easterly to the east shore to a point 35° 55.2800' N - 76° 48.8077' W.
- (c) Devils Gut - all waters of Devils Gut and its tributaries northwest of a line beginning on the west shore at a point 35° 49.5300' N - 76° 54.2209' W; running easterly to the east shore to a point 35° 49.5486' N - 76° 54.1703' W.
- (d) Conine Creek - all waters of Conine Creek and its tributaries west of a line beginning on the north shore at a point 35° 52.9752' N - 76° 58.0474' W; running southwesterly to the south shore to a point 35° 52.9776' N - 76° 57.9958' W.
- (19) Scuppernong River - all waters of the Scuppernong River and tributaries southeast of a line beginning on the northeast shore at a point 35° 56.7196' N - 76° 18.8964' W; running southwesterly to the southwest shore to a point 35° 56.3351' N - 76° 19.6609' W; and north of a line beginning on the west shore at a point 35° 54.0158' N - 76° 15.4605' W; running easterly to the east shore to a point 35° 54.0406' N - 76° 15.3007' W.
- (20) Alligator River - all waters of the Alligator River and tributaries east of a line beginning on the north shore at Cherry Ridge Landing at a point 35° 42.2172' N - 76° 08.4686' W; running southerly to the south shore to a point 35° 42.1327' N - 76° 08.5002' W; and south of a line beginning on the west shore at a point 35° 57.4252' N - 76° 00.8704' W; running easterly to the east shore to a point 35° 57.5494' N - 75° 56.8268' W.
- (21) Alligator River Area, the Frying Pan - all waters of the Frying Pan and its tributaries west of a line beginning on the north shore at a point 35° 46.0777' N - 76° 03.3439' W; running southerly to the south shore to a point 35° 45.6011' N - 76° 03.3692' W.
- (22) Neuse River - all waters of the Neuse River and its tributaries northwest of a line beginning on the west shore at a point 35° 08.8723' N - 77° 04.6700' W; running northeasterly to the east shore to a point 35° 09.1032' N - 77° 04.3355' W and southeast of a line at Pitch Kettle Creek beginning on the north shore at a point 35° 16.9793' N - 77° 15.5529' W; running south to the south shore to a point 35° 16.9237' N - 77° 15.5461' W.
- (23) Neuse River Area:
- (a) Smith Creek - north of a line beginning on the west shore at a point 35° 02.2439' N - 76° 42.3035' W; running easterly to the east shore to a point 35° 02.2392' N - 76° 42.1910' W.
- (b) Kershaw Creek - north of a line beginning on the west shore at a point 35° 02.4197' N - 76° 43.7886' W; running easterly to the east shore to a point 35° 02.4218' N - 76° 43.7367' W.
- (24) White Oak River - all waters north of a line beginning at a point on the west shore 34° 46.0728' N - 77° 08.9657' W; running easterly to a point on the east shore 34° 46.1431' N - 77° 08.8907' W; running north to the Coastal - Inland ~~waters~~ Fishing Waters boundary line beginning at a point on the west shore 34° 48.1466' N - 77° 11.4711' W; running northeasterly to a point on the east shore 34° 48.1620' N - 77° 11.4244' W.
- (25) Cape Fear River - all waters north of a line beginning at a point on the west shore 34° 07.7034' N - 77° 57.3431' W; running easterly to a point on the east shore 34° 08.0518' N - 77° 55.7626' W; running north to the Joint - Inland ~~waters~~ Fishing Waters boundary on the following rivers:
- (a) Cape Fear River - at a line beginning at a point on the west shore 34° 24.2628' N - 78° 17.6390' W; running northeasterly along the Lock and Dam #4 ~~No. 1~~ to a point on the east shore 34° 24.2958' N - 78° 17.5634' W.
- (b) Black River - at a line beginning at a point on the north shore 34° 22.0783' N - 78° 04.4123' W; running southeasterly to a point on the south shore 34° 21.9950' N - 78° 04.2864' W.
- (c) Northeast Cape Fear River - at a line beginning at a point on the west side 34° 26.5658' N - 77° 50.0871' W; running northeasterly along the southern side of the ~~NC~~ Highway 210 Bridge to a point on the east side 34° 26.6065' N - 77° 49.9955' W.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SECTION .0200 – FISHERY MANAGEMENT AREAS

**15A NCAC 03R .0202 RIVER HERRING
MANAGEMENT AREAS**

(a) The Albemarle Sound River Herring Management Area referenced in 15A NCAC 03J .0209 is defined as the Coastal and Joint Fishing Waters of Albemarle, Currituck, Roanoke, Croatan and Pamlico sounds and all their joint water tributaries north of a line beginning on the west shore at a point 35° 48.5015' N - 75° 44.1228' W on Roanoke Marshes Point; running southeasterly to the east shore to a point 35° 44.1710' N - 75° 31.0520' W on the north point of Eagles Nest Bay.

(b) The Chowan River River Herring Management Area referenced in 15A NCAC 03J .0209 is defined as the area

northwest of a line beginning on the west shore at a point 35° 59.9267' N - 76° 41.0313' W on Black Walnut Point; running northeasterly to the east shore to a point 36° 02.2140' N - 76° 39.3240' W on Reedy Point, to the North Carolina/Virginia state line; including the Meherrin River.

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

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 August 21, 2014.

**REGISTER CITATION TO THE
NOTICE OF TEXT****AGRICULTURE, COMMISSIONER OF**

| | | | | | |
|------------------------------|----|------|-----|--------|-----------|
| <u>Signage</u> | 02 | NCAC | 52K | .0301* | 28:18 NCR |
| <u>Fencing</u> | 02 | NCAC | 52K | .0401* | 28:18 NCR |
| <u>Hand Washing Stations</u> | 02 | NCAC | 52K | .0501* | 28:18 NCR |

ALCOHOLIC BEVERAGE CONTROL COMMISSION

| | | | | | |
|--|----|------|-----|--------|-----------|
| <u>Applications for Permits: General Provisions</u> | 04 | NCAC | 02S | .0102* | 28:22 NCR |
| <u>Labels to be Submitted to Commission</u> | 04 | NCAC | 02T | .0302* | 28:22 NCR |
| <u>Label Contents: Malt Beverages</u> | 04 | NCAC | 02T | .0303* | 28:22 NCR |
| <u>Growlers</u> | 04 | NCAC | 02T | .0308* | 28:22 NCR |
| <u>Growlers: Cleaning, Sanitizing, Filling and Sealing</u> | 04 | NCAC | 02T | .0309* | 28:22 NCR |

LABOR, DEPARTMENT OF

| | | | | | |
|--|----|------|----|--------|-----------|
| <u>Design and Construction Standards</u> | 13 | NCAC | 13 | .0401* | 28:22 NCR |
|--|----|------|----|--------|-----------|

ENVIRONMENTAL MANAGEMENT COMMISSION

| | | | | | |
|--------------------------|-----|------|-----|--------|-----------|
| <u>Broad River Basin</u> | 15A | NCAC | 02B | .0306* | 28:16 NCR |
|--------------------------|-----|------|-----|--------|-----------|

DENTAL EXAMINERS, BOARD OF

| | | | | | |
|--|----|------|-----|--------|-----------|
| <u>Examination Required; Exemptions</u> | 21 | NCAC | 16B | .0101* | 28:15 NCR |
| <u>In General</u> | 21 | NCAC | 16B | .0201* | 28:15 NCR |
| <u>Student May Apply</u> | 21 | NCAC | 16B | .0202* | 28:15 NCR |
| <u>Application for Licensure</u> | 21 | NCAC | 16B | .0301* | 28:15 NCR |
| <u>Board Approved Examinations</u> | 21 | NCAC | 16B | .0303* | 28:15 NCR |
| <u>Application for Board Conducted Examination</u> | 21 | NCAC | 16B | .0401 | 28:15 NCR |
| <u>Time for Filing</u> | 21 | NCAC | 16B | .0402 | 28:15 NCR |
| <u>Examination Conducted by the Board</u> | 21 | NCAC | 16B | .0403 | 28:15 NCR |
| <u>Patients and Supplies for Board Conducted Clinical Examina...</u> | 21 | NCAC | 16B | .0404 | 28:15 NCR |
| <u>Scope of Board Conducted Clinical Examination</u> | 21 | NCAC | 16B | .0405 | 28:15 NCR |
| <u>Board Conducted Reexamination</u> | 21 | NCAC | 16B | .0406 | 28:15 NCR |
| <u>Dental Licensure by Credentials</u> | 21 | NCAC | 16B | .0501* | 28:15 NCR |
| <u>Limited Volunteer Dental License</u> | 21 | NCAC | 16B | .0601* | 28:15 NCR |
| <u>Instructor's License</u> | 21 | NCAC | 16B | .0701* | 28:15 NCR |
| <u>Temporary Volunteer Dental Permit</u> | 21 | NCAC | 16B | .0801* | 28:15 NCR |
| <u>Definitions</u> | 21 | NCAC | 16B | .0901* | 28:15 NCR |
| <u>Dental Licensure by Endorsement Based on Status as Milita...</u> | 21 | NCAC | 16B | .1002* | 28:15 NCR |
| <u>Proof of Competency</u> | 21 | NCAC | 16B | .1101* | 28:15 NCR |

APPROVED RULES

| | | | | | |
|---|----|------|-----|--------|-----------|
| <u>Licensure</u> | 21 | NCAC | 16C | .0101* | 28:16 NCR |
| <u>Student May Apply</u> | 21 | NCAC | 16C | .0202* | 28:16 NCR |
| <u>Application for Licensure</u> | 21 | NCAC | 16C | .0301* | 28:16 NCR |
| <u>Board Approved Examinations</u> | 21 | NCAC | 16C | .0303* | 28:16 NCR |
| <u>Reexamination</u> | 21 | NCAC | 16C | .0311* | 28:16 NCR |
| <u>Application for Examination Conducted by the Board</u> | 21 | NCAC | 16C | .0401 | 28:16 NCR |
| <u>Time for Filing</u> | 21 | NCAC | 16C | .0402 | 28:16 NCR |
| <u>Examination Conducted by the Board</u> | 21 | NCAC | 16C | .0403 | 28:16 NCR |
| <u>Patients and Supplies for Board Conducted Clinical Examin...</u> | 21 | NCAC | 16C | .0404 | 28:16 NCR |
| <u>Board Conducted Reexamination</u> | 21 | NCAC | 16C | .0405 | 28:16 NCR |
| <u>Dental Hygiene Licensure by Credentials</u> | 21 | NCAC | 16C | .0501* | 28:16 NCR |
| <u>Proof of Competency</u> | 21 | NCAC | 16C | .0601* | 28:16 NCR |
| <u>Patient Records</u> | 21 | NCAC | 16D | .0103 | 28:18 NCR |
| <u>Temporary Approval Prior to Site Inspection</u> | 21 | NCAC | 16Q | .0303* | 28:07 NCR |

EXAMINERS OF ELECTRICAL CONTRACTORS, BOARD OF

| | | | | | |
|---|----|------|-----|--------|-----------|
| <u>Electrical Installation: Project: Project Value-Limitation</u> | 21 | NCAC | 18B | .0303* | 28:20 NCR |
| <u>Annual License Fees</u> | 21 | NCAC | 18B | .0404* | 28:09 NCR |

MEDICAL BOARD

| | | | | | |
|--|----|------|-----|--------|-----------|
| <u>Reinstatement of Physician License</u> | 21 | NCAC | 32B | .1350* | 28:22 NCR |
| <u>Reactivation of Physician License</u> | 21 | NCAC | 32B | .1360* | 28:22 NCR |
| <u>Application for Resident's Training License</u> | 21 | NCAC | 32B | .1402* | 28:22 NCR |
| <u>Administration of Vaccines by Pharmacists</u> | 21 | NCAC | 32U | .0101* | 28:21 NCR |

PHARMACY, BOARD OF

| | | | | | |
|--|----|------|----|--------|-----------|
| <u>Administration of Vaccines by Pharmacists</u> | 21 | NCAC | 46 | .2507* | 28:20 NCR |
|--|----|------|----|--------|-----------|

APPRAISAL BOARD

| | | | | | |
|---|----|------|-----|-------|--------------------|
| <u>Expired Registration, License or Certificate</u> | 21 | NCAC | 57A | .0206 | n/a G.S. 150B-21.5 |
|---|----|------|-----|-------|--------------------|

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

*History Note: Authority G.S. 106-520.3A;
Eff. September 1, 2006;
Amended Eff. September 1, 2014.*

02 NCAC 52K .0301 SIGNAGE

An animal contact exhibit shall provide visible signage at the entrance and exit of the exhibit to educate the public regarding:

- (1) the fact that animal contact may pose a health risk;
- (2) items that are prohibited in animal areas;
- (3) the identity of high risk populations, including:
 - (a) the elderly;
 - (b) children under the age of six;
 - (c) women who are pregnant;
 - (d) people with an existing health condition; and
- (4) the location of hand-washing stations.

02 NCAC 52K .0401 FENCING

(a) Animals and bedding shall be separated from the public with fencing to minimize the public's contact with manure and bedding. This does not apply to:

- (1) animal rides (including pony, camel, and elephant rides);
- (2) milking booths; or
- (3) the petting of an animal held or restrained outside of its housing area by an exhibit operator or patron as part of an educational or photographic opportunity where there is limited possibility of contact with manure and bedding.

(b) Fencing shall be at least 29 inches high. On the side(s) of the exhibit intended for public contact, the fencing shall have a solid board or panel at the bottom at least eight inches high to contain manure and bedding.

(c) Fencing may allow children to reach through or over to pet and feed animals.

History Note: Authority G.S. 106-520.3A;

Eff. September 1, 2006;

Amended Eff. September 1, 2014.

02 NCAC 52K .0501 HAND-WASHING STATIONS

(a) Hand-washing stations with soap, running water, paper towels and disposal containers shall be located within 10 feet of the exit of an animal contact exhibit, wherever feasible.

(b) Hand-washing stations suitable for small children shall be available in the same area as the stations in Paragraph (a) of this Rule.

(c) Signage shall be provided to direct patrons to hand-washing stations.

(d) In order to promote hand-washing with soap and water, dispensers for waterless hand sanitizing lotions, gels or hand wipes shall not be provided in the transition or exhibit area. Such dispensers may be placed at the entrance of milking booths to reduce the potential for introduction of disease to the exhibit animals.

History Note: Authority G.S. 106-520.3A;

Eff. September 1, 2006;

Amended Eff. September 1, 2014; November 1, 2008.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission's office or web site as referenced in 04 NCAC 02R .0102.

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he or she wants permits, and shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;

- (2) sole proprietorship, corporate, limited liability company or partnership name;
- (3) mailing address and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation or limited liability company, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by a power of attorney;
- (9) a diagram of the premises showing:
 - (A) entrances and exits;
 - (B) storage area for alcoholic beverages; and
 - (C) locations where alcoholic beverages will be served or consumed;
- (10) that the applicant is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner;
- (11) that the applicant intends to carry on the business authorized by the permit himself or herself or under his or her immediate supervision and direction; and
- (12) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by a power of attorney, a resident manager to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his or her licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. The Commission shall waive this requirement upon a showing by the permittee that he or she will suffer financial hardship or the safety of the employees will be jeopardized.

(g) Areas for Sales and Consumption. In determining the areas where alcoholic beverages will be sold and consumed, the Commission shall consider the convenience of the permittee and patrons, allowing the fullest use of the premises consistent with the control of the sale and consumption of alcoholic beverages, but the Commission will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by permitted retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic beverages shall be sold, served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums, or bleachers at public gatherings, except as provided in Paragraph (l) of this Rule.

As used in this Paragraph, the term "enclosed establishment" includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location within a single terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and 04 NCAC 02S .0519.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include meat, poultry, fish, bread,

cereals, vegetables, fruits, vegetable and fruit juices, and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments, and spices.

(l) Professional Sporting Events. Notwithstanding Paragraph (i) of this Rule, holders of a retail permit pursuant to G.S. 18B-1001(1) may sell malt beverages for consumption in the seating areas of stadiums, ball parks, and similar public places with a seating capacity of 3,000 or more during professional sporting events pursuant to G.S. 18B-1009, provided that:

- (1) the permittee or the permittee's employee shall not wear or display alcoholic beverage branded advertising;
- (2) the permittee or the permittee's employee shall not use branded carrying trays, coolers, or other equipment to transport malt beverage products;
- (3) the permittee or the permittee's employee may display the malt beverage product names and prices provided that all of the product names are displayed with the same font size and font style; and
- (4) in-stand sales shall cease, whichever is earlier, upon the cessation of other malt beverage sales or upon the commencement of:
 - (A) the eighth inning during baseball games; provided that if a single ticket allows entry to more than one baseball game, then the eighth inning of the final game;
 - (B) the fourth quarter during football and basketball games;
 - (C) the sixtieth minute during soccer games;
 - (D) the third period during hockey games;
 - (E) the final 25 percent of the distance scheduled for automotive races; and
 - (F) the final hour of the anticipated conclusion of a contest or event for all other events.

History Note: Authority 18B-100; 18B-206(a); 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009;

Eff. January 1, 1982;

Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984;

Temporary Amendment Eff. October 25, 2013;

Amended Eff. September 1, 2014.

04 NCAC 02T .0302 LABELS TO BE SUBMITTED TO COMMISSION

(a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval Form."

(b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, bottler, and importer of the product.

(c) Notwithstanding Paragraphs (a) and (b) of this Rule, holders of retail permits pursuant to G.S. 18B-1001(1),(2), or (16) that

fill or refill growlers on demand are not required to submit the labels required by Rule .0303(b) of this Section.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-1001(1); 18B-1001(2); 18B-1001(16); Eff. January 1, 1982; Temporary Amendment Eff. October 25, 2013; Amended Eff. September 1, 2014.

04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES

(a) Containers that are prefilled by the manufacturer shall be affixed with malt beverage labels that shall contain the following information in a legible form:

- (1) brand name of product;
- (2) name and address of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per container; and
- (6) the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

(b) Growlers that are filled or refilled on demand pursuant to Rule .0309 of this Subchapter shall be affixed with a label or a tag that shall contain the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants from the original manufacturer, the amount of each (milligrams) per container;
- (6) name and address of business that filled or refilled the growler;
- (7) date of fill or refill;
- (8) if the malt beverage is more than six percent alcohol by volume, the amount of alcohol by volume pursuant to G.S. 18B-101(9); and
- (9) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

(c) Growlers that are filled or refilled on demand pursuant to Rule .0309 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

History Note: Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; 18B-1001(1); 18B-1001(2); 18B-1001(16); 27 C.F.R. 16.20 through 16.22;

*Eff. January 1, 1982;
Amended Eff. April 1, 2011;
Temporary Amendment Eff. October 25, 2013;
Amended Eff. September 1, 2014.*

04 NCAC 02T .0308 GROWLERS

(a) As used in this Rule, a "growler" is a refillable rigid glass, ceramic, plastic, aluminum, or stainless steel container with a flip-top or screw-on lid that is no larger than 2 liters (0.5283 gallons) into which a malt beverage is prefilled, filled, or refilled for off-premises consumption.

(b) Holders of only a brewery permit may sell, deliver, and ship growlers prefilled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that accurately provides the information as required by Rules .0303(a) and .0305 of this Section.

(c) Holders of retail permits pursuant to G.S. 18B-1001(1),(2), or (16) who do not hold a brewery permit shall not prefill growlers with malt beverage.

(d) Holders of a brewery permit who also have retail permits pursuant to G.S. 18B-1001(1) may fill or refill growlers on demand with the brewery's malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and .0305 of this Section is affixed to the growler.

(e) Holders of retail permits pursuant to G.S. 18B-1001(1),(2), or (16) may fill or refill growlers on demand with draft malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and .0305 of this Section is affixed to the growler.

(f) Holders of retail permits pursuant to G.S. 18B-1001(1),(2), or (16) shall affix a label as required by Rules .0303(b) and .0305 of this Section to the growler when filling or refilling a growler.

(g) Holders of retail permits pursuant to G.S. 18B-1001(1),(2), or (16), may, in their discretion, refuse to fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

*History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; 18B-1001(1); 18B-1001(2); 18B-1001(16); Eff. April 1, 2011;
Temporary Amendment Eff. October 25, 2013;
Amended Eff. September 1, 2014.*

04 NCAC 02T .0309 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING

(a) Filling and refilling growlers shall only occur on demand by a customer.

(b) Growlers shall only be filled or refilled by a permittee or the permittee's employee.

(c) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the permittee or the permittee's employee using one of the following methods:

- (1) Manual washing in a three compartment sink:
 - (A) Prior to starting, clean sinks and work area to remove any chemicals, oils, or grease from other cleaning activities;
 - (B) Empty residual liquid from the growler to a drain. Growlers shall not be emptied into the cleaning water;

- (C) Clean the growler and cap in water and detergent. Water temperature shall be at a minimum 110°F or the temperature specified on the cleaning agent manufacturer's label instructions. Detergent shall not be fat or oil based;
 - (D) Remove any residues on the interior and exterior of the growler and cap;
 - (E) Rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot, or from the tub as long as the water for rinsing shall not be stagnant but shall be continually refreshed;
 - (F) Sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of that chemical; and
 - (G) A test kit or other device that accurately measures the concentration in mg/L of chemical sanitizing solutions shall be provided and be readily accessible for use; or
- (2) Mechanical washing and sanitizing machine:
- (A) Mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;
 - (B) Mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;
 - (C) Concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and
 - (D) The machine shall be regularly serviced based upon the manufacturer's or installer's guidelines.
- (d) Notwithstanding Paragraph (c) of this Rule, a growler may be filled or refilled without cleaning and sanitizing the growler as follows:
- (1) Filling or refilling a growler with a tube as referenced by Paragraph (e) of this Rule:
 - (A) Food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;
 - (B) A container of liquid food grade sanitizer shall be maintained for no more than 10 malt beverage taps that will be used for filling and refilling growlers;
 - (C) Each container shall contain no fewer than five tubes that will be used only for filling and refilling growlers;
 - (D) The growler is inspected visually for contamination;
 - (E) The growler is filled or refilled with a tube as described in Paragraph (e) of this Rule;
 - (F) After each filling or refilling of a growler, the tube shall be immersed in the container with the liquid food grade sanitizer; and
 - (G) A different tube from the container shall be used for each fill or refill of a growler; or
- (2) Filling a growler with a contamination-free process:
- (A) The growler shall be inspected visually for contamination; and
 - (B) Shall be otherwise in compliance with the FDA Food Code 2009, Section 3-304.17(c).
- (e) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage faucet and extends to the bottom of the growler or with a commercial filling machine.
- (f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.
- (g) After filling or refilling a growler, the growler shall be sealed with a cap.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-1001(1); 18B-1001(2); 18B-1001(16); FDA Food Code 2009, Section 3-304.17(c) and Section 4-204.13(a),(b) and (d);
Temporary Adoption Eff. October 25, 2013;
Eff. September 1, 2014.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 13 .0401 DESIGN AND CONSTRUCTION STANDARDS

- (a) The design, construction, installation, inspection, stamping, and operation of all boilers and pressure vessels shall conform to the rules in this Chapter and the accepted design and construction code.
- (b) Repairs and alterations to boilers and pressure vessels shall conform to the requirements of the National Board Inspection Code, except as provided in Paragraph (g) of this Rule.
- (c) The rules of this Chapter shall control when any conflict is found to exist between the Rules and the accepted design and construction code or the National Board Inspection Code.
- (d) Welded repairs and alterations shall be made only by an individual or organization in possession of a valid certificate of authorization for use of the National Board "R" symbol stamp,

except as provided in Paragraph (g) of this Rule. Repairs and alterations shall be reported on National Board "R1" and "R2" reports respectively, as required by the NBIC. These reports are available through the National Board of Boiler and Pressure Vessel Inspectors. The reports, along with supplements used, shall be submitted to the Chief Inspector within 60 days of the completion of the work conducted. Repair and alteration reports shall be annotated with the appropriate NC identification number for the pressure equipment repaired.

(e) In such cases where removal of a defect in a pressure-retaining item is not practical at the time of discovery, with approval of the Chief Inspector, the repair shall be conducted in compliance with the NBIC, Part 3 Repairs and Alterations, Repair of Pressure-Retaining Items Without Complete Removal of Defects. The Chief Inspector may be contacted in writing at 1101 Mail Service Center, Raleigh, NC 27699-1101 or via telephone at (919)807-2760.

(f) Repairs of safety valves or safety relief valves shall be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "VR" symbol stamp.

(g) Welded repairs and alterations to exhibition (historical) boilers of riveted or welded construction may be conducted by a welder who has been qualified in accordance with the ASME Boiler and Pressure Vessel Code, Section IX, Welding and Brazing Qualifications.

History Note: Authority G.S. 95-69.11;

Eff. May 29, 1981;

Amended Eff. October 1, 2014; July 1, 2011; January 1, 2009; July 1, 2006; January 1, 1995; February 1, 1989; February 1, 1985; June 1, 1982.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0306 BROAD RIVER BASIN

(a) Effective February 1, 1976, the adopted classifications assigned to the waters within the Broad River Basin are set forth in the Broad River Basin Schedule of Classifications and Water Quality Standards, which may be inspected at the following places:

- (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) North Carolina Department of Environment and Natural Resources:
 - (A) Mooresville Regional Office
610 East Center Avenue
Suite 301
Mooresville, North Carolina
 - (B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) February 12, 1979;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) February 1, 1986.

(d) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules (15A NCAC 02B .0100, .0200 and 0300), which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(e) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective September 1, 1994 with the reclassification of the Second Broad River [Index No. 9-41-(0.5)] from its source to Roberson Creek including associated tributaries was reclassified from Class WS-V to Classes WS-V, WS-IV and WS-IV CA.

(f) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the Broad River [Index No. 9-(23.5)] from Class WS-IV to Class C and Second Broad River [Index Nos. 9-41-(10.5) and 9-41-(14.5)] and First Broad River [Index No. 9-50-(11)] from Class WS-IV to Class WS-V.

(g) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended August 1, 2000 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to its mouth in Lake Summit at elevation 2011 from Class C Tr to Class B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective August 1, 2000 with the reclassification of Lake Montonia [Index No. 9-54-1-(1)], and all tributaries, from Class B to Class B HQW.

(i) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective April 1, 2001 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to the downstream side of the mouth of Rock Creek from Class B Tr to Class B Tr HQW.

(j) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007 with the reclassification of the North Fork First Broad River (Index No. 9-50-4), including all tributaries, from its source to the First Broad River from Class C Tr to Class C Tr ORW.

(k) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to the City of

Shelby proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to a point approximately 0.3 mile downstream of its confluence with Cane Creek from Class C to Class WS-IV. The City of Shelby proposed water supply intake is to be placed on the Broad River at a point approximately one mile upstream of its confluence with the First Broad River.

(l) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to the Town of Forest City proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to a point approximately 0.2 mile downstream of Rutherford County SR 1145 (Town of Rutherfordton water supply intake) from Class C to Class WS-IV. The Town of Forest City proposed water supply intake is to be placed on the Broad River at a point approximately 0.4 mile downstream of McKinney Creek.

(m) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective September 1, 2014, in order to allow a water supply intake to be placed in Lake Adger by Polk County, as follows:

- (1) a portion of the Green River [Index No. 9-29-(33)], including tributaries, from the dam at Lake Adger to a point 0.35 mile downstream of Rash Creek from Class C to Class WS-IV CA. The CA extends 0.5 mile from and draining to the normal pool elevation of Lake Adger.
- (2) a portion of the Green River from a point 0.35 mile [Index No. 9-29-(33)], including tributaries, downstream of Rash Creek to a point 300 feet downstream of Laurel Branch from Class C to Class WS-IV. The PA extends 5.0 miles from and draining to the normal pool elevation of Lake Adger.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. September 1, 2014; March 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998; September 1, 1994; August 3, 1992; February 1, 1986; January 1, 1985.

(b) The examination requirement does not apply to persons who do not hold a North Carolina dental license and who are seeking volunteer licenses pursuant to G.S. 90-21.107 or licensure by endorsement pursuant to Rules .1001 and .1002 of this Subchapter.

(c) All persons practicing dentistry in North Carolina shall maintain current CPR certification at all times.

History Note: Authority G.S. 90-21.107; 90-28; 90-30; 90-36; 90-38; 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. September 1, 2014; September 1, 2013; March 1, 2006; May 1, 1991; May 1, 1989; January 1, 1983.

21 NCAC 16B .0201 IN GENERAL

(a) An applicant for licensure as a dentist shall be a graduate of and have a DMD or DDS degree from a university or college accredited by the Commission on Dental Accreditation of the American Dental Association.

(b) Graduates of foreign colleges may apply for licensure after completing at least two years in a dental school accredited by the Commission on Accreditation of the American Dental Association, graduating with a DMD or DDS degree from that dental school, and passing Board approved written and clinical examinations, as set out in these Rules.

History Note: Authority G.S. 90-28; 90-30; 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. September 1, 2014; August 1, 2009; March 1, 2006; May 1, 1989; October 1, 1986.

21 NCAC 16B .0202 STUDENT MAY APPLY

Applications for a dental license shall be accepted from students currently enrolled in schools of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association. Applications shall be automatically denied if the applicant fails to complete the required course of study or fails a Board approved licensure examination.

History Note: Authority G.S. 90-28; 90-30; 90-48;
Eff. September 3, 1976;
Readopted Eff. March 1, 2006; September 26, 1977;
Amended Eff. September 1, 2014.

21 NCAC 16B .0301 APPLICATION FOR LICENSURE

(a) All applications shall be made on the forms furnished by the Board at www.ncdentalboard.org and no application shall be deemed complete that does not set forth all the required information. Incomplete applications will be returned to the applicant. Any applicant who changes his or her address shall notify the Board office within 10 business days. Applicants shall ensure that official transcripts of undergraduate college and dental school are sent in a sealed envelope to the Board office.

(b) The nonrefundable application fee shall accompany the application.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16B .0101 EXAMINATION REQUIRED; EXEMPTIONS

(a) All persons desiring to practice dentistry in North Carolina are required to pass a Board approved, as set forth in these Rules, written and clinical examinations before receiving a license.

(c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the board of each state in which they are licensed.

(d) A photograph of the applicant, taken within six months prior to the date of the application, shall be affixed to the application.

(e) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application. The form and card are available from the Board office.

(f) All applicants shall arrange for and ensure the submission to the Board office the examination scores as required by Rule .0303(b) of this Subchapter, if applicable. The examination requirement does not apply to individuals who do not hold a North Carolina dental license and who are seeking volunteer licenses pursuant to G.S. 90-21.107 or licensure by endorsement pursuant to Rules .1001 or .1002 of this Subchapter.

(g) All applicants shall include a statement disclosing and explaining periods within the last 10 years, of any voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any drug treatment program, or impaired dentists or other impaired professionals program.

*History Note: Authority G.S. 90-28; 90-30; 90-39; 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. September 1, 2014; March 1, 2006.*

21 NCAC 16B .0303 BOARD APPROVED EXAMINATIONS

(a) All applicants for dental licensure shall achieve passing scores on the Board's sterilization and jurisprudence examinations. Reexamination on the written examinations shall be governed by Rule .0317 of this Section.

(b) All applicants for dental licensure shall achieve passing scores on Parts I and II of the Dental National Board examination administered by the Joint Commission on National Dental Examinations and written and clinical examinations administered by the Board or Board approved testing agencies.

(c) Test development agencies shall permit Board representation on the Board of Directors and the Examination Review Committee or equivalent committee and allow Board input in the examination development and administration.

(d) The clinical examination shall:

- (1) be substantially equivalent to or an improvement to the clinical licensure examination most recently administered by the Board;
- (2) include procedures performed on human subjects as part of the assessment of restorative clinical competencies;
- (3) include evaluations in clinical periodontics and at least three of the following subject matter areas:
 - (A) endodontics, clinical abilities testing;
 - (B) amalgam preparation and restoration;

- (C) anterior composite preparation and restoration;
- (D) posterior ceramic or composite preparation and restoration;
- (E) prosthetics, written or clinical abilities testing;
- (F) oral diagnosis, written or clinical abilities testing; or
- (G) oral surgery, written or clinical abilities testing; and

(4) provide the following:

- (A) anonymity between applicants and examination graders;
- (B) standardization and calibration of graders;
- (C) a mechanism for post exam analysis;
- (D) conjunctive scoring, which is scoring that requires applicants to earn a passing grade on all sections or areas tested and that does not allow weighted, averaged or overall scoring to compensate for failures in individual subject areas;
- (E) a minimum passing score for each subject area tested;
- (F) an annual review of the examination;
- (G) a task analysis performed at least once every seven years, which surveys dentists nationwide to determine the content of the examination;
- (H) a defined system of quality assurance to ensure uniform, consistent administration of the examination at each testing site; and
- (I) does not permit a dental instructor to grade candidates at any institution at which the instructor is employed.

(e) The Board shall accept examination scores for five years following the date of such examinations. Each applicant shall arrange for and ensure the submission to the Board office the applicant's scores. Individuals who apply more than five years after the examination date to seek licensure must re-take the examination.

(f) The applicant shall comply with all requirements of the testing agency in applying for and taking the examination.

(g) The Board shall determine which examinations meet the criteria set out in Paragraph (d) of this Rule.

*History Note: Authority G.S. 90-30; 90-48;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. September 1, 2014; June 1, 2009; March 1, 2006;
August 1, 1998; March 1, 1988.*

**21 NCAC 16B .0401 APPLICATION FOR BOARD
CONDUCTED EXAMINATION**

21 NCAC 16B .0402 TIME FOR FILING

**21 NCAC 16B .0403 EXAMINATION CONDUCTED
BY THE BOARD**

**21 NCAC 16B .0404 PATIENTS AND SUPPLIES FOR
BOARD CONDUCTED CLINICAL EXAMINATION**

**21 NCAC 16B .0405 SCOPE OF BOARD
CONDUCTED CLINICAL EXAMINATION**

*History Note: Authority G.S. 90-28; 90-30; 90-39; 90-41;
90-48;*

Eff. March 1, 2006;

Amended Eff. February 1, 2008;

Repealed Eff. September 1, 2014.

**21 NCAC 16B .0406 BOARD CONDUCTED
REEXAMINATION**

History Note: Authority G.S. 90-28; 90-30; 90-48;

Eff. April 1, 2006;

Repealed Eff. September 1, 2014.

**21 NCAC 16B .0501 DENTAL LICENSURE BY
CREDENTIALS**

(a) An applicant for a dental license by credentials shall submit to the Board:

- (1) a completed, notarized application form provided by the Board;
- (2) the non-refundable licensure by credentials fee;
- (3) an affidavit from the applicant stating for the five years immediately preceding the application:
 - (A) the dates that and locations where the applicant has practiced dentistry;
 - (B) that the applicant has provided at least 5,000 hours of clinical care directly to patients, not including post graduate training, residency programs or an internship; and
 - (C) that the applicant has continuously held an active, unrestricted dental license issued by another U.S. state or U.S. territory;
- (4) a statement disclosing and explaining any investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (5) a statement disclosing and explaining periods within the last 10 years of any voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program;

- (6) a copy of a current CPR certificate; and
- (7) a statement disclosing whether or not the applicant holds or has ever held a registration with the federal Drug Enforcement Administration (DEA) and whether such registration has ever been surrendered or revoked.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental license by credentials shall arrange for and ensure the submission to the Board office the following documents as a package, with each document in an unopened envelope sealed by the entity involved:

- (1) official transcripts verifying that the applicant graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) if the applicant is or has ever been employed as a dentist by or under contract with a federal agency, a letter certifying the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
- (3) a certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and a full, fair and accurate disclosure of any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;
- (4) a report from the National Practitioner Databank;
- (5) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant shall submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
- (6) a score certification letter from a dental professional regulatory board or regional testing agency of a passing score on a clinical licensure examination substantially equivalent to the clinical licensure examination required in North Carolina by Rule .0303 of this Subchapter. The examination shall be administered by the dental professional regulatory board or a regional testing agency. The score certification letter shall:
 - (A) state that the examination included procedures performed on human subjects as part of the assessment of restorative clinical competencies and included evaluations in periodontics and at least three of the following subject areas:
 - (i) endodontics, clinical abilities testing;

- (ii) amalgam preparation and restoration;
- (iii) anterior composite preparation and restoration;
- (iv) posterior ceramic or composite preparation and restoration;
- (v) prosthetics, written or clinical abilities testing;
- (vi) oral diagnosis, written or clinical abilities testing; or
- (vii) oral surgery, written or clinical abilities testing; and
- (B) state that licensure examinations after January 1, 1998 included:
 - (i) anonymity between candidates and examination graders;
 - (ii) standardization and calibration of graders; and
 - (iii) a mechanism for post exam analysis;
- (7) the applicant's passing score on the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations; and
- (8) the applicant's passing score on the licensure examination in general dentistry conducted by a regional testing agency or independent state licensure examination substantially equivalent to the clinical licensure examination required in North Carolina as set out in Subparagraph (b)(6) of this Rule.

(c) All information required shall be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete applications shall be returned to the applicant.

(d) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and other form(s) required to perform a criminal history check at the time of the application. The forms are available at the Board office.

(e) An applicant for dental licensure by credentials must pass written examinations as set out in G.S. 90-36 and, if deemed necessary based on the applicant's history, a clinical simulation examination administered by the Board. An applicant who fails the written examination may retake it two additional times during a one year period. The applicant shall wait at least 72 hours before attempting to retake a written examination. Individuals who fail the clinical examination or do not pass the written examination after three attempts within one year may not reapply for licensure by credentials.

(f) Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required at the time of each reapplication.

(g) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

*Temporary Adoption Eff. January 1, 2003;
Eff. January 1, 2004;
Recodified from 21 NCAC 16B .0401 Eff. March 1, 2006;
Amended Eff. September 1, 2014; February 1, 2010.*

21 NCAC 16B .0601 LIMITED VOLUNTEER DENTAL LICENSE

(a) An applicant for a limited volunteer dental license shall submit to the Board:

- (1) a completed, notarized application form provided by the Board;
- (2) the non-refundable limited volunteer dental licensure fee;
- (3) an affidavit from the applicant stating:
 - (A) for the five years immediately preceding application, the dates that and locations where the applicant has practiced dentistry;
 - (B) that the applicant has provided at least 1,000 hours per year of clinical care directly to patients for at least five years, not including post graduate training, residency programs or an internship; and
 - (C) that the applicant has provided at least 500 hours of clinical care directly to patients within the last five years, not including post graduate training, residency programs or an internship;
- (4) a statement disclosing and explaining periods within the last 10 years of any voluntary or involuntary commitment to a hospital or treatment facility, of observation, assessment, or treatment for substance abuse, with verification from the applicable program demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program; and
- (5) a copy of a current CPR certification card.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a limited volunteer dental license shall arrange for and ensure the submission to the Board office the following documents as a package, with each document in an unopened envelope sealed by the entity involved:

- (1) official transcripts verifying that the applicant graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) a certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and, if applicable, of the applicant's authorization to treat veterans or personnel enlisted in the United States armed services, and information regarding all disciplinary actions taken or investigations pending, from

History Note: Authority G.S. 90-28; 90-36;

all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;

- (3) a report from the National Practitioner Databank;
- (4) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant shall submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
- (5) the applicant's passing score on the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations; and
- (6) the applicant's passing score on a licensure examination in general dentistry substantially equivalent to the clinical licensure examination required in North Carolina as set out in Rule .0303 of this Subchapter, conducted by a regional testing agency or a state licensing board.

(c) All information required shall be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete applications shall be returned to the applicant.

(d) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application. The forms are available at the Board.

(e) An applicant for limited volunteer dental license must pass written examinations as set out in G.S. 90-37.1 and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. An applicant who fails the written exam may retake it two additional times during a one year period. The applicant shall wait a minimum of 72 hours before attempting to retake a written examination. Applicants who fail the clinical examination or who do not pass the written examination after three attempts in one year may not reapply for a limited volunteer dental license.

(f) Should the applicant reapply for a limited volunteer dental license, an additional limited volunteer dental license fee shall be required.

(g) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(h) The license may be renewed on an annual basis provided that the licensee provides documentation that he or she has practiced a minimum of 100 hours, completed continuing education requirements as required in Subchapter 16R of these Rules and has current CPR certification.

*History Note: Authority G.S. 90-28; 90-37.1;
Temporary Adoption Eff. January 1, 2003;
Eff. January 1, 2004;
Recodified from 21 NCAC 16B .0501 Eff. March 1, 2006;
Amended Eff. September 1, 2014.*

21 NCAC 16B .0701 INSTRUCTOR'S LICENSE

(a) An applicant for an instructor's license shall submit to the Board:

- (1) a completed, notarized application form provided by the Board at www.ncdentalboard.org.
- (2) the non-refundable instructor's licensure fee;
- (3) a photograph of the applicant, taken within six months prior to the date of the application, affixed to the application;
- (4) a signed release form and completed Fingerprint Record Card, and other form(s) required to perform a criminal history check at the time of the application. The form and card are available from the Board office;
- (5) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (6) a statement disclosing and explaining periods within the last ten years of any voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program; and
- (7) a current CPR card.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for an instructor's license shall ensure the submission to the Board office of the following documents as a package, with each document in an unopened envelope sealed by the entity involved:

- (1) if the applicant is or has ever been employed as a dentist by or under contract with an agency or organization, a certification letter of the applicant's current status and disciplinary history from each agency or organization where the applicant is or has been employed or under contract;
- (2) a certificate of the applicant's licensure status from the dental regulatory authority or other occupational or professional regulatory authority and information regarding all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other occupational or professional license;
- (3) a report from the National Practitioner Databank or its international equivalent, if applicable;
- (4) a report of any pending or final malpractice actions against the applicant, verified by the malpractice insurance carrier covering the applicant. The applicant shall submit a letter

of coverage history from all current and all previous malpractice insurance carriers covering the applicant; and

- (5) a certification letter from the dean or director that the applicant has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated, and certification that such school or medical center is accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations.

(c) All information required shall be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete applications shall be returned to the applicant.

(d) Any applicant who changes his or her address shall notify the Board office within 10 business days.

(e) Should the applicant reapply for an instructor's license, an additional instructor's license fee shall be required.

(f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(g) The license shall be renewed on an annual basis, as set out in 21 NCAC 16R .0102.

History Note: Authority G.S. 90-28; 90-29.5; Temporary Adoption Eff. January 1, 2003; Eff. January 1, 2004; Recodified from 21 NCAC 16B .0601 Eff. March 1, 2006; Amended Eff. September 1, 2014.

21 NCAC 16B .0801 TEMPORARY VOLUNTEER DENTAL PERMIT

(a) An applicant for a Temporary Volunteer Dental License shall submit to the Board:

- (1) A completed, notarized application form provided by the Board, with a photograph of the applicant taken within six months of the application date attached;
- (2) A statement from all jurisdictions in which the applicant is now or has ever been licensed, disclosing the applicant's disciplinary history and current status of the applicant's license;
- (3) A statement signed by a N.C. licensed dentist agreeing to provide supervision or direction to the temporary volunteer dentist, stating where, during the effective period of the permit such supervision or direction will occur, and affirming that no fee or monetary compensation of any kind will be paid to the applicant for dental services performed; and
- (4) A statement signed by the applicant stating where the applicant will practice, the type of facility where the practice will occur, the duration of the practice, the name of the supervising dentist, and affirming that no fee will be charged or accepted. The applicant shall update the information within five days

of any changes in the practice location or facility.

(b) All information required must be completed and received in the Board office as a complete package at least two weeks prior to the issuance of the license. Incomplete applications shall be returned to the applicant.

(c) To renew the Temporary Volunteer Dental License the licensee shall submit the information required in Subparagraphs (a)(2) – (4) of this Rule, along with an affidavit stating that the information on the original application is correct and requires no update or correction.

(d) All required information shall be completed and received in the Board office as a complete package at least two weeks prior to the renewal of the license. Incomplete applications shall be returned to the applicant. The applicant shall report any changes to submitted information within five days of when the licensee knew or should have known of the changes.

History Note: Authority G.S. 90-29; 90-37.2; Eff. February 1, 2008; Amended Eff. September 1, 2014.

21 NCAC 16B .0901 DEFINITIONS

The following definitions apply only to this Section;

- (1) "Dental Board" – the North Carolina State Board of Dental Examiners.
- (2) "Eligible licensees" – all dentists currently licensed by and in good standing with the North Carolina State Board of Dental Examiners who are serving in the armed forces of the United States and who are eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.
- (3) "Extension period" – the time period disregarded pursuant to 26 U.S.C. 7508.
- (4) "Good standing" – a dentist whose license is not suspended, revoked or subject to a probationary order.

History Note: Authority G.S. 90-28; 93B-15; Eff. April 1, 2010; Amended Eff. September 1, 2014.

21 NCAC 16B .1002 DENTAL LICENSURE BY ENDORSEMENT BASED ON STATUS AS MILITARY SPOUSE

(a) An applicant for a dental license by endorsement based on the applicant's status as a military spouse shall submit to the Board:

- (1) a completed, signed and notarized application form provided by the Board at www.ncdentalboard.org ;
- (2) the non-refundable application fee required by Rule 16M .0101(a)(14) of this Chapter;
- (3) written evidence demonstrating that the applicant is married to an active member of the U.S. military and that such applicant:
 - (A) holds a current dental license from another jurisdiction whose standards

- for licensure are substantially equivalent to or greater than those required for licensure as a dentist in North Carolina as set forth in these Rules; and
- (B) has engaged in the active practice of dentistry as defined by G.S. 90-29(b)(1) for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (4) a statement disclosing and explaining the commission of an act set out in G.S. 90-41(a) or (b), any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.
- (5) a statement disclosing and explaining periods within the last 10 years of any voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program;
- (6) a copy of a current CPR certification;
- (7) a report from the National Practitioner Data Bank; and
- (8) the applicant's passing score on the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations.

(b) All information required shall be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete application packages shall be returned to the applicant.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card and other forms required to perform a criminal history check. The form and cards may be obtained from the Board.

History Note: Authority G.S. 90-30(b); 90-41; 90-36; 93B-15.1;

Eff. September 1, 2013;

Amended Eff. September 1, 2014.

21 NCAC 16B .1101 PROOF OF COMPETENCY

(a) All applications for reinstatement shall be submitted on forms furnished by the Board at www.ncdentalboard.org and no application shall be deemed complete that does not set forth all the information required relative to the applicant. Incomplete applications shall be returned to the applicant.

(b) The application for reinstatement shall be accompanied by:

- (1) the non-refundable reinstatement fee;
- (2) two letters of character reference from non-family members;

- (3) a current report from the National Practitioner Databank;
- (4) proof of completion of continuing education courses in clinical patient care from Board-approved sponsors, as defined in Rule 16R .0104 of this Chapter in amounts equal to the hours required for renewal of a dental license; and
- (5) a copy of current CPR card.

(c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the board of each state in which they are licensed.

(d) Applicants whose North Carolina license has been revoked, suspended, inactive or lapsed for more than one year shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check. The form and card are available from the Board office.

(e) Applicants for reinstatement whose North Carolina license has been revoked, suspended, inactive or lapsed for two to five years may be required, at the Board's discretion, to take refresher courses on topics specified by the Board. Refresher courses may be required if the Board determines, based upon the facts of the case, that the applicant may lack skills or knowledge to practice dentistry competently. Refresher courses for individuals whose licenses have been revoked or suspended shall relate to the deficiencies that led to the imposition of discipline. Refresher courses for individuals whose licenses have been inactive or lapsed shall take into account the amount of time the license has been inactive or lapsed and the individual's level of experience.

(f) Applicants seeking reinstatement of a North Carolina dental license that has been revoked, suspended, inactive or lapsed for more than five years must successfully pass the clinical examination given to first-time applicants before applying for reinstatement.

(g) Any applicant who changes his or her address shall notify the Board office within 10 business days.

History Note: Authority G.S. 90-30; 90-41;
Eff. September 1, 2014.

21 NCAC 16C .0101 LICENSURE

(a) All dental hygienists shall be licensed by the North Carolina State Board of Dental Examiners before practicing dental hygiene in this state.

(b) The examination requirement does not apply to persons who do not hold a North Carolina dental hygiene license who are seeking volunteer licenses pursuant to G.S. 90-21.107 or license by endorsement pursuant to Rules 16G .0107 or .0108 of this Chapter.

(c) All dental hygienists shall maintain current CPR certification at all times.

History Note: Authority G.S. 90-223; 90-224;
Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. September 1, 2014; September 1, 2013; June 1, 2006; May 1, 1989; January 1, 1983.

21 NCAC 16C .0202 STUDENT MAY APPLY

The Board shall accept dental hygienist applications from students currently enrolled in schools of dental hygiene. Applications shall automatically be denied if the applicant fails to complete the required course of study or fails a Board approved licensure examination.

*History Note: Authority G.S. 90-223; 90-224;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. September 1, 2014; June 1, 2006; May 1, 1989.*

21 NCAC 16C .0301 APPLICATION FOR LICENSURE

(a) All applications for licensure shall be made on the forms furnished by the Board at www.ncdentalboard.org and no application shall be deemed complete that does set forth all the information required relative to the applicant. Incomplete applications shall be returned to the applicant. Any applicant who changes his or her address shall notify the Board office within 10 business days. Applicants shall ensure that proof of graduation from high school or its equivalent is sent to the Board office in a sealed envelope. Applicants shall also ensure that an official final transcript from a dental hygiene program as set forth in G.S. 90-224 is sent in a sealed envelope to the Board office.

(b) The nonrefundable application fee shall accompany the application.

(c) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the board of each state in which they are licensed. A photograph of the applicant, taken within six months prior to the date of the application, shall be affixed to the application.

(d) All applicants shall submit to the Board a signed release form and completed Fingerprint Record Card and other form(s) required to perform a criminal history check at the time of the application. The form and card are available from the Board office.

(e) All applicants shall arrange for and ensure the submission to the Board office the examination scores required by Rule .0303 of this Subchapter. The examination requirement does not apply to individuals who do not hold a North Carolina dental hygiene license who are seeking volunteer licenses pursuant to G.S. 90-21.107 or licensure by endorsement pursuant to Rules 16G .0107 or 16G .0108 of this Chapter.

(f) All applicants must include a statement disclosing and explaining periods within the last 10 years of any voluntary or involuntary commitment to any hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any drug treatment program, or impaired dental hygienists or other impaired professionals program.

(g) All applicants for dental hygiene licensure shall achieve a passing score on the Dental Hygiene National Board examination administered by the Joint Commission on National Dental Examinations.

History Note: Authority G.S. 90-223; 90-224; 90-229(a)(4);

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. September 1, 2014; September 1, 2013; June 1, 2006; May 1, 1989.

21 NCAC 16C .0303 BOARD APPROVED EXAMINATIONS

(a) All applicants for dental hygiene licensure shall achieve passing scores on the Board's sterilization and jurisprudence examinations. Reexamination on the written examinations shall be governed by Rule .0311 of this Section.

(b) All applicants for dental hygiene licensure shall achieve passing scores on written and clinical examinations administered by Board approved testing agencies.

(c) Clinical testing agencies shall permit Board representation on the Board of Directors and the Examination Review Committee or equivalent committee and allow Board input in the examination development and administration.

(d) The clinical examination shall:

- (1) be substantially equivalent to or an improvement to the clinical licensure examination most recently administered by the Board;
- (2) include procedures performed on human subjects as part of the assessment of clinical competency;
- (3) include probing, supra and subgingival scaling and soft tissue management; and
- (4) provide the following:
 - (A) anonymity between applicants and examination graders;
 - (B) standardization and calibration of graders;
 - (C) a mechanism for post exam analysis;
 - (D) conjunctive scoring, which is scoring that requires applicants to earn a passing grade on all sections or areas tested and that does not allow weighted, averaged or overall scoring to compensate for failures in individual subject areas;
 - (E) a minimum passing score for each subject area tested;
 - (F) an annual review of the examination;
 - (G) a task analysis performed once every seven years that surveys dentists nationwide to determine the content domain to be scored and how the sections of the examination are scored;
 - (H) a defined system of quality assurance to ensure uniform, consistent administration of the examination at each testing site; and
 - (I) does not permit a dental hygiene instructor to grade candidates at any institution at which the instructor is employed on a full time basis.

(e) The Board shall accept examination scores for five years following the date of the examination. Each applicant shall arrange for and ensure the submission to the Board office the applicant's scores. Individuals who apply for licensure more than five years after the examination date must re-take the examination.

Each applicant shall arrange for and ensure that the applicant's scores are submitted to the Board office. The applicant shall comply with all requirements of such testing agency in applying for and taking the examination.

(f) The Board shall specify the agencies that will conduct Board approved licensure examinations.

History Note: Authority G.S. 90-224;

Eff. September 3, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. September 1, 2014; June 1, 2009; June 1, 2006;

May 1, 1989; March 1, 1988.

21 NCAC 16C .0311 REEXAMINATION

(a) Any applicant who passed the written examination but failed the clinical portion of any Board approved examination shall also re-take the written examination unless the applicant successfully passes the clinical examination within one year of passing the written examination. The Board shall not accept scores from the written examination that are more than one year old.

(b) Any applicant who failed the written examination may retake the written portion of the examination two additional times during a one year period and need not retake the clinical portion of the examination. The applicant shall wait at least 72 hours before attempting to retake the written examination. If the applicant does not pass the written portion of the examination upon the second reexamination, the applicant shall retake the written and clinical portions of the examination upon subsequent reexamination.

(c) Any applicant who failed the written or clinical portions of the examination three times shall successfully complete an additional Board approved course of study in the area(s) of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

History Note: Authority G.S. 90-223; 90-224;

Eff. September 1, 2014.

21 NCAC 16C .0401 APPLICATION FOR EXAMINATION CONDUCTED BY THE BOARD

21 NCAC 16C .0402 TIME FOR FILING

21 NCAC 16C .0403 EXAMINATION CONDUCTED BY THE BOARD

21 NCAC 16C .0404 PATIENTS AND SUPPLIES FOR BOARD CONDUCTED CLINICAL EXAMINATION

21 NCAC 16C .0405 BOARD CONDUCTED REEXAMINATION

History Note: Authority G.S. 90-223; 90-224; 90-224.1;

Eff. June 1, 2006;

Amended Eff. July 1, 2010; February 1, 2008;

Repealed Eff. September 1, 2014.

21 NCAC 16C .0501 DENTAL HYGIENE LICENSURE BY CREDENTIALS

(a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- (1) a completed, notarized application form provided by the Board;
- (2) the nonrefundable licensure by credentials fee;
- (3) an affidavit from the applicant stating for the two years immediately preceding the application:
 - (A) the dates that and locations where the applicant has practiced dental hygiene;
 - (B) that the applicant has provided at least 2000 hours of clinical care directly to patients; and
 - (C) that the applicant has continuously held an active, unrestricted dental hygiene license issued by another U.S. state or any U.S. territory.
- (4) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges;
- (5) a statement disclosing and explaining periods within the last 10 years of any voluntary or involuntary commitment to a hospital or treatment facility, observation, assessment, or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dental hygiene or other impaired professionals program; and
- (6) a copy of a current CPR certificate.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials shall arrange for and ensure the submission to the Board office the following documents as a package, with each document in an unopened envelope sealed by the entity involved:

- (1) official transcripts certifying that the applicant graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) if the applicant is or has ever been employed as a dental hygienist by or under contract with a federal agency, a letter certifying the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
- (3) a certificate of the applicant's licensure status from the regulatory authority or other occupational or professional regulatory authority and a full, fair and accurate

disclosure of all disciplinary actions taken or investigations pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other occupational or professional license;

- (4) a report from the National Practitioner Databank;
- (5) a report of any pending or final malpractice actions against the applicant verified by the malpractice insurance carrier covering the applicant. The applicant shall submit a letter of coverage history from all current and all previous malpractice insurance carriers covering the applicant;
- (6) the applicant's passing score on the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; and
- (7) the applicant's passing score on the licensure examination conducted by a regional testing agency or independent state licensure examination that is substantially equivalent to the clinical licensure examination required in North Carolina as set out in Rule .0303 of this Subchapter.

(c) All information required shall be completed and received by the Board office as a complete package with the initial application and application fee. Incomplete applications shall be returned to the applicant.

(d) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and other form(s) required to perform a criminal history check at the time of the application. The forms are available from the Board office.

(e) An applicant for dental hygiene licensure by credentials shall pass written examinations and, if deemed necessary based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails the written examinations, the applicant may retake the examination two additional times during a one year period, as required by Rule .0311 of this Subchapter. Applicants who fail the clinical examination or who do not pass the written examination after three attempts within one year may not reapply for licensure by credentials.

(f) Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required at the time of reapplication.

(g) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

History Note: Authority G.S. 90-223; 90-224.1; 90-229;
Temporary Adoption Eff. January 1, 2003;
Eff. January 1, 2004;
Recodified from Rule .0401 Eff. June 1, 2006;
Amended Eff. September 1, 2014; February 1, 2010.

21 NCAC 16C .0601 PROOF OF COMPETENCY

(a) All applications for reinstatement shall be made on the forms furnished by the Board at www.ncdentalboard.org and no application shall be deemed complete that does not set forth all

the information required relative to the applicant. Incomplete applications shall be returned to the applicant. Any applicant who changes his or her address shall notify the Board office within 10 business days.

(b) The reinstatement fee shall accompany the application.

(c) All applicants for reinstatement whose North Carolina license has been revoked, suspended, inactive or lapsed for more than five years must successfully pass the clinical examination given to first-time applicants before seeking reinstatement.

(d) Applicants for reinstatement whose North Carolina license has been revoked, suspended, inactive or lapsed for two to five years may, at the Board's discretion, be required to take refresher courses as specified by the Board. Refresher courses may be required if the Board determines, based upon the facts of the case, that the applicant may lack skills or knowledge to practice dental hygiene competently. Refresher courses for individuals whose licenses have been revoked or suspended shall relate to the deficiencies that led to the imposition of discipline. Refresher courses for individuals whose licenses have been inactive or lapsed shall take into account the amount of time the license has been inactive or lapsed and the individual's level of experience.

(e) Applicants who are licensed in other states shall ensure that the Board receives verification of licensure from the board of each state in which they are licensed.

(f) Applicants whose North Carolina license has been revoked, suspended, inactive or lapsed for more than one year shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application for reinstatement. The form and card are available from the Board office.

(g) Applicants shall provide proof of continuing education in clinical patient care, by Board-approved sponsors, equal to the number of hours currently required for the renewal of a dental hygiene license and current CPR certification.

(h) Two letters of character reference from non-family members.

(i) A report from the National Practitioner Databank.

History Note: Authority G.S. 90-223; 90-224; 90-229;
Eff. September 1, 2014.

21 NCAC 16D .0103 PATIENT RECORDS

History Note: Authority G.S. 90-29.3;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Repealed Eff. September 1, 2014.

21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Paragraphs (a) – (e) of Rule .0301 of this Subchapter, he/she shall be granted temporary approval to administer moderate conscious sedation or moderate pediatric conscious sedation until a permit can be issued. If a dentist meets the requirements of Paragraph (j) of Rule .0301 of this Subchapter, he or she shall be granted temporary approval to administer moderate conscious sedation limited to oral routes

and nitrous oxide inhalation. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. The temporary approval shall expire after 90 days. Extensions shall not be granted. An applicant who fails to complete the requirements within the time allowed by this Rule must re-apply for a permit and shall not be eligible for temporary approval. An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required prior to issuance of a permanent permit. The evaluation shall be conducted in accordance with Rules .0204 - .0205 of this Subchapter, except that evaluations of dentists applying for moderate conscious sedation permits may be conducted by dentists who have been issued moderate conscious sedation permits by the Board and who have been approved by the Board, as set out in these Rules. A two hundred seventy five dollar (\$275.00) inspection fee shall be collected for each site inspected pursuant to this Rule.

(b) An inspection may be made upon renewal of the permit or for cause.

(c) Temporary approval shall not be granted to a provisional licensee or applicants who are the subject of a pending Board disciplinary investigation or whose licenses have been revoked, suspended or are subject to an order of stayed suspension or probation.

History Note: Authority G.S. 90-28; 90-30.1;

Eff. February 1, 1990;

Amended Eff. August 1, 2002; January 1, 1994;

Temporary Amendment Eff. December 11, 2002;

Amended Eff. September 1, 2014; February 1, 2009; July 3, 2008; August 1, 2004.

CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21 NCAC 18B .0303 ELECTRICAL INSTALLATION: PROJECT: PROJECT VALUE-LIMITATION

For the purpose of implementing G.S. 87-43.3 pertaining to the limited and intermediate electrical contracting license classifications, the following provisions shall apply:

- (1) Electrical Installation. Electrical work is construed to be an electrical installation when the work is made or is to be made:
 - (a) in or on a new building or structure;
 - (b) in or on an addition to an existing building or structure;
 - (c) in or on an existing building or structure, including electrical work in connection with lighting or power rewiring or with the addition or replacement of machines, equipment or fixtures; or
 - (d) in an area outside of buildings or structures, either overhead or underground or both.

- (2) Project. An electrical installation is construed to be a separate electrical contracting project if all the following conditions are met:
 - (a) the installation is, or will be, separate and independently supplied by a separate service, feeder, or feeder system;
 - (b) the installation is for:
 - (i) an individual building or structure which is separated from other buildings or structures by a lot line or, if located on the same lot with other buildings or structures, is physically separated from such other buildings or structures by an open space or an area separation fire wall;
 - (ii) an individual townhouse single-family dwelling unit constructed in a series or group of attached units with property lines separating such units;
 - (iii) an individual tenant space in a mall-type shopping center;
 - (iv) an addition to an existing building or structure;
 - (v) an existing building or structure, including electrical work in connection with lighting or power rewiring or with the addition or replacement of machines, equipment, or fixtures; or
 - (vi) an outdoor area either overhead or underground or both;
 - (c) the negotiations or bidding procedures for the installation are carried out in a manner totally separate and apart from the negotiations or bidding procedures of any other electrical installation or part thereof;
 - (d) except for additions, alterations, repairs, or changes to a pre-existing electrical installation, no electrical interconnection or relationship exists between the installation and any other electrical installation or part thereof; and
 - (e) a separate permit is required to be obtained for each individual building structure or outdoor area involved from the governmental agency having jurisdiction.

If a question is raised by a party at interest or if requested by the Board or Board's staff for any reason, the owner or the awarding authority or an agent of either shall furnish to the Board, and to the inspections department having jurisdiction, a sworn affidavit confirming that the conditions set forth in Sub-Items (2)(a) through (e) of this Rule are satisfied or the project will be treated as a single project.

- (3) Relationship of Plans and Specifications to Definition of Project. Even though the electrical work may not fully comply with each condition set out in Item (2) of this Rule, the entire electrical work, wiring, devices, appliances or equipment covered by one set of plans or specifications shall be construed as a single electrical contracting project by the Board.
- (4) Project Value Limitation. In determining the value of a given electrical contracting project, the total known or reasonable estimated costs as determined by the Board of all electrical wiring materials, equipment, fixtures, devices, and installation shall be included in arriving at this value, regardless whether a third party such as an owner or general contractor furnishes all or part of same, and regardless of the form or type of contract or subcontract involved.

- (a) if the total cost of the wiring, materials, etc., including that furnished by others, plus the total cost of the installation involved, will be more than fifty thousand dollars (\$50,000) but not more than one hundred thirty thousand dollars (\$130,000), then only an electrical contractor holding either an intermediate or unlimited license shall be eligible to submit a proposal or engage in the project.
- (b) if the total cost of the wiring, materials, etc., including that furnished by others, plus the total cost of the installation involved, will exceed one hundred thirty thousand dollars (\$130,000), then only an electrical contractor holding an unlimited license shall be eligible to submit a proposal or engage in the project.

If a given electrical contracting project is subdivided into two or more contracts or subcontracts for any reason, then the total value of the combined contracts or subcontracts that may be awarded to or accepted by any one licensee of the Board must be within the total project value in accordance with this Rule.

The Board's staff shall make a determination of what constitutes a project in any given situation, and any party at interest may appeal any staff determination to the Board for a final binding decision.

History Note: Authority G.S. 87-42; 87-43; 87-43.3; Eff. October 1, 1988; Amended Eff. September 1, 2014; January 1, 2008; February 1, 1996; February 1, 1990.

21 NCAC 18B .0404 ANNUAL LICENSE FEES

(a) The annual license fees and license renewal fees for the various license classifications are as follows:

LICENSE FEE SCHEDULE

| CLASSIFICATION | LICENSE FEE |
|--------------------|-------------|
| Limited | \$ 85.00 |
| Intermediate | \$130.00 |
| Unlimited | \$180.00 |
| SP-SFD | \$ 85.00 |
| Special Restricted | \$ 85.00 |

(b) License fees shall be made payable to the Board. Payment shall accompany any license or license renewal application filed with the Board.

History Note: Authority G.S. 87-42; 87-44; Eff. October 1, 1988; Amended Eff. May 1, 1998; July 1, 1989; Temporary Amendment Eff. June 30, 2000; Temporary Amendment Eff. August 31, 2001; Amended Eff. July 1, 2015; January 1, 2008; December 4, 2002.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32B .1350 REINSTATEMENT OF PHYSICIAN LICENSE

(a) "Reinstatement" is for a physician who has held a North Carolina License, but whose license either has been inactive for more than one year, or whose license became inactive as a result of disciplinary action (revocation or suspension) taken by the Board. It also applies to a physician who has surrendered a license prior to charges being filed by the Board.

(b) All applicants for reinstatement shall:

- (1) submit a completed application which can be found on the Board's website in the application section at <http://www.ncmedboard.org/licensing>, attesting under oath or affirmation that information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
- (3) supply a certified copy of the applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant shall provide information about the applicant's immigration and work status which the Board shall use to verify the applicant's ability to work lawfully in the United States.

Applicants who are not present in the U.S. and who do not plan to practice physically in the US shall submit a written statement to that effect.

- (4) furnish an original ECFMG certification status report of a currently valid certification of the ECFMG if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if:

- (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
- (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;

- (5) submit the AMA Physician Profile; and, if the applicant is an osteopathic physician, also submit the AOA Physician Profile;
- (6) submit a NPDB/HIPDB report dated within 60 days of the application's submission;
- (7) submit a FSMB Board Action Data Bank report;
- (8) submit documentation of CME obtained in the last three years, upon request;
- (9) submit two completed fingerprint cards supplied by the Board;
- (10) submit a signed consent form allowing a search of local, state, and national files to disclose any criminal record;
- (11) provide two original references from persons with no family or material relationship to the applicant. These references shall be:

- (A) from physicians who have observed the applicant's work in a clinical environment within the past three years;
- (B) on forms supplied by the Board;
- (C) dated within six months of submission of the application; and
- (D) bearing the original signature of the author;

- (12) pay to the Board a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
- (13) upon request, supply any additional information the Board deems necessary to evaluate the applicant's qualifications.

(c) In addition to the requirements of Paragraph (b) of this Rule, the applicant shall submit proof that the applicant has:

- (1) within the past 10 years taken and passed either:
 - (A) an exam listed in G.S. 90-10.1 (a state board licensing examination; NBME;

NBOME; USMLE; FLEX; COMLEX; or MCCQE or their successors);

- (B) SPEX (with a score of 75 or higher); or

- (C) COMVEX (with a score of 75 or higher);

- (2) within the past ten years:

- (A) obtained certification or recertification of CAQ by a specialty board recognized by the ABMS, CCFP, FRCP, FRCS or AOA; or
- (B) met requirements for ABMS MOC (maintenance or certification) or AOA OCC (Osteopathic continuous Certification);

- (3) within the past 10 years completed GME approved by ACGME, CFPC, RCPSC or AOA; or

- (4) within the past three years completed CME as required by 21 NCAC 32R .0101(a), .0101(b), and .0102.

(d) All reports shall be submitted directly to the Board from the primary source, when possible. If a primary source verification is not possible, then a third party verification shall be submitted.

(e) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character if the Board needs more information to complete the application.

(f) An application must be complete within one year of submission. If not, the applicant shall be charged another application fee plus the cost of another criminal background check.

(g) Notwithstanding the above provisions of this Rule, the licensure requirements established by rule at the time the applicant first received his or her equivalent North Carolina license shall apply. Information about these Rules is available from the Board.

History Note: Authority G.S. 90-8.1; 90-9.1; 90-10.1; 90-13.1;

Eff. August 1, 2010;

Amended Eff. September 1, 2014; November 1, 2013; November 1, 2011.

21 NCAC 32B .1360 REACTIVATION OF PHYSICIAN LICENSE

(a) "Reactivation" applies to a physician who has held a physician license in North Carolina, and whose license has been inactive for up to one year except as set out in Rule .1704(e) of this Subchapter. Reactivation is not available to a physician whose license became inactive either while under investigation by the Board or because of disciplinary action by the Board.

(b) In order to reactivate a Physician License, an applicant shall:

- (1) submit a completed application which can be found on the Board's website in the application section at <http://www.ncmedboard.org/licensing>, attesting under oath that the information on the

- application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) supply a certified copy of the applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired US passport. If the applicant does not possess proof of U.S. citizenship, the applicant shall provide information about the applicant's immigration and work status which the Board shall use to verify the applicant's ability to work lawfully in the United States; Those applicants who are not present in the US and who do not plan to practice physically in the US shall include a statement to that effect in the application.
 - (3) submit a FSMB Board Action Data Bank report;
 - (4) submit documentation of CME obtained in the last three years;
 - (5) submit two completed fingerprint record cards supplied by the Board;
 - (6) submit a signed consent form allowing search of local, state, and national files for any criminal record;
 - (7) pay to the Board the a non-refundable fee pursuant to G.S. 90-13.1(a), plus the cost of a criminal background check; and
 - (8) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character, if the Board needs more information to complete the application.

(c) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(d) Notwithstanding the above provisions of this Rule, the licensure requirements established by rule at the time the applicant first received his or her equivalent North Carolina license shall apply. Information about these Rules is available from the Board.

*History Note: Authority G.S. 90-8.1; 90-9.1; 90-12.1A; 90-13.1; 90-14(a)(11a);
Eff. August 1, 2010;
Amended Eff. September 1, 2014.*

21 NCAC 32B .1402 APPLICATION FOR RESIDENT'S TRAINING LICENSE

(a) In order to obtain a Resident's Training License, an applicant shall:

- (1) submit a completed application which can be found on the Board's website in the application section at <http://www.ncmedboard.org/licensing>, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the

- Board of all information pertaining to the application;
- (2) submit documentation of a legal name change, if applicable;
 - (3) submit a photograph, two inches by two inches, affixed to the oath or affirmation which has been attested to by a notary public;
 - (4) submit proof on the Board's Medical Education Certification form that the applicant has completed at least 130 weeks of medical education.
 - (5) furnish an original ECFMG certification status report of a currently valid certification of the ECFMG if the applicant is a graduate of a medical school other than those approved by LCME, AOA, COCA, or CACMS. The ECFMG certification status report requirement shall be waived if:
 - (A) the applicant has passed the ECFMG examination and successfully completed an approved Fifth Pathway program (original ECFMG score transcript from the ECFMG required); or
 - (B) the applicant has been licensed in another state on the basis of a written examination before the establishment of the ECFMG in 1958;
 - (6) submit an appointment letter from the program director of the GME program or his or her appointed agent verifying the applicant's appointment and commencement date;
 - (7) submit two completed fingerprint record cards supplied by the Board;
 - (8) submit a signed consent form allowing a search of local, state, and national files for any criminal record;
 - (9) pay a non-refundable fee pursuant to G.S. 90-13.1(b), plus the cost of a criminal background check;
 - (10) provide proof that the applicant has taken and passed within three attempts:
 - (A) the COMLEX Level 1, and each component of COMLEX Level 2 (cognitive evaluation and performance evaluation) and if taken, COMLEX Level 3; or
 - (B) the USMLE Step 1 and each component of the USMLE Step 2 (Clinical Knowledge and Clinical Skills); and if taken USMLE Step 3; and
 - (11) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(b) An applicant shall be required to appear in person for an interview with the Board or its agent to evaluate the applicant's

competence and character, if the Board needs more information to complete the application.

(c) If the applicant previously held a North Carolina residency training license, the licensure requirements established by rule at the time the applicant first received his or her North Carolina residency training license shall apply. Information about these Rules is available from the Board.

History Note: Authority G.S. 90-8.1; 90-12.01; 90-13.1; Eff. August 1, 2010; Amended Eff. September 1, 2014; November 1, 2013; August 1, 2012; November 1, 2011.

21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) An Immunizing Pharmacist shall administer only those vaccines or immunizations permitted by G.S. 90-85.15B and shall do so subject to all requirements of that statute and this Rule.

(b) The following words and terms, when used in this Rule, have the following meanings:

- (1) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) an Immunizing Pharmacist or a Pharmacy Intern who is under the direct, in-person supervision of an Immunizing Pharmacist; or
 - (B) the patient at the direction of either an Immunizing Pharmacist or a health care provider authorized by North Carolina law to prescribe the vaccine.
- (2) "Immunizing Pharmacist" shall have the meaning provided in G.S. 90-85.3(i1).
- (3) "Pharmacy Intern" shall have the meaning provided in 21 NCAC 46 .1317(28).
- (4) "Physician" means an M.D. or D.O. currently licensed with the North Carolina Medical Board who is responsible for the supervision of the Immunizing Pharmacist pursuant to the Written Protocol between the Immunizing Pharmacist and the Physician.
- (5) RESERVED
- (6) RESERVED
- (7) RESERVED
- (8) RESERVED
- (9) RESERVED
- (10) RESERVED
- (11) RESERVED
- (12) "Written Protocol" is a document prepared, signed, and dated by the Physician and Immunizing Pharmacist that shall contain the following:
 - (A) the name of the Physician responsible for authorizing the Written Protocol;
 - (B) the name of the Immunizing Pharmacist authorized to administer vaccines;

- (C) the immunizations or vaccinations that may be administered by the Immunizing Pharmacist;
- (D) the screening questionnaires and safety procedures that shall at least include the then-current minimum standard screening questionnaire and safety procedures adopted by the Medical Board, the Board of Nursing, and the Board of Pharmacy pursuant to S.L. 2013-246, s. 6, and available at the North Carolina Medical Board's office and on its website (www.ncmedboard.org).
- (E) the procedures to follow, including any drugs required by the Immunizing Pharmacist for treatment of the patient, in the event of an emergency or adverse event following vaccine administration;
- (F) the reporting requirements by the Immunizing Pharmacist to the Physician, including content and time frame; and
- (G) the locations at which the Immunizing Pharmacist may administer immunizations or vaccinations.

The Physician and the Immunizing Pharmacist shall review the Written Protocol at least annually and revise it if necessary.

(c) An Immunizing Pharmacist who, because of physical disability, is unable to obtain a current provider level CPR certification pursuant to G.S. 90-85.3(i1)(1), may administer vaccines in the presence of a pharmacy technician or pharmacist who holds a current provider level CPR certification.

(d) With each dose of vaccine, either the Immunizing Pharmacist or a Pharmacy Intern shall give the most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative. The Immunizing Pharmacist or Pharmacy Intern must ensure that the patient or legal representative has the opportunity to read, or to have read to him or her, the information provided and to have any questions answered prior to administration of the vaccine.

(e) In agreeing to serve as a supervising Physician, the Physician shall agree to meet the following requirements:

- (1) be responsible for the formulation or approval of the Written Protocol and review the Written Protocol and the services provided to patients under the Written Protocol, as set out in Subparagraph (b)(12) of this Rule;
- (2) be accessible to the Immunizing Pharmacist or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage; and
- (3) receive a periodic status reports from the Immunizing Pharmacist, including any problems or complications encountered.

(f) The following requirements pertain to drugs administered by an Immunizing Pharmacist:

- (1) Drugs administered by an Immunizing Pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) the Physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Immunizing Pharmacists, while engaged in the administration of vaccines under the Written Protocol, shall have in their custody and control the vaccines identified in the Written Protocol and any other drugs listed in the Written Protocol to treat adverse events; and
- (4) After administering vaccines at a location other than a pharmacy, the Immunizing Pharmacist shall return all unused prescription medications to the pharmacy or Physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) An Immunizing Pharmacist shall maintain the following information, readily retrievable, in the pharmacy records in accordance with the applicable rules and statute regarding each administration:
 - (A) the name, address, and date of birth of the patient;
 - (B) the date of the administration;
 - (C) the administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) route of administration of the vaccine;
 - (E) the name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) dose administered;
 - (G) the name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) the name or identifiable initials of the Immunizing Pharmacist.
- (2) An Immunizing Pharmacist shall document the annual review with the Physician of the Written Protocol as required in this Rule.
- (3) An Immunizing Pharmacist shall report adverse events associated with administration of a vaccine to either the prescriber, when administering a vaccine pursuant to G.S. 90-85.15B(a), or the patient's primary care

provider, if the patient identifies one, when administering a vaccine pursuant to G.S. 90-85.15B(b).

(h) The Immunizing Pharmacist shall maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.

History Note: Authority G.S. 90-85.3(r); 90-85.15B; Emergency Adoption Eff. September 10, 2004; Temporary Adoption Eff. December 29, 2004; Eff. November 1, 2005; Amended Eff. February 1, 2008; Emergency Amendment Eff. October 9, 2009; Temporary Amendment Eff. December 29, 2009; Temporary Amendment Expired on October 12, 2010; Amended Eff. September 1, 2014; March 1, 2012.

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) An Immunizing Pharmacist shall administer only those vaccines or immunizations permitted by G.S. 90-85.15B and shall do so subject to all requirements of that statute and this Rule.

(b) The following words and terms, when used in this Rule, have the following meanings:

- (1) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) an Immunizing Pharmacist or a Pharmacy Intern who is under the direct, in-person supervision of an Immunizing Pharmacist; or
 - (B) the patient at the direction of either an Immunizing Pharmacist or a health care provider authorized by North Carolina law to prescribe the vaccine.
- (2) "Immunizing Pharmacist" shall have the meaning provided in G.S. 90-85.3(i1).
- (3) "Pharmacy Intern" shall have the meaning provided in 21 NCAC 46 .1317(28).
- (4) "Physician" means an M.D. or D.O. currently licensed with the North Carolina Medical Board who is responsible for the supervision of the Immunizing Pharmacist pursuant to the Written Protocol between the Immunizing Pharmacist and the Physician.
- (5) RESERVED
- (6) RESERVED
- (7) RESERVED
- (8) RESERVED
- (9) RESERVED
- (10) RESERVED
- (11) RESERVED
- (12) "Written Protocol" is a document prepared, signed, and dated by the Physician and

Immunizing Pharmacist that shall contain the following:

- (A) the name of the Physician responsible for authorizing the Written Protocol;
- (B) the name of the Immunizing Pharmacist authorized to administer vaccines;
- (C) the immunizations or vaccinations that may be administered by the Immunizing Pharmacist;
- (D) the screening questionnaires and safety procedures that shall at least include the then-current minimum standard screening questionnaire and safety procedures adopted by the Medical Board, the Board of Nursing, and the Board of Pharmacy pursuant to S.L. 2013-246, s. 6, and available at the Board of Pharmacy's office and on its website (www.ncbop.org).
- (E) the procedures to follow, including any drugs required by the Immunizing Pharmacist for treatment of the patient, in the event of an emergency or adverse event following vaccine administration;
- (F) the reporting requirements by the Immunizing Pharmacist to the Physician, including content and time frame; and
- (G) the locations at which the Immunizing Pharmacist may administer immunizations or vaccinations.

The Physician and the Immunizing Pharmacist shall review the Written Protocol at least annually and revise it if necessary.

(c) An Immunizing Pharmacist who, because of physical disability, is unable to obtain a current provider level CPR certification pursuant to G.S. 90-85.3(i1)(1), may administer vaccines in the presence of a pharmacy technician or pharmacist who holds a current provider level CPR certification.

(d) With each dose of vaccine, either the Immunizing Pharmacist or a Pharmacy Intern shall give the most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative. The Immunizing Pharmacist or Pharmacy Intern must ensure that the patient or legal representative has the opportunity to read, or to have read to him or her, the information provided and to have any questions answered prior to administration of the vaccine.

(e) In agreeing to serve as a supervising Physician, the Physician shall agree to meet the following requirements:

- (1) be responsible for the formulation or approval of the Written Protocol and review the Written Protocol and the services provided to patients under the Written Protocol, as set out in Subparagraph (b)(12) of this Rule;

- (2) be accessible to the Immunizing Pharmacist or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage; and
- (3) receive periodic status reports from the Immunizing Pharmacist, including any problems or complications encountered.

(f) The following requirements pertain to drugs administered by an Immunizing Pharmacist:

- (1) Drugs administered by an Immunizing Pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) the Physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Immunizing Pharmacists, while engaged in the administration of vaccines under the Written Protocol, shall have in their custody and control the vaccines identified in the Written Protocol and any other drugs listed in the Written Protocol to treat adverse events; and
- (4) After administering vaccines at a location other than a pharmacy, the Immunizing Pharmacist shall return all unused prescription medications to the pharmacy or Physician responsible for the drugs.

(g) Record Keeping and Reporting.

- (1) An Immunizing Pharmacist shall maintain the following information, readily retrievable, in the pharmacy records in accordance with the applicable rules and statute regarding each administration:
 - (A) the name, address, and date of birth of the patient;
 - (B) the date of the administration;
 - (C) the administration site of injection (e.g., right arm, left leg, right upper arm);
 - (D) route of administration of the vaccine;
 - (E) the name, manufacturer, lot number, and expiration date of the vaccine;
 - (F) dose administered;
 - (G) the name and address of the patient's primary health care provider, as identified by the patient; and
 - (H) the name or identifiable initials of the Immunizing Pharmacist.

- (2) An Immunizing Pharmacist shall document the annual review with the Physician of the Written Protocol as required in this Rule.
- (3) An Immunizing Pharmacist shall report adverse events associated with administration of a vaccine to either the prescriber, when administering a vaccine pursuant to G.S. 90-85.15B(a), or the patient's primary care provider, if the patient identifies one, when administering a vaccine pursuant to G.S. 90-85.15B(b).

(h) The Immunizing Pharmacist shall maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.

History Note: Authority G.S. 90-85.3; 90-85.6; 90-85.15B;
Eff. April 1, 2003;
Emergency Amendment Eff. May 11, 2004;
Temporary Amendment approved by RRC October 21, 2004;
Amended Eff. February 1, 2008; November 1, 2005; November 1, 2004;
Emergency Amendment Eff. October 9, 2009;
Temporary Amendment Eff. December 29, 2009;
Amended Eff. September 1, 2014; March 1, 2012.

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

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

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

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

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

(e) A trainee or appraiser whose registration, license, or certification has expired and who is returning from active military duty may renew his or her registration, license, or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee or appraiser renews the registration, license, or certificate within 180 days of when the trainee or appraiser returns from active duty. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105 249.2 grants an extension of time to file a tax return.

History Note Authority G.S. 93E-1-6(b); 93E-1-7; 93E-1-10;
Eff. July 1, 1994;
Amended Eff. September 1, 2014; July 1, 2014; July 1, 2011;
 September 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002; April 1, 1999.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on October 16, 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)
Stephanie Simpson (2nd Vice Chair)
Jeanette Doran
Ralph A. Walker
Anna Baird Choi

COMMISSION COUNSEL

Abigail Hammond (919)431-3076
Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

October 16, 2014 November 20, 2014
December 18, 2014 January 15, 2015

AGENDA

RULES REVIEW COMMISSION
THURSDAY, OCTOBER 16, 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. Board of Dental Examiners – 21 NCAC 16D .0104, .0106; 16E .0103, .0104 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between August 21, 2014 and September 22, 2014
 - Board of Agriculture (Hammond)
 - Medical Care Commission (Reeder)
 - Criminal Justice Education and Training Standards Commission (Hammond)
 - Irrigation Contractors Licensing Board (Reeder)
 - NC Medical Board/Perfusion Advisory Committee (Hammond)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - B. 15A NCAC 02B - Environmental Management Commission
 - C. 15A NCAC 02H - Environmental Management Commission
 - D. 15A NCAC 02T - Environmental Management Commission
 - E. 15A NCAC 02U - Environmental Management Commission
- VII. Commission Business
 - Next meeting: Thursday, November 20, 2014

**Commission Review
Log of Permanent Rule Filings
August 21, 2014 through September 22, 2014**

AGRICULTURE, BOARD OF

The rules in Chapter 20 concern the North Carolina State Fair.

The rules in Subchapter 20B concern regulations of the state fair including general provisions (.0100); space rental: commercial exhibit and concession regulations (.0200); competitive exhibit regulations (.0300); and operation of state fair facilities (.0400).

Alcoholic Beverages
Amend/*

02 NCAC 20B .0413

MEDICAL CARE COMMISSION

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

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.5000); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); supplemental rules for hospitals providing living organ donation transplant services (.5500); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

Itemized Charges
Amend/*

10A NCAC 13B .3110

Required Policies, Rules, and Regulations
Amend/*

10A NCAC 13B .3502

The rules in Subchapter 13C concern licensing of ambulatory surgical facilities including general provisions (.0100); licensing procedures (.0200); governing authority and management (.0300); medical and surgical services (.0400); anesthesia services (.0500); pathology services (.0600); radiology services (.0700); pharmaceutical services (.0800); nursing services (.0900); medical records services (.1000); surgical facilities and equipment (.1100); functional safety (.1200); control and sanitation (.1300); and physical plant construction (.1400).

Requirements for Issuance of a License
Amend/*

10A NCAC 13C .0202

Itemized Charges
Amend/*

10A NCAC 13C .0205

Governing Authority
Amend/*

10A NCAC 13C .0301

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>Preservation of Medical Records</u> | 10A | NCAC | 13D | .2402 |
| Amend/* | | | | |
| <u>Use of Nurse Practitioners and physician Assistants</u> | 10A | NCAC | 13D | .2503 |
| Amend/* | | | | |

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

| | | | | |
|---|----|------|-----|-------|
| <u>Responsibilities of the School Director</u> | 12 | NCAC | 09B | .0202 |
| Amend/* | | | | |
| <u>Basic Law Enforcement Training</u> | 12 | NCAC | 09B | .0205 |
| Amend/* | | | | |
| <u>Criminal Justice Instructor Training</u> | 12 | NCAC | 09B | .0209 |
| Amend/* | | | | |
| <u>Specialized Firearms Instruction Training</u> | 12 | NCAC | 09B | .0226 |
| Amend/* | | | | |
| <u>Specialized Driver Instructor Training</u> | 12 | NCAC | 09B | .0227 |
| Amend/* | | | | |
| <u>Specialized Subject Control Arrest Techniques Instructor ...</u> | 12 | NCAC | 09B | .0232 |
| Amend/* | | | | |
| <u>Specialized Physical Fitness Instructor Training</u> | 12 | NCAC | 09B | .0233 |
| Amend/* | | | | |
| <u>General Instructor Certification</u> | 12 | NCAC | 09B | .0302 |
| Amend/* | | | | |
| <u>Specialized Instructor Certification</u> | 12 | NCAC | 09B | .0304 |
| Amend/* | | | | |
| <u>Time Requirement for Completion of Training</u> | 12 | NCAC | 09B | .0401 |
| Amend/* | | | | |
| <u>Evaluation for Training Waiver</u> | 12 | NCAC | 09B | .0403 |
| Amend/* | | | | |
| <u>Comprehensive Written Examination - Basic Law Enforcement...</u> | 12 | NCAC | 09B | .0406 |
| Amend/* | | | | |
| <u>Comprehensive Written Examination - Basic SMI Certification</u> | 12 | NCAC | 09B | .0408 |
| Amend/* | | | | |
| <u>Comprehensive Written Exam - Instructor Training</u> | 12 | NCAC | 09B | .0413 |
| Amend/* | | | | |
| <u>Comprehensive Written Exam - Specialized Instructor Training</u> | 12 | NCAC | 09B | .0414 |
| Amend/* | | | | |
| <u>Satisfaction of Minimum Training - SMI Instructor</u> | 12 | NCAC | 09B | .0416 |
| Amend/* | | | | |

The rules in Subchapter 9C concern the administration of criminal justice education and training standards including

responsibilities of the criminal justice standards division (.0100); forms (.0200); certification of criminal justice officers (.0300); accreditation of criminal justice schools and training courses (.0400); minimum standards for accreditation of associate of applied science degree programs incorporating basic law enforcement training (.0500); and equipment and procedures (.0600).

| | | |
|--|----|----------------|
| <u>Pre-Delivery Report of Training Course Presentation</u> Amend/* | 12 | NCAC 09C .0211 |
| <u>Reports of Training Course Presentation and Completion</u> Amend/* | 12 | NCAC 09C .0403 |

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

| | | |
|---|----|----------------|
| <u>Minimum Training Specifications: Annual In-Service Training</u> Amend/* | 12 | NCAC 09E .0105 |
|---|----|----------------|

The rules in Subchapter 9F cover concealed handgun training.

| | | |
|---------------------------------|----|----------------|
| <u>Topical Areas</u> Amend/* | 12 | NCAC 09F .0102 |
|---------------------------------|----|----------------|

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers-intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

| | | |
|--|----|----------------|
| <u>General Instructor Certification</u> Amend/* | 12 | NCAC 09G .0308 |
| <u>Comprehensive Written Exam - Instructor Training</u> Amend/* | 12 | NCAC 09G .0314 |
| <u>Instructor Training</u> Amend/* | 12 | NCAC 09G .0414 |

IRRIGATION CONTRACTORS LICENSING BOARD

The rules in Chapter 23 are from the Irrigation Contractors' Licensing Board and concern licensing (.0100); hearing rules of the North Carolina Irrigation Contractors' Licensing Board (0200); irrigation record drawing minimum standards (.0300); irrigation design minimum standards (.0400); irrigation system installation minimum standards (.0500); irrigation system management for water efficiency minimum standards (.0600); and

| | | |
|--|----|---------------|
| <u>Ethics</u> Adopt/* | 21 | NCAC 23 .0105 |
| <u>Conduct of Hearing</u> Amend/* | 21 | NCAC 23 .0206 |
| <u>Decision of Board</u> Amend/* | 21 | NCAC 23 .0207 |
| <u>Trenching and Piping</u> Amend/* | 21 | NCAC 23 .0505 |

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

The rules in Subchapter 32V are rules covering licensure of perfusionists and the practice of perfusion. Perfusion primarily concerns operating cardiopulmonary bypass systems during cardiac surgery cases.

Definitions
Amend/*

21 NCAC 32V .0102

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

| | |
|------------------------|-----------------|
| Melissa Owens Lassiter | A. B. Elkins II |
| Don Overby | Selina Brooks |
| J. Randall May | Craig Croom |
| J. Randolph Ward | |

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>DATE</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|--|------------------------|-------------|---|
| <u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u> | | | |
| ABC Commission v. Noble 6 Enterprises LLC, T/A Peppermint Rabbit | 13 ABC 20226 | 08/13/14 | |
| ABC Commission v. Demetrius Earl Smith, T/A Smith's Convenient Store | 14 ABC 01354 | 08/18/14 | |
| Melody Locklear McNair v. ABC Commission | 14 ABC 02323 | 06/25/14 | |
| Marcus L. Bellamy T/A Bellas Grill v. ABC Commission | 14 ABC 03485 | 07/24/14 | |
| <u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u> | | | |
| Travis Earl Atkinson v. NC Victims Compensation Commission | 13 CPS 16304 | 09/02/14 | |
| Carl John Perkinson v. Department of Public Safety | 14 CPS 02245 | 06/24/14 | |
| Waheeda Ammeri v. Department of Public Safety | 14 CPS 03254 | 07/21/14 | |
| <u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u> | | | |
| Senior Home Care Services, Inc. v. DHHS | 12 DHR 09750 | 08/13/14 | |
| Johnson Allied Health Services, Inc. v. DHHS | 12 DHR 11536 | 09/02/14 | |
| Helen Graves v. Alamance County Department of Social Services and NC Department of Health and Human Services, Division of Health Service Regulation | 12 DHR 12411 | 09/02/14 | |
| AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare | 13 DHR 00115 | 01/06/14 | 29:02 NCR 202 |
| Albert Barron, Sr. v. Eastpointe Human Services Local Management Entity | 13 DHR 00784 | 04/22/14 | 29:04 NCR 444 |
| At Home Personal Care Services, Inc. v. DHHS, Division of Medical Assistance | 13 DHR 01922 | 03/20/14 | 29:07 NCR 834 |
| AHB Psychological Services v. DHHS and Alliance Behavioral Healthcare | 13 DHR 08874 | 01/06/14 | 29:02 NCR 202 |
| Sheryl A. Lyons v. DHHS | 13 DHR 10228 | 05/12/14 | 29:05 NCR 559 |
| Kenneth Terrell Ford v. DHHS, Division of Facility Services | 13 DHR 10745 | 02/12/14 | 29:03 NCR 356 |
| Pamela Byrd v. DHHS | 13 DHR 12691 | 11/05/13 | 29:06 NCR 685 |
| Tricare Counseling and Consulting, Inc. v. DHHS, Division of Medical Assistance | 13 DHR 14221 | 12/31/13 | 29:04 NCR 460 |
| J. Mark Oliver DDS, PLLC v. DHHS, Division of Medical Assistance | 13 DHR 14369 | 02/19/14 | 29:02 NCR 206 |
| Genesis Project 1 Inc. v. DHHS, Division of Medical Assistance and its agent, Mecklink Behavioral Healthcare | 13 DHR 17094 | 12/16/13 | 29:01 NCR 70 |
| Ervin Smith v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry | 13 DHR 17560 | 07/30/14 | |
| Ashley Renee Davis v. Department of Human Services | 13 DHR 17606 | 09/02/14 | |
| Estate of Earlene W. Alston, Lewis E. Alston v. DHHS, DMA | 13 DHR 17909 | 04/08/14 | 29:02 NCR 211 |
| Total Renal Care of North Carolina, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Bio-Medical Applications of North Carolina | 13 DHR 18127 | 06/23/14 | 29:07 NCR 842 |

CONTESTED CASE DECISIONS

| | | | |
|--|--------------|----------|---------------|
| Total Renal Care of North Carolina, LLC v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Bio-Medical Applications of North Carolina | 13 DHR 18223 | 06/23/14 | 29:07 NCR 842 |
| Lawanda Suggs v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry | 13 DHR 18454 | 08/15/14 | |
| Susan Arrowood, OLPC v. DHHS, Division of Medical Assistance and its agent Partners Behavioral Health Management | 13 DHR 19981 | 01/08/14 | 29:03 NCR 366 |
| Rosemary Nwankwo v. DHHS | 13 DHR 20013 | 08/13/14 | |
| Marilyn Sherrill v. DHHS | 13 DHR 20086 | 08/13/14 | |
| HSB Enterprise Corporation, Hettion S. Booker v. DHHS, Division of Medical Assistance, Program Integrity Section | 13 DHR 20235 | 09/02/14 | |
| Gregory P. Lathan, President and Registered Agent, The EI Group Inc. v. DHHS | 13 DHR 20332 | 08/20/14 | |
| Jacqueline Marie Jackson v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry | 14 DHR 00460 | 07/10/14 | |
| Nadiah Porter v. Durham County Department of Social Services (DSS) (Formerly Durham's Alliance for Child Care Access, DACCA) | 14 DHR 01309 | 06/30/14 | |
| Wittner Wright and Lisa Wright v. DHHS | 14 DHR 01510 | 07/21/14 | |
| Darrick Pratt v. DHHS, Division of Health Service Regulation | 14 DHR 01598 | 08/26/14 | |
| Elite Care Inc. Demetrice Wilson v. DHHS and East Carolina Behavioral Health | | | |
| Elizabeth Mitchell v. Durham DSS | 14 DHR 01982 | 06/23/14 | |
| Wayne Mitchell v. Durham DSS | 14 DHR 02044 | 06/23/14 | |
| Prince Onwuka, Roda V. Onwuka v. Division of Child Development and Early Education | 14 DHR 02636 | 07/24/14 | |
| Andrea Cook v. DHHS, Division of Health Service Regulation | 14 DHR 02947 | 07/29/14 | |
| Dianne Lucas v. DHHS, Division of Health Service Regulation | 14 DHR 03088 | 08/05/14 | |
| Faisal Saed Ismail v. New Hanover County DSS | 14 DHR 03089 | 08/01/14 | |
| Peter K. Kagwanja, owner Lighthouse Foodmart v. DHHS, Division of Public Health | 14 DHR 03335 | 07/03/14 | |
| Jennifer Lyn McKinney v. DHHS, Division of Health Service Regulation | 14 DHR 03521 | 08/07/14 | |
| Juan Wilbornx v. DHHS | 14 DHR 03585 | 08/18/14 | |
| Harold Eku John Coker v. Office of Administrative Hearings | 14 DHR 03644 | 08/01/14 | |

DEPARTMENT OF JUSTICE

| | | | |
|--|--------------|----------|---------------|
| Stephen James Riley v. NC Sheriffs' Education and Training Standards Commission | 13 DOJ 09572 | 10/30/13 | 29:04 NCR 465 |
| William Dale Aaronson v. NC Sheriffs' Education and Training Standards Commission | 13 DOJ 11693 | 01/07/14 | 29:03 NCR 373 |
| Benjamin Lee Torain v. NC Private Protective Services Board | 13 DOJ 14220 | 12/11/13 | 29:06 NCR 692 |
| Jose Monserrate Acosta v. NC Private Protective Services | 13 DOJ 15271 | 12/11/13 | 29:02 NCR 213 |
| Kent Patrick Locklear v. NC Sheriffs' Education and Training Standards Commission | 13 DOJ 15368 | 01/03/14 | 29:01 NCR 74 |
| Michael Keith Fox v. NC Criminal Justice Education and Training Standards Commission | 13 DOJ 15453 | 05/27/14 | 29:05 NCR 572 |
| Michael Tyler Nixon v. NC Alarm Systems Licensing Board | 13 DOJ 16246 | 11/25/13 | 29:01 NCR 79 |
| Vincent Dale Donaldson v. NC Sheriffs' Education and Training Standards Commission | 13 DOJ 16255 | 04/14/14 | 29:07 NCR 877 |
| Garrett Dwayne Gwin v. NC Criminal Justice Education and Training Standards Commission | 13 DOJ 17240 | 06/10/14 | |
| Howard Ron Simons v. NC Sheriffs' Education and Training Standards Commission | 13 DOJ 19148 | 06/20/14 | |
| Keith Lavon Mallory, Jr. v. NC Sheriff's Education and Training Standards Commission | 13 DOJ 19152 | 08/20/14 | |
| Janet Staricha v. University of NC at Chapel Hill | 13 DOJ 19693 | 06/06/14 | |
| Scott Eric Smithers v. NC Private Protective Services Board | 14 DOJ 00728 | 07/31/14 | |
| Lisa Paulette Childress v. NC Sheriffs' Education and Training Standards Commission | 14 DOJ 00869 | 07/07/14 | |
| Derek Andre Howell v. NC Sheriffs' Education and Training Standards Commission | 14 DOJ 00871 | 08/22/14 | |
| Angela Renee Joyner v. NC Sheriffs' Education and Training Standards Commission | 14 DOJ 00873 | 06/23/14 | |
| Jeremy Samuel Jordan v. NC Sheriffs' Education and Training Standards Commission | 14 DOJ 01203 | 06/12/14 | |
| Kenneth Lamont McCoy v. NC Alarm Systems Licensing Board | 14 DOJ 03904 | 07/17/14 | |
| Donald Edward Cottle II v. NC Alarm Systems Licensing Board | 14 DOJ 04127 | 08/27/14 | |
| Ossie James Adkins v. NC Alarm Systems Licensing Board | 14 DOJ 04129 | 08/29/14 | |
| David R. Beatson v. NC Private Protective Services Board | 14 DOJ 04313 | 09/04/14 | |

DEPARTMENT OF STATE TREASURER

| | | | |
|---|--------------|----------|--|
| Reza M. Salami v. NC A&T State University, Retirement Systems Division | 13 DST 09273 | 06/26/14 | |
| Ozie L. Hall v. Department of State Treasurer, Retirement Systems Division, Teachers' and State Employees Retirement System | 14 DST 02877 | 07/07/14 | |
| Lucy Hayes v. Department of State Treasurer, Retirement Systems Division | 14 DST 03138 | 08/29/14 | |

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

| | | | |
|--|--------------|----------|--|
| Certain Teed Corporation v. Department of Environment and Natural Resources, Division of Water Resources | 13 EHR 13548 | 06/30/14 | |
|--|--------------|----------|--|

CONTESTED CASE DECISIONS

| | | |
|---|--------------|----------|
| Certain Teed Corporation v. Department of Environment and Natural Resources, Division of Water Resources | 13 EHR 14024 | 6/30/14 |
| NC Coastal Federation, Cape Fear River Watch, Penderwatch and Conservancy, Sierra Club v. Department of Environment and Natural Resources, Division of Air Quality and Carolinas Cement Company LLC | 13 EHR 17906 | 07/01/14 |

HUMAN RELATIONS COMMISSION

| | | |
|---|--------------|----------|
| Shannon S. Smith v. Housing Authority of the Town of Mt. Airy | 14 HRC 03220 | 08/20/14 |
|---|--------------|----------|

DEPARTMENT OF INSURANCE

| | | |
|--|--------------|----------|
| Sandy T. Moore v. Blue Cross/Blue Shield NC, State Health Plan | 14 INS 00275 | 08/07/14 |
|--|--------------|----------|

BOARD OF LICENSED PROFESSIONAL COUNSELORS

| | | |
|---------------------------|--------------|----------|
| Beth Ford v. NC LPC Board | 14 LPC 03805 | 08/25/14 |
|---------------------------|--------------|----------|

MISCELLANEOUS

| | | |
|---|--------------|----------|
| William L. Harris v. NC Administrative Office of the Courts | 14 MIS 00113 | 08/25/14 |
| Beth Ford v. Wake County Special Proceeding Court | 14 MIS 01123 | 08/26/14 |

OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)

| | | | |
|---|--------------|----------|---------------|
| Azlea Hubbard v. Department of Commerce, Division of Workforce Solutions | 12 OSP 08613 | 05/19/14 | |
| Mark Smagner v. Department of Revenue | 13 OSP 05246 | 12/05/13 | 29:04 NCR 471 |
| Antonio Asion v. Department of Public Safety, et. Al. | 13 OSP 10036 | 05/09/14 | 29:05 NCR 593 |
| Thomas Carl Bland v. NC Agricultural & Technical State University | 13 OSP 11087 | 10/30/13 | 29:06 NCR 697 |
| Antonio Asion v. Department of Public Safety, et. Al. | 13 OSP 11386 | 05/09/14 | 29:05 NCR 593 |
| Ricky Ward v. Department of Public Safety | 13 OSP 11968 | 05/14/14 | 29:05 NCR 615 |
| Chauncey John Ledford v. Department of Public Safety | 13 OSP 12223 | 12/31/13 | 29:03 NCR 381 |
| Harold Leonard McKeithan v. Fayetteville State University | 13 OSP 13380 | 12/03/13 | 29:05 NCR 637 |
| Vicki Belinda Johnson v. DHHS | 13 OSP 13603 | 08/08/14 | |
| Lenton Credelle Brown v. Department of Public Safety, W. Ellis Boyle General Counsel | 13 OSP 13729 | 05/16/14 | |
| Cleveland Dunston v. DHHS | 13 OSP 14365 | 06/23/14 | 29:06 NCR 705 |
| Kenneth Shields v. Department of Public Safety | 13 OSP 15762 | 02/26/14 | 29:01 NCR 84 |
| Tammy Cagle v. Swain County Consolidated Human Services Board | 13 OSP 15763 | 12/19/13 | 29:04 NCR 480 |
| Rena Pearl Bridges v. Department of Commerce | 13 OSP 15896 | 02/19/14 | 29:01 NCR 95 |
| Barbara Hinton v. Surry County Health and Nutrition Center | 13 OSP 16230 | 02/12/14 | 29:03 NCR 388 |
| Meg DeMay v. Richmond County Department of Social Services | 13 OSP 18084 | 07/02/14 | 29:06 NCR 719 |
| Gregg Sipler v. University of NC at Greensboro | 13 OSP 18692 | 04/21/14 | 29:07 NCR885 |
| Joseph Vincoli v. Department of Public Safety | 14 OSP 00389 | 04/10/14 | 29:02 NCR 218 |
| Rose Marie Johnson v. Durham County Department of Social Services | 14 OSP 01317 | 07/21/14 | |
| Craig Williams v. Billy Deaver NCCU Superintendent, NC Central University of Building Trades | 14 OSP 02111 | 06/06/14 | |
| Crystal McLean v. Alicia Lopez, NC SCO/DOA, NC State Construction Office/Department of Administration | 14 OSP 02944 | 07/01/14 | |
| Teresa Wheeler v. County of Currituck-Currituck County Fire/EMS Department | 14 OSP 03688 | 08/12/14 | |

DEPARTMENT OF REVENUE

| | | | |
|--|--------------|----------|---------------|
| Feeling Great Inc. v. Department of Revenue | 13 REV 18080 | 07/23/14 | 29:07 NCR 891 |
| Sleep Medical Center Inc. v. Department of Revenue | 13 REV 18081 | 07/23/14 | 29:07 NCR 891 |
| Curtis Leyshon v. Department of Revenue | 13 REV 20016 | 08/29/14 | |
| Lisa Webb Leyshon v. Department of Revenue | 13 REV 20017 | 08/29/14 | |
| Cyril Broderick, Jr. v. Department of Revenue | 14 REV 01773 | 06/24/14 | |
| P&P of Holden Beach Inc. or Rockfish Ventures 1 Inc. | 14 REV 03901 | 08/05/14 | |
| C-Co Mini Mart Inc. v. Department of Revenue | 14 REV 10490 | 08/01/14 | |

OFFICE OF THE SECRETARY OF STATE

| | | |
|---|--------------|----------|
| Tonya Denise Pettaway v. Department of the Secretary of State | 14 SOS 02369 | 08/05/14 |
| Anthony Garrard v. Secretary of State's Office | 14 SOS 03403 | 08/22/14 |

WILDLIFE RESOURCES COMMISSION

| | | |
|--|--------------|----------|
| People for the Ethical Treatment of Animals, Inc., Jacob Matthew Norris, and Julie Coveleski v. North Carolina Wildlife Resources Commission and Gordon Myers, as Executive Director, North Carolina Wildlife Resources Commission | 14 WRC 01045 | 08/01/14 |
| People for the Ethical Treatment of Animals, Inc., Jacob Matthew Norris, and Julie Coveleski v. North Carolina Wildlife Resources Commission and Gordon Myers, as Executive Director, North Carolina Wildlife Resources Commission | 14 WRC 01348 | 08/01/14 |

Filed

STATE OF NORTH CAROLINA

COUNTY OF PITT

2011 MAR 20 AM 9:53
Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

13 DHR 01922

At Home Personal Care Services, Inc.,

Petitioner,

v.

N.C. Department of Health and Human
Services, Division of Medical Assistance,

Respondent.

FINAL DECISION

This contested case was heard before the undersigned Administrative Law Judge on October 24, 2013 in Greenville, North Carolina.

APPEARANCES

For Petitioner: Matthew Jordan Cochran
Ott Cone & Redpath, P.A.
Attorneys at Law
Asheville, North Carolina

For Respondent: Brenda Eaddy
Assistant Attorney General
N.C. Department of Justice
Raleigh, North Carolina

ISSUE

The issue in this contested case is whether the Department of Health and Human Services ("Department") correctly determined that petitioner had received an overpayment of \$112,040.00, based upon an audit conducted by Respondent of Petitioner's paid claim records and an extrapolation of those audit findings.

EVIDENCE

The parties agreed to the authenticity and admissibility of the following documents, each of which was accordingly admitted, having been marked for identification with the numbers indicated below:

Petitioner's Exhibits:

6. Curriculum Vitae of Dr. Jeffrey A. Witmer, PhD.

Respondent's Exhibits:

1. DMA Clinical Coverage Policy 8A (effective 1/1/2009, revised 6/11/2009).
2. Medicaid Provider Participation Agreement.
3. Records Request Letter dated 10/11/11.
4. Tentative Notice of Overpayment dated 7/13/12 (hereinafter "TNO").
5. Chart identifying claims with paid amounts and pass/fail designation prepared and mailed with the TNO.
6. Chart of paid/overpaid amounts prepared in accordance with the TNO.
7. RAT-STATS Variable Unrestricted Appraisal dated 7/13/12 prepared in accordance with the TNO.
8. Hearing Officer's Decision dated 12/11/12 (hereinafter "Reconsideration Decision").
9. Chart of paid/overpaid amounts prepared in accordance with the Reconsideration Decision.
10. RAT-STATS Variable Unrestricted Appraisal dated 12/3/12 prepared in accordance with the Reconsideration Decision.
11. Chart of paid/overpaid amounts prepared in preparation for hearing.
12. RAT-STATS Variable Unrestricted Appraisal dated 8/28/13 prepared in preparation for hearing.
13. Curriculum Vitae of Bob Dunas, Appeals Specialist, PCG.
14. Curriculum Vitae of Patrice Graham, Sampling Specialist, PCG.
15. Copy of RAT-STATS Processing Tool.
17. Curriculum Vitae of Dr. Michael Jiroutek.

In addition, the following exhibits offered by Petitioner were admitted into evidence, having been properly marked for identification with the numbers indicated below:

7. E-mails between counsel dated August 2, 2013; August 9, 2013; August 12, 2013; and, August 20, 2013.
8. E-mails between counsel dated September 2, 2013 and September 23, 2013.
9. Petitioner's Prehearing Statement (dated March 4, 2013).

WITNESSES

Petitioner's Witnesses:

1. Regenia Gilliam, Owner, At Home Personal Care Services, Inc.
2. Dr. Jeffrey A. Witmer, PhD, Barraclough NY LLC.

Respondent's Witnesses:

1. Patrice Graham, Sampling Specialist, PCG.
2. Dr. Michael Jiroutek, PhD.

STIPULATIONS

Petitioner stipulates to the accuracy of the clinical findings in the Reconsideration Decision.

The parties stipulated (1) that both Dr. Michael Jiroutek, Respondent's expert, and Dr. Jeffrey Witmer, Petitioner's expert, possess the scientific, technical, or other specialized knowledge to assist the trier of fact to understand the evidence or to determine a fact in issue and (2) that by virtue of the knowledge, skill, experience, training or education of each, Dr. Jiroutek and Dr. Witmer each qualify as experts in the area of statistics, pursuant to Rule 702 of the North Carolina Rules of Evidence.

Based upon the preponderance of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent audited Community Support claims of Medicaid services provided by Petitioner for dates between January 1, 2009 and June 30, 2009 (the "Audit Period").
2. Respondent reviewed a random sample of 101 Community Support claims submitted or made by Petitioner during or for the Audit Period.

3. The amount Respondent paid to Petitioner for the sample of 101 claims was \$14,467.70. The amount of improperly paid claims from the audit sample was \$12,353.84. Using extrapolation, Respondent determined that it had improperly paid Petitioner \$520,488.00 during the Audit Period.

4. Petitioner timely requested and participated in an informal reconsideration review hearing before an agency Hearing Officer. The agency Hearing Officer's decision is the Reconsideration Review Decision dated December 11, 2012.

5. The Reconsideration Decision contains a number of clinical findings adverse to Petitioner and concludes that, in addition to 17 claims conceded by Petitioner at the reconsideration proceedings held on September 18, 2012, another 4 claims had been erroneously paid. Petitioner does not dispute, and concedes, the adverse clinical findings in the Reconsideration Decision.

6. Following the informal reconsideration review hearing, the Hearing Officer found that the amount of improperly paid claims decreased from \$12,353.84 to \$3,632.22. Using extrapolation, the Hearing Officer determined that Respondent had improperly paid Petitioner \$112,040.00 during the audit period (the "Reconsideration Review Overpayment").

7. The Reconsideration Decision describes the Total Overpayment as arising from the 21 erroneously paid claims and as being based on Respondent's extrapolation calculations.

8. In keeping with the revised clinical findings established in the Reconsideration Decision, Respondent produced the extrapolation documents dated December 3, 2021 that constitute Respondent's Exhibits 9 and 10 (the "Reconsideration Numbers").

9. Petitioner did not submit any revised claims or new documentation to Respondent or its contractors following the hearing Reconsideration Decision.

10. Prior to the hearing of this matter, Respondent produced extrapolation documents dated August 28, 2013 that constitute Respondent's Exhibits 11 and 12 (the "Prehearing Numbers").

11. Based on that review, Respondent decreased the improperly paid claims from \$3,632.22 to \$2,681.82. Using extrapolation, Respondent determined that it had improperly paid Petitioner \$76,729.00 during the audit period.

12. Although this extrapolated amount is to the benefit of the Petitioner, it has no relevance to this proceeding in that it was not at issue when Petitioner filed the contested case petition and not the basis for this appeal.

13. In March 2013, Petitioner sought to obtain from Respondent through discovery requests contained in its Prehearing Statement the "universe" associated with the extrapolations conducted this case.

14. 26 NCAC 03 .0104 sets forth what is to be contained in prehearing statements in pertinent part as follows:

The administrative law judge may serve all parties with an Order for Prehearing Statements together with, or after service of, the Notice of Contested Case Filing and Assignment. The parties thus served shall, within 30 days of service, file the requested statements setting out the party's present position on the following:

- (4) A description of what discovery, if any, the party will seek to conduct prior to the contested case hearing and an estimate of the time needed to complete discovery;

15. The Administrative Code does not provide nor require a party to specifically state what is sought by way of discovery. A prehearing statement is considered a "pleading" and as such requests for specific information in the nature of discovery may be given some credence.

16. The parties corresponded from July until September, 2013, via email. On August 20, 2013, Respondent forwarded to Petitioner the documents contained in Respondent's Exhibits 9 and 10.

17. Although there was further email correspondence between the parties concerning what had been produce and seeking clarification there has not been any formal discovery requests other than that in the prehearing statement and there have been no formal requests to compel discovery.

18. According to Dr. Jiroutek, a "universe" is the entire population of whatever is to be studied statistically. In this instance, the universe of files in the audit period is all of the claims that Petitioner actually filed with Respondent for payment during the period under review.

19. Petitioner has this information since it is what Petitioner supplied to Respondent for payment. There is no evidence as to how Petitioner would have stored this information, or how it might have been useful in making a separate statistical analysis, but Petitioner had this information nevertheless.

20. A "sample" is a piece of the entire universe. Generally in research the universe is so large as to make it extremely difficult and unwieldy to attempt to study the entire universe, so a representative sample is used and extrapolated in order to draw conclusions about the entire universe. This is a well-recognized and accepted practice, although alternative methods may be applied in such studies.

21. Patrice Graham testified on behalf of Respondent. She is employed by Public Consulting Group (PCG), a contractor with DMA.

22. Ms. Graham explained the part of the process with which she is involved with the post payment reviews, as in this particular case. She is given the particular parameters of the search, including the dates of review and the providers Medicaid number or numbers, which she initially applies to the DRIVE computer program which contains all Medicaid claim information for the entire state of North Carolina. From that program, she initially pulls the "universe." The

information is next placed in PCG's ACCESS program which further refines the scope of the search by removing claims which are not applicable; e.g., limiting the search to the specific dates within the range to be audited.

23. To assure randomness and to protect against manipulation, Ms. Graham does not actually see the data as it is being "sampled."

24. The next step in the process is a weighted "stratification", which Ms. Graham also explained and is performed by the ACCESS program. Ms. Graham is still not capable of seeing the claims as this part of the process is accomplished. The stratification gets an equal amount of high end claims and low end claims to try to not skew the results in either direction. The "stratification" is performed by Ms. Graham and the weighing of value assigned to the various claims is primarily done by the computer program as well as relying on the expertise of the auditor.

25. The information is next applied to the RAT-STATS computer program. RAT-STATS randomly generates the numbers, a "sample" of claims from the universe of Petitioner's claims, that are audited. Those random numbers are then pulled from the ACCESS data. The information is put into yet another Excel spreadsheet which generates for the first time the actual claims that are being audited. That information is uploaded and the initial letter to the provider is generated.

26. No evidence was introduced to challenge the process as described by Ms. Graham. No evidence was introduced to challenge the reliability of either the DRIVE or ACCESS computer programs used by PCG.

27. Both Dr. Jiroutek and Dr. Witmer agreed as to the general functioning and reliability of RAT-STATS. The program has been used by the federal government for approximately forty years.

28. RAT-STATS show that the Universe of Petitioner's claims in this matter contained 4,500 claims – 2,719 in stratum 1 and 1,781 in stratum 2.

29. The samples produced by RAT-STATS were selected randomly - -there is no evidence to the contrary. Stratum 1 contained 66 claims – stratum 2 contained 35 claims.

30. Dr. Jiroutek opined within a reasonable degree of statistical certainty that the random sample process used in this matter is statistically valid and reliable. Further, Dr. Jiroutek opined that the process used to produce the random sample and extrapolation in this matter is statistically valid and reliable.

31. Dr. Witmer could not offer his opinion as to the statistical validity of Respondent's numbers because he did not review the Universe of claims.

Based upon the foregoing findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The parties stipulated, and the undersigned finds as fact and concludes as a matter of law, that the Office of Administrative Hearings has jurisdiction over this contested case pursuant to Chapters 131E and 150B of the North Carolina General Statutes, that this matter is in the appropriate forum and venue, that this action was filed in a timely and appropriate fashion, and that all parties necessary to this action are joined. In addition, pursuant to N.C. Gen. Stat. § 108C-12, Respondent bears the burden of proof in this matter.

2. 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.

3. There has been no assertion or allegation in this proceeding that Petitioner was in any way responsible for fraud as defined in N.C. Gen. Stat. §108A-63. Specifically, there is no allegation or assertion of the Petitioner “knowingly and willfully making or causing to be made any false statement or representation of material fact” or engaging in other types of fraud. Therefore, fraud is not an issue in this contested case.

4. Petitioner contends that it did not receive a file containing the universe of claims from Respondent, and that therefore Respondent was hiding information from Petitioner; however, Petitioner possessed the universe of claims. The universe of claims is comprised totally of information that Petitioner furnished to Respondent in order to be reimbursed.

5. While there is no evidence as to how Petitioner would have stored this information, or how it might have been useful in making a separate statistical analysis, Petitioner possessed this information nevertheless. It could have passed that information on to its expert.

6. Alternatively, if the information Respondent sent to Petitioner as the Universe was insufficient and/or incorrect, Petitioner could have pursued more formal methods of compelling discovery.

7. No evidence at all was introduced to challenge the process of random sampling as described by Ms. Graham. No evidence was introduced to challenge the reliability of either the DRIVE or ACCESS computer programs used by PCG.

8. Both Dr. Jiroutek and Dr. Witmer agreed as to the general functioning and reliability of RAT-STATS.

9. Respondent met its burden of showing by a preponderance of the evidence that Respondent’s identification of the improper overpayments was proper.

10. The procedure to select a random sample of claims from the universe of claims for the audit period was valid, proper and sound to a reasonable degree of statistical certainty.

11. The procedure to perform the statistical extrapolation for the universe of claims, based on the audited claims, was valid, proper, and sound to a reasonable degree of statistical certainty.

12. Based upon the preponderance of the evidence, Respondent properly identified an improper payment to Petitioner of \$112,040.00. The Respondent did not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule. Respondent has not otherwise improperly substantially prejudiced the petitioner's rights.

DECISION

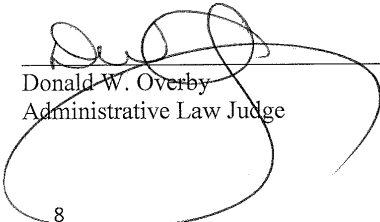
Based upon the foregoing findings of fact and conclusions of law, the undersigned finds that Respondent properly determined that Petitioner received an overpayment of \$112,040.00.

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 the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute I A-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 is the 20th day of March, 2014.


Donald W. Overby
Administrative Law Judge

Filed

NORTH CAROLINA
FRANKLIN COUNTY

2014 JUN 23 PM 4:52

Office of
Administrative Hearings

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 18127 and 13 DHR 18223

TOTAL RENAL CARE OF NORTH
CAROLINA, LLC,

Petitioner,

v.

NORTH CAROLINA DEPARTMENT
OF HEALTH AND HUMAN
SERVICES, DIVISION OF HEALTH
SERVICE REGULATION,
CERTIFICATE OF NEED SECTION,

Respondent,

And

BIO-MEDICAL APPLICATIONS OF
NORTH CAROLINA, INC.,

Respondent-Intervenor

FINAL DECISION

This matter came for hearing before Craig Croom, Administrative Law Judge ("ALJ"), on March 24 – April 3, 2014 in Raleigh, North Carolina. Having heard and considered all of the testimony and evidence in this case and having considered the exhibits, arguments, and relevant law, the Undersigned makes the Findings of Fact by a preponderance of the evidence, enters his Conclusions of Law thereon, and makes the following Final Decision.

APPEARANCES

For Petitioner Total Renal Care of North Carolina, LLC ("TRC"):

William R. Shenton
Pamela A. Scott
Poyner Spruill LLP
301 Fayetteville Street
Suite 1900
Raleigh, NC 27601

For Respondent N.C. Department of Health and Human Services, Division of Health Service Regulation, Certificate of Need Section (the "CON Section" or "Agency"):

Scott T. Stroud
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

For Respondent-Intervenors Bio-Medical Applications of North Carolina, Inc. ("BMA"):

Marcus C. Hewitt
Elizabeth Sims Hedrick
Smith Moore Leatherwood LLP
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601

APPLICABLE LAW

1. The procedural statutory law applicable to this contested case is the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-2 *et seq.* and N.C. Gen. Stat. § 131E-188 of the North Carolina Certificate of Need Law.

2. The substantive statutory law applicable to this contested case is the North Carolina Certificate of Need Law, N.C. Gen. Stat. § 131E-175 *et seq.*

3. The administrative regulations applicable to this contested case are the North Carolina Certificate of Need Program Administrative Regulations, 10A N.C.A.C. 14C. 0101 *et seq.*, in particular 10A N.C.A.C. 14C .2200 *et seq.*

BURDEN OF PROOF

As petitioner, TRC bears the burden of proof by a preponderance of the evidence. *See* N.C. Gen. Stat. § 150B-23(a); N.C. Gen. Stat. § 150B-29(a); *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447-48 (2006).

ISSUES

TRC's List of Contested Issues

1. Whether the CON Section substantially prejudiced TRC's rights when it conditionally approved the BMA Application.

2. Whether the CON Section exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule in determining that the BMA Application should be conditionally approved.

3. Whether the CON Section exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule in determining that the BMA Application conformed with Review Criteria 4, 5, and 13(c). N.C. Gen. Stat. §§ 131E-183(a)(4), (5), and (13(c)).

4. Whether the CON Section substantially prejudiced TRC's rights when it disapproved the TRC Application.

5. Whether the CON Section exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule in determining that the TRC Application should be disapproved.

6. Whether the CON Section exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule in determining that the TRC Application did not conform with Review Criteria 1, 4, 6, and 18a. N.C. Gen. Stat. §§ 131E-183(a)(1), (4), (6), and (18a).

The CON Section's List of Contested Issues

1. Whether Respondent substantially prejudiced Petitioner's rights and exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when Respondent approved the CON application filed by BMA and denied the application of TRC for Project I.D. Nos. K-10099-13 and K-10126-13.

BMA's List of Contested Issues

1. Whether the Agency exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in finding the BMA Application conforming with N.C. Gen. Stat. § 131E-183(a) subsections (4), (5), and 13(c).

2. Whether the Agency exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in failing to find the TRC Application non-conforming with N.C. Gen. Stat. § 131E-183(a) subsections (3), (3a), (4) and (5).

3. Whether the Agency exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in failing to find the TRC Application nonconforming with 10A N.C.A.C. 14C.2202(b)(7).

4. Whether the Agency exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in failing to find the TRC Application nonconforming with 10A N.C.A.C. 14C.2203(c).

WITNESSES**Witnesses for Petitioner**

Lauren J. Coyle, Regional Operations Director, DaVita, Inc.
Kimberly Randolph, Project Analyst, CON Section
Clarkston Hines, Divisional Vice President, DaVita, Inc.
Michael J. McKillip, Project Analyst, CON Section
Martha Frisone, Interim Chief, CON Section
Jim Swann, Director of Operations for Certificate of Need, Fresenius Medical Care
David Wells, Director of Operations, Fresenius Medical Care
Sylvia Barber, Director of Operations, Fresenius Medical Care
Daniel J. Sullivan, President, Sullivan Consulting Group
Bill Hyland, Director of Healthcare Planning, DaVita, Inc.

Witness for Respondent-Intervenor

James Swann, Director of Operations for Certificate of Need, Fresenius Medical Care

Witness for Respondent

Michael J. McKillip, Project Analyst, CON Section

EXHIBITS**Joint Exhibits**

1. BMA Application, Project ID No. K-10099-13
2. Agency File (BMA), Project ID No. K-10099-13
3. TRC Application, Project ID No. K-10126-13
4. Agency File (TRC), Project ID No. K-10126-13
46. E-mails between Hines and Hyland, 1/4/13, 1/8/13, and 1/9/13 re January 2013 SDR
(**Confidential, Attorneys' Eyes Only**)
50. E-mails among Hyland, Coyle, and Hines, 3/20/13, re Franklin County
52. E-mail, Hines to Hyland, 7/29/13, re NC CON Status (2) .xls (**Confidential, Attorneys' Eyes Only**)
53. E-mail, Hyland to Hines and Coyle, 8/29/13 re FMC Tar River Findings, with attached findings, 8/27/13

- 55. E-mail, Nichols to Okezi, Hines and others, 9/8/13, with redacted attachment **(Confidential, Attorneys' Eyes Only)**
- 61. James W. Swann, Jr. resume
- 62. James W. Swann, Jr. summary of opinions
- 66. BMA Application Payor Mix Reformatted in Aggregate
- 70. Table of payor mix figures from TRC applications (sorted)
- 108. DaVita web site pages, www.davita.com
- 109. BMA Application: Treatments in Year 2 (Commercial Ins. Only)

TRC Exhibits

- 201. CON application form for ESRD applications, revised 4/1/10
- 211. Agency findings for 2010 Randolph County competitive dialysis review
- 223. Section X from 3/15/10 BMA Wake Application, Project ID No. J-8488-10
- 224. Sections VI and X from 9/15/10 BMA Raleigh Application, Project ID No. J-8591-10
- 226. Sections III, VI, and X from FMC South Rocky Mount application, Project ID No. L-10177-13
- 228. Sections III, VI, and X from 3/15/12 BMA Dunn application, Project ID No. M-8805-12
- 229. Sections III, VI, and X from 3/15/13 FMC Stallings Station application, Project ID No. J-10094-13
- 230. Section X from 3/15/10 BMA Fayetteville Application, Project ID No. M-8485-10
- 231. Section X from 9/15/10 Fayetteville Kidney Center Application, Project ID No. M-8593-10
- 232. Sections III, VI, and X from 3/15/12 BMA Fayetteville application, Project ID No. M-8800-12
- 236. Sections III, VI, and X from 9/17/12 FMC Sea Spray application, Project ID No. P-10051-12
- 241. BMA's Objections and Responses to TRC's Second Set of Interrogatories and Second Request for Production of Documents

- 247. Denovo Feasibility Model 2012 (February 28, 2013, 10:23:31 am) (**Confidential, Attorneys' Eyes Only**)
- 250. PQ Spreadsheet (**Confidential, Attorneys' Eyes Only**)
- 259. 2/13/13 9:44 am e-mail string from Barber to Swann re Franklin County, with attachments (**Confidential**)
- 260. E-mail string from Barber to Swann re Tar River, NC: Pending Area Manager Approval – Daily Notification, 2/28/13, 1:14 pm (**Confidential**)
- 263. Spreadsheet showing home PD and home hemodialysis patients (**Confidential**)
- 265. E-mail, Wells to Swann re Tar River Patient Letters – includes attached patient letters, 2/12/13, 10:15 am (**Confidential**)
- 269. E-mail, Hyland to Sawyer, Martin, Leahy, Coyle, Richeson, and Robinson, cc Ledford and Hines, 1/22/13, re TOPCATS CON Opportunities, with attachment
- 270. TRC's identification of Dan Sullivan as Expert Witness
- 271. Revised Summary of Dan Sullivan's Expert Opinions
- 272. Supplement to Summary of Expert Opinions by Daniel J. Sullivan – Rebuttal to Deposition Testimony of James Swann
- 273. 8/12/10 Federal Register, Volume 75, No. 155, page 49164 and 42 USCS 1395rr
- 274. 2010-2012 Census Bureau Data for Wake County
- 275. 2010-2012 Census Bureau Data for Franklin County
- 276. Resume for Lauren Coyle
- 280. Letter from NCDHHS to Hyland re conditional approval of Project J-10038-12 to add five stations to Wake Forest Dialysis, 2/14/13
- 281. E-mail string from Tammi Phillips to Hyland re Wake Forest Dialysis expansion application with certification letter
- 304. North Carolina state highway map / central North Carolina
- 305. Map of central North Carolina showing location of existing BMA facilities

- 306. Chart re Effect of Projected Payor Mix on Revenues (from Section X of Tar River Application)
- 307. Dialysis illustration, "How Does a Dialysis Machine Work?"
- 311. Chart: Summary of Wake County and Franklin County Census Data
- 318. Excerpts of transcript of deposition of Laquesha Sanders, 3/3/14
- 323. Excerpts of transcript of deposition of William L. Hyland, 3/6/14
- 325. Peritoneal dialysis illustration, "PD Exchange"
- 326. E-mail, Coyle to Hines and Carriker, cc Hyland and Ledford, 2/26/13, re Topcats Real Estate Updates

BMA Exhibits

- 401. Map of Franklin County
- 402. Article, Bloomberg Businessweek, 6/28/12
- 403. Excerpts from the Affordable Care Act, Public Law 111-148, 111th Congress
[OFFICIAL NOTICE]
- 404. Article, WRAL.com, 2/12/13
- 405. North Carolina Session Law 2013-5 [OFFICIAL NOTICE]
- 406. Semiannual Dialysis Report, January 2013 (Revised 1/18/13)
- 407. Semiannual Dialysis Report, July 2012
- 408. Semiannual Dialysis Report, January 2012
- 409. Semiannual Dialysis Report, July 2011
- 410. Semiannual Dialysis Report, January 2011 (revised 2/1/11)
- 411. Semiannual Dialysis Report, July 2010
- 412. Semiannual Dialysis Report, January 2010
- 413. Semiannual Dialysis Report, July 2009
- 414. Semiannual Dialysis Report, January 2009

- 417. Comparison of projected commercial insurance revenues in TRC and BMA applications
- 420. DVA healthcare Albemarle Dialysis Application Excerpts, Project ID R-10176-13
- 421. TRC Macon County Dialysis Application Excerpts, Project ID No. A-8799-12
- 422. Medicare.gov profile, Wake Forest Dialysis Center, printed 3/24/14
- 423. Copy of page 12 from Petitioner Exhibit 271 with highlighting and handwritten revised Year 2 amounts
- 424. Findings for Huntersville Dialysis Center of Wake Forest University, Project ID No. F-7017-04, 7/28/04

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 each witness, 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 occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other credible evidence in the case.

FINDINGS OF FACT

Parties

- 1. Petitioner TRC is a Delaware limited liability company authorized to conduct business in North Carolina, with its principal place of business in Denver, Colorado, and its registered agent in Wake County, North Carolina.
- 2. Respondent CON Section is the administrative agency responsible for the administration of North Carolina's Certificate of Need Law, Chapter 131E, Article 9 of the North Carolina General Statutes.
- 3. Respondent-Intervenor BMA is a Delaware corporation authorized to conduct business in North Carolina, with its principal place of business in Waltham, Massachusetts, and its registered agent in Wake County, North Carolina.

Expert Witnesses

- 4. Mr. Daniel Sullivan was accepted as an expert witness for TRC in "health care planning, finance, CON preparation, and analysis." (Sullivan, T. Vol. 4, p. 994). Mr. Sullivan is the President of Sullivan Consulting Group, a health care management consulting firm that focuses on health care planning and finance. (Sullivan, T. Vol. 4, p. 979).

5. Mr. Bill Hyland was accepted as an expert witness for TRC in “health planning for dialysis services and in preparation of CON applications.” (Hyland, T. Vol. 5, p. 1205-06). Mr. Hyland is the Director of Health Care Planning for DaVita Health Care Partners, Inc., the parent company of TRC, and he has prepared approximately 300 Certificate of Need applications in North Carolina. (Hyland, T. Vol. 5, p. 1193).

6. Mr. James Swann was accepted as an expert witness for BMA in “health planning for dialysis services and CON preparation.” (Swann, T. Vol. 7, p. 1614). For the last ten years, Mr. Swann has served as the Director of Operations for Certificate of Need for Fresenius Medical Care, the parent company of BMA. (Swann, T. Vol. 3, pp. 552-53, Vol. 7, p. 1598). In that role, Mr. Swann has prepared almost 300 Certificate of Need applications in North Carolina, West Virginia, and Washington, D.C., with a 91% approval rate. (Swann, T. Vol. 7, pp. 1600-01).

Procedural and Factual Background

7. A Certificate of Need (“CON”) is required for certain “new institutional health services” as that term is defined by N.C. Gen. Stat. § 131E-176(16). The statute requires a facility to first obtain a CON when the entity is constructing, developing, or establishing a new health service facility or offering dialysis services by or on behalf of a health service facility if those services were not offered within the previous 12 months by or on behalf of the facility. N.C. Gen. Stat. §§ 131E-176(16)(a), (d) and 131E-178(a).

8. The construction of a dialysis facility is *per se* reviewable under the CON law and is subject to the methodologies and need determinations contained in the applicable State Medical Facilities Plan (“SMFP”) and Semi-Annual Dialysis Report (“SDR”).

9. Dialysis is a therapy used to treat patients who have lost the function of their kidneys.

10. Dialysis can be provided to patients in a dialysis facility (“in-center dialysis”) or conducted by the patients themselves at home (“home dialysis”). (See Coyle, T. Vol. 1, p. 46).

11. In-center dialysis is a form of hemodialysis provided on a dialysis machine or “station” which pulls blood from the patient through an access in the patient’s body, employs osmosis to remove toxins and excess fluid from the patient’s blood, and returns the cleaner blood to the patient’s body. (Coyle, T. Vol. 1, pp. 47-48). An in-center patient must typically go to the dialysis facility three times a week for about 4 hours at a time to dialyze. (Swann, T. Vol. 7, p. 1646).

12. Home hemodialysis (“home hemo”) is a form of hemodialysis that uses the same basic process as in-center dialysis but on a smaller machine that has been adapted to work in the patient’s home. (Coyle, T. Vol. 1, p. 48). One machine commonly used to provide home hemo is the NxStage machine. (Barber, T. Vol. 4, p. 960).

13. Peritoneal dialysis (“PD”) is another form of home dialysis that uses the patient’s peritoneal cavity to cleanse the patient’s blood. For purposes of PD, a catheter is placed in the patient’s belly through which solution is inserted, and the peritoneal cavity pulls toxins and

excess fluids into the belly which are then drained through the catheter. (Coyle, T. Vol. 1, pp. 48-49).

14. Patients who choose to dialyze at home must be trained for the appropriate modality, and providers must obtain a CON to provide home training and ongoing support to home patients in addition to in-center dialysis services. (Coyle, T. Vol. 1, p. 30). *See also* N.C. Gen. Stat. § 131E-176(16)d.

15. The SMFP is the official plan developed and published each year which inventories certain services, facilities, and equipment that are subject to CON regulation as well as the utilization of those services, facilities, and equipment. The SMFP also projects future needs for additional services, facilities, and equipment in each service area.

16. The SMFP is developed under the direction of the State Health Coordinating Council ("SHCC"), which is comprised of healthcare professionals and other citizens, each of whom is appointed by the Governor. N.C. Gen. Stat. §§ 131E-1796(17), (25); 131E-177(4). The SHCC submits a proposed SMFP for review by the Governor, who has the ultimate authority to approve and finalize the SMFP.

17. The North Carolina Department of Health and Human Services develops the SDR. (*See* BMA Ex. 406, p. 4). The SDR is published in January and July of each year. (*Id.*) Each contains detailed information about the number of patients who are receiving dialysis services in each county as well as the dialysis facilities that are in operation or which have received a CON approval to begin operations in each county. (*See* BMA Exs. 406-414). The SDR also provides information about the capacity of dialysis facilities which is expressed in terms of the number of dialysis stations which they are permitted to operate. (*Id.*).

18. The SDR contains methodologies used to project the need for additional dialysis stations in each county in the future, based on the size and capacity of the existing dialysis facilities, as well as the County's future projected patient population. (*See, e.g.*, BMA Ex. 406). The estimate of future dialysis patients is derived by applying the average rates of change in each county over the prior five years to the current number of dialysis patients residing in each county. (*See* BMA Ex. 406, p. 8).

19. The SDR identifies surpluses and deficits of stations in each county by projecting the number of in-center stations necessary to serve the projected patient population of the county and subtracting the number of stations certified for Medicare and the number of stations approved for a CON and pending CON resolution. (*See, e.g.*, BMA Ex. 406, p. 8).

20. The SDR also contains "need determinations" by county constituting a determination that additional dialysis stations are needed in a given county. A county need determination is realized only upon the occurrence of both (1) a projected station deficit of 10 or more stations and (2) a utilization rate of at least 80 percent at each dialysis facility in the county. (*See, e.g.*, BMA Ex. 406, p. 8).

21. The minimum size of a proposed new dialysis facility is at least 10 dialysis stations. (*See, e.g.*, Ex. 406, p. 6; Hines, T. Vol. 1, p. 182).

22. The SMFP includes policies applicable to different types of health services, and an applicant must demonstrate conformity with all applicable policies. *See* N.C. Gen. Stat. § 131E-183(a)(1). Policy ESRD-2 is the only SMFP policy applicable specifically to dialysis services. (*See* Joint Ex. 2, pp. 223-24).

23. Policy ESRD-2 defines limited circumstances in which a provider may relocate dialysis stations into a county despite the absence of a need determination for the county. Under the policy, a provider may relocate existing dialysis stations within a county where the stations are currently located or into contiguous counties currently served by the facility where the existing stations are located. (*See* Joint Ex. 2, p. 224). However, a CON applicant proposing to relocate existing stations to contiguous counties must demonstrate that the proposal will not result in (1) a deficit in the number of dialysis stations in the county that would be losing stations as a result of the project, or (2) a surplus of dialysis stations in the county that would gain stations as a result of the proposed project. (*Id.*).

24. The January 2013 SDR identified a deficit of 10 stations in Franklin County. (BMA Ex. 406, p. 21). However, it did not include a county need determination for Franklin County because the only existing facility in Franklin County, Dialysis Care Franklin County (“DC Franklin County”), was only 75 percent utilized. (BMA Ex. 406, p. 13). DC Franklin County is owned by TRC. (Coyle, T. Vol. 1, p. 55).

25. The Agency has adopted regulations governing the application process for CONs. Pursuant to these regulations, the Agency determines the appropriate review category or categories for each proposed project, including the applicable review period and the deadline for submitting such applications. *See* 10A NCAC 14C.0202(c). The Agency reviews applications “according to the categories and schedule set forth in the duly adopted State Medical Facilities Plan in effect at the time the scheduled review period commences.” *See* 10A N.C.A.C. 14C .0202(e).

26. There are two review categories in the SMFP relevant to the applications at issue. Review Category D as described in the SMFP includes “relocation of existing certified dialysis stations to *another county* pursuant to Policy ESRD-2” (emphasis added). Category I, on the other hand, includes relocation of existing certified dialysis stations within the *same county*. (*See* Respondent’s and Respondent-Intervenor’s Br. In Opposition to Pet.’s Mot. For Summ. J., Exhibit A, pp. 4-6).

27. Pursuant to the 2013 SMFP, the first scheduled review period for Category D applications in Franklin County was the review period beginning April 1, 2013.

28. Pursuant to the 2013 SMFP, the first scheduled review period for Category I applications in Franklin County began on March 1, 2013, and the second scheduled review period for Category I applications began on May 1, 2013.

29. On March 15, 2013, BMA submitted a CON application in review category D to develop a 10-station facility in Louisburg, Franklin County (the “BMA Application”) (Joint Ex. 1) for the review period beginning April 1, 2013. BMA has no existing dialysis stations in Franklin County, and therefore proposed to relocate 10 existing stations from its BMA Zebulon

and FMC Eastern Wake facilities in Wake County, which is contiguous to Franklin County. (*See* Joint Ex. 1 pp. 5, 45). BMA's application was designated as Project ID No. K-10099-13. (Joint Ex. 1, p. 3).

30. In addition to in-center dialysis, the BMA Application proposed to offer a home therapies program with training and support for PD and home hemo. (Joint Ex. 1 p. 5).

31. One month later, on April 15, 2013, TRC submitted a CON application in review category I to develop a 10-station facility in Youngsville, Franklin County (the "TRC Application") (Joint Ex. 3) for the review period beginning May 1, 2013. TRC proposed to relocate 8 existing stations from DC Franklin County and 2 stations from its Wake Forest Dialysis Center in Wake County. (Joint Ex. 3, p. 6). TRC's application was designated as Project ID No. K-10126-13. (*See, e.g.*, Joint Ex. 4, p. 1).

32. In addition to in-center dialysis, the TRC Application proposed to offer training and support in PD at the proposed facility. It also proposed to provide training in home hemo through a contract with another TRC facility. (Joint Ex. 3, p. 22).

33. During the review of the TRC Application, TRC submitted a letter dated May 13, 2013, to the Agency requesting a determination that the TRC and BMA Applications should be reviewed competitively. (Joint Ex. 4, pp. 282-86).

34. However, the TRC Application was submitted after the deadline for the Category D review period, but timely for the Category I review period. Accordingly; the Agency did not review the applications competitively, and instead reviewed the TRC application standing alone. (Joint Ex. 4, pp. 328-30).

35. The TRC Application was prepared by Bill Hyland. Mr. Hyland was aware of the BMA Application nearly a month prior to submitting the TRC Application and knew that if the BMA Application were approved, the station deficit in Franklin County would be eliminated. (Hyland, T. Vol. 6, pp. 1387-88).

36. It is entirely an applicant's choice how to structure a proposed project, and the Agency simply reviews whatever an applicant proposes against the review criteria. (Frisone, T. Vol. 2, p. 515). By proposing to transfer two stations from Wake County, TRC could not demonstrate conformity with Policy ESRD-2 if there was no station deficit in Franklin County.

37. DC Franklin County had 23 dialysis stations at the time TRC submitted the TRC Application and had been operating below capacity (at approximately 75% capacity) for several years. (Coyle, T. Vol. 1, p. 80; Hyland, T. Vol. 6, p. 1378).

38. Although TRC proposed to relocate two stations from its Wake County facility, it had enough stations at DC Franklin County that it could have proposed to relocate ten stations from DC Franklin County and not relocate any from Wake County. (*See, e.g.*, Hyland, T. Vol. 6, p. 1384; Frisone, T. Vol. 2, p. 508).

39. Had TRC proposed to relocate 10 stations from DC Franklin County, its project would have had no impact on the total number of stations within Franklin County. It therefore

would have been consistent with Policy ESRD-2 regardless of whether the station deficit in Franklin County was eliminated by the approval of BMA's previously-filed application. (Hyland, T. Vol. 6, p. 1385).

40. Nonetheless, TRC decided to submit the TRC Application proposing to relocate two stations into Franklin County knowing that the station deficit might be eliminated prior to the Agency's decision on the TRC Application. (Hyland, T. Vol. 6, pp. 1384-85; Joint Ex. 46).

41. Once CON applications are filed, the Agency assigns a project analyst to each review and determines if the applications are complete and whether a public hearing is necessary. (See Randolph, T. Vol. 1, pp. 155-57). The project analyst conducts the public hearing, if any, reviews each application to determine its conformity with statutory and regulatory review criteria, and reviews any written and public hearing comments. (Randolph, Vol. 1, pp. 155-57; McKillip, T. Vol. 2, pp. 381-82). Ultimately, the project analyst drafts the required state agency findings and submits them to the co-signer assigned to the review. (Randolph, Vol. 1, p. 130; McKillip, T. Vol. 2, p. 382). Together, the project analyst and the co-signer review any issues and finalize the required state agency findings. (Randolph, T. Vol. 1, pp. 155-57; McKillip, T. Vol. 2, p. 382).

42. To receive a CON for a proposed project, an application must satisfy all applicable statutory review criteria specified in N.C. Gen. Stat. § 131E-183(a) as well as all applicable administrative rules established pursuant to N.C. Gen. Stat. § 131E-183(b). See *Bio-Medical Applications of N.C. v. N.C. Dep't of Human Res.*, 136 N.C. App. 103, 109, 523 S.E.2d 677, 681 (1999).

43. The BMA Application was deemed complete, and the review period for the BMA Application began on April 1, 2013. Mr. McKillip was assigned as the project analyst for the BMA Application. (McKillip, T. Vol. 1, p. 208). TRC filed written comments opposing the BMA Application, and a public hearing was held on May 17, 2013. (Joint Ex. 2, pp. 28-46, 49). Mr. McKillip reviewed the written comments, public hearing comments, and the BMA application. (McKillip, T. Vol. 2, pp. 381-82, Vol. 8, pp. 1911-12, 1924-25). He determined that the BMA Application was conforming to all statutory and regulatory review criteria, and the Agency issued its required state agency findings approving the BMA Application on August 27, 2013. (Joint Ex. 2, pp. 223-56).

44. The TRC Application was deemed complete, and the review period for the TRC Application began on May 1, 2013. (Randolph, T. Vol. 1, p. 136). Ms. Randolph was assigned as the project analyst for the TRC Application. (Randolph, T. Vol. 1, p. 96). Ms. Randolph conducted a public hearing on the TRC Application on June 13, 2013. (See Joint Ex. 4, p. 88). She reviewed all written and public hearing comments, and the TRC Application. (Randolph, T. Vol. 1, pp. 155-57). She determined that the TRC Application was nonconforming to certain statutory review criteria, namely N.C. Gen. Stat. §§ 131E-183(a)(1) ("Criterion 1"), 131E-183(a)(4) ("Criterion 4"), 131E-183(a)(6) ("Criterion 6"), and 131E-183(a)(18a) ("Criterion 18a"), and the Agency issued its required state agency findings denying the TRC Application on September 25, 2013. (Joint Ex. 4, pp. 328-59).

45. On September 26, 2013, TRC filed a petition for a contested case hearing challenging the approval of the BMA Application. The contested case was identified as 13 DHR 18127.

46. On October 1, 2013, TRC filed a petition for a contested case hearing challenging the disapproval of the TRC Application. The contested case was identified as 13 DHR 18223.

47. On October 15, 2013, BMA filed a motion to intervene in contested case 13 DHR 18127. The Administrative Law Judge allowed BMA to intervene by order dated October 21, 2013.

48. BMA also filed a motion to intervene in contested case 13 DHR 18223. The Administrative Law Judge allowed BMA to intervene by order dated November 21, 2013.

49. By Order dated November 26, 2013, the Chief Administrative Law Judge consolidated contested cases 13 DHR 18127 and 13 DHR 18223 for a single hearing pursuant to N.C. Gen. Stat. § 150B-26 and 26 N.C.A.C. 3.0111.

The BMA Application

50. At the contested case hearing in this case, TRC challenged the Agency's decision with respect to BMA's conformity to the statutory review criteria found at N.C. Gen. Stat. §§ 131E-183(a)(5) ("Criterion 5") and 131E-183(a)(13)c ("Criterion 13c"). TRC also challenged the Agency's decision with respect to N.C. Gen. Stat. § 131E-183(a)(4) ("Criterion 4") insofar as it contends a nonconformity with Criterion 5 causes a nonconformity with Criterion 4.

Criterion 5

51. Criterion 5 requires that "[f]inancial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs and charges for providing health services." N.C. Gen. Stat. § 131E-183(a)(5).

52. At the hearing, TRC's witnesses contended that the BMA Application did not adequately demonstrate long-term financial feasibility of the proposed project. (Sullivan, T. Vol. 4, p. 1022-23; Hyland, T. Vol. 6, p. 1341).

53. The Agency generally evaluates long-term financial feasibility by determining whether the applicant has projected a profit by the end of the second operating year. (Frisone, T. Vol. 2, p. 427). If the applicant has projected a profit by the end of the second operating year, the Agency also evaluates whether financial projections are reasonable, credible, and supported. (See Frisone, T. Vol. 2, p. 418-19).

54. The BMA Application was prepared by James Swann. In projecting the utilization of the project, Mr. Swann projected the number of patients expected to be served by the proposed facility. (Swann, T. Vol. 7, pp. 1620-33). By the end of the second operating year, BMA projected to serve 34 in-center patients, 4 PD patients, and 4 home hemo patients. (Joint Ex. 1, p. 31). TRC did not offer any evidence challenging these utilization projections.

55. BMA also projected the payor mix for the projected patients as required in the application. (Swann, T. Vol. 7, pp. 1635-36). Payor mix refers to the percentage of the total projected dialysis treatments an applicant expects to be reimbursed by each payor category (*e.g.*, Medicare, Medicaid, commercial insurance). BMA projected payor mix separately for in-center dialysis, PD and home hemo. (Joint Ex. 1, p. 92)

56. In projecting the in-center payor mix, BMA presented a composite historical payor mix for the two facilities from which BMA proposed to relocate stations and projected an identical payor mix for its in-center patients at the proposed facility. (Swann, T. Vol. 7, p. 1635; Joint Ex. 1, p. 92). TRC did not challenge the in-center payor mix. (*See*, Hyland, T. Vol. 6, p. 1397).

57. Neither of the two facilities from which BMA proposed to relocate stations provided home training or support and therefore had no historical home dialysis payor mix. (Swann, T. Vol. 3, p. 601; Joint Ex. 1, p. 92).

58. Witnesses for both TRC and BMA testified that home dialysis tends to have a higher percentage of treatments reimbursed by commercial insurance than in-center dialysis. (Hines, T. Vol. 1, p. 173; Wells, T. Vol. 4, pp. 903-07; Barber, T. Vol. 4, p. 965).

59. With regard to the home dialysis modalities, Mr. Swann projected payor mix percentages in light of the number of patients expected to have commercial insurance as their primary payment source. (Swann, T. Vol. 3, pp. 790-91, Vol. 7, pp. 1656-57). In part, Mr. Swann testified that he assumed a higher commercial percentage for home hemo than for PD based upon his understanding of recent trends, including rapid growth in the use of home hemo services, and the attractiveness of home hemo to working people, who more likely to have commercial insurance. (*See, e.g.*, Swann, T. Vol. 3, pp. 602, 762, 768-69).

60. For PD, which represented approximately 9% of the patient population (*see* Joint Ex. 1, p. 31), BMA projected that 24.9% of its treatments would be primarily reimbursed by commercial insurance, 70.7% by Medicare, 1.1% by Medicaid, 2.2% by VA, and 1.1% by the patient. (Joint Ex. 1, p. 92).

61. For home hemo, which also represented approximately 9% of the patient population (*see* Joint Ex. 1, p. 31), BMA projected that 87.0% of its treatments would be primarily reimbursed by commercial insurance, 10.0% by Medicare, 0.7% by Medicaid, and 2.3% by VA. (Joint Ex. 1, p. 92).

62. To project revenues for each modality, Mr. Swann multiplied the number of treatments projected based on the number of projected patients by the projected payor mix percentage to arrive at the number of projected treatments by payor category. He then multiplied the number of projected treatments for each payor by the reimbursement rate projected for that payor to arrive at the total revenue by payor for each modality. (Joint Ex. 1, pp. 110-12; Swann, T. Vol. 7, pp. 1677-82).

63. In addition, BMA projected revenues associated with ancillary services. (Joint Ex. 1, p. 112).

64. BMA added the revenues projected for each modality to the projected ancillary services revenue. (Swann, T. Vol. 7, p. 1681). Mr. Swann also calculated the expected contractual allowances and deducted this amount to arrive at the total net revenue. (Swann, T. Vol. 7, pp. 1679-80; Joint Ex. 1, p. 109). Contractual allowances are discounts on the general charge a provider gives to certain payors. (McKillip, T. Vol. 2, p. 374).

65. The BMA Application assumed contractual allowances would be equal to a 40% deduction on all treatments reimbursed by commercial insurance and the self-insured. (Swann, T. Vol. 7, pp. 1679-80).

66. Mr. Swann also projected expenses for each of the first two years of operation. (Swann, T. Vol. 7, pp. 1679, 1683-84; Joint Ex. 1, p. 113).

67. For the second operating year, BMA projected total net revenue of \$2,009,543 (Joint Ex. 1, p. 109) and total expenses of \$1,862,150 (Joint Ex. 1, p. 113), resulting in a net profit of \$147,393.

68. Because BMA projected to be profitable by the end of the second operating year and the Agency determined that the projections were reasonable, credible, and supported, the Agency found BMA conforming with Criterion 5. (Joint Ex. 2, pp. 236-38).

Home Payor Mix Projections

69. TRC's challenge to BMA's conformity focused almost entirely on BMA's home dialysis payor mix projections, and the projected commercial percentage of 87% for home hemo in particular.

70. In its written comments submitted to the Agency during the review (*see* Joint Ex. 2, pp. 28-46), TRC criticized BMA's projected home payor mix, particularly the percentage of treatments projected to be commercially reimbursed. In its comments, TRC noted that in the last few years BMA had filed several applications in other counties in which it proposed home dialysis services, and "[i]n no instance [were] the commercial insurance revenues for home dialysis projected to be anywhere close to the 87% that BMA is projecting for Home Hemodialysis patients in Franklin County, or to the 24.9% that it is projecting for home PD." (*See* Joint Ex. 2, p. 35).

71. Ms. Frisone testified that the Agency took Mr. Hyland's comments seriously and attempted to vet BMA's projections. (Frisone, T. Vol. 2, pp. 456-57; *see also* McKillip T. Vol. 8, pp. 1912-13).

72. As part of the Agency's investigation, Ms. Frisone reviewed the Agency's files to determine whether BMA had ever projected a similar payor mix for home dialysis services. (Frisone, T. Vol. 2, pp. 457-58). She discovered that the Agency had recently approved a BMA application (the "BMA North Charlotte review") in which BMA had projected payor mixes for home hemo and PD that were very similar to those in the BMA Application, including identical commercial percentages of 87% for home hemo and 24.9% for PD. (*See* Joint Ex. 2, pp. 114-143). The cosigner in the BMA North Charlotte review was the then-Chief of the CON Section, Craig Smith. (Joint Ex. 2, p. 114).

73. Additionally, Ms. Frisone attempted to research general statistics regarding payor mix for home dialysis. (Frisone, T. Vol. 2, p. 443). Although she could not find information specific to home dialysis, statistics on the federal Centers for Medicare & Medicaid Services (“CMS”) website indicated that nationally approximately 24% of dialysis patients in 2008 had employer group health plans (i.e., commercial insurance) as their primary insurance. (See Frisone, T. Vol. 2, p. 486; Sullivan, T. Vol. 5, pp. 1120-21; Joint Ex. 2 p. 244).

74. In evaluating the reasonableness of the projection, the Agency also recognized that the number of patients projected to receive home hemo through the proposed facility was very small, and payor mix percentages could therefore vary widely. (McKillip, T. Vol. 1, p. 235; Frisone, T. Vol. 2, p. 522).

75. Based on this information, the Agency determined that the projections were reasonable, credible, and supported. (Frisone, T. Vol. 2, p. 429; McKillip, T. Vol. 1, pp. 234-35).

76. Although BMA projected payor mix separately for each modality, it was not required to do so. (See Hyland, T. Vol. 6, pp. 1404-05). In fact, TRC projected only a single aggregated payor mix for all three modalities. (Joint Ex. 3, p. 48; Hyland, T. Vol. 6, p. 1404).

77. TRC acknowledged that in the aggregate, BMA projected that 11.6% of all of its treatments would be reimbursed by commercial insurance, 79.38% by Medicare, 5.44% by Medicaid, 3.01% by VA, and 0.56% by the patient. (Joint Ex. 66; Sullivan, T. Vol. 5, pp. 1110-13; Hyland, T. Vol. 6, pp. 1407-08). Although the BMA Application did not explicitly state the aggregated payor mix, the information in the application was sufficient to allow anyone, including the Agency, to calculate the aggregated payor mix. (See, e.g., Sullivan, T. Vol. 5, p. 1113).

Adequacy of Documentation

78. The BMA Application stated that its home payor mix projections were “a function of BMA historical performance across North Carolina” and an appropriate representation for a new home program. (Joint Ex. 1, p. 92). BMA did not represent that it relied on any specific facilities or data, or quantify how the specific percentages were projected, nor did the application form or any rule require BMA to do so.

79. Both Mr. Sullivan and Mr. Hyland criticized the BMA Application for what they viewed as inadequate documentation of the bases for the PD and home hemo payor mixes and testified that this lack of documentation was grounds in and of itself to find BMA nonconforming to Criterion 5. (Hyland, T. Vol. 6, pp. 1336-37, 1401; Sullivan, T. Vol. 4, p. 1018, Vol. 5, pp. 1100, 1169-70)

80. The application form provided by the Agency does not request or direct the applicant to provide the assumptions for projected payor mix. (TRC Ex. 201, p. 13).

81. No statute, rule, or Agency policy requires any particular documentation for payor mix. (Hyland, T. Vol. 6, p. 1421).

82. In contrast, the Agency has adopted rules requiring specific documentation of the methodology and assumptions used to project utilization of the proposed services. (Hyland, T. Vol. 6, p. 1421-22; 10A N.C.A.C. 14C .2203(c)).

83. Ms. Frisone testified that the level of detail BMA provided was “quite consistent with the level of detail we get in almost all the applications that we review.” (Frisone, T. Vol. 2, p. 435). She also testified that BMA’s statement of assumptions underlying its projected payor mix is typical of statements of assumptions for a payor mix. (Frisone, T. Vol. 2, p. 438).

84. In fact, the TRC Application contained less information about the bases for its projections as did the BMA Application, and provided *no explanation whatsoever* as to how TRC derived its projected payor mix for the proposed facility. (*Compare* Joint Ex. 1, p. 92 to Joint Ex. 3, p. 48).

85. Similarly, neither TRC nor BMA provided any explanation with regard to how each projected the line items for “contractual allowances” and “bad debt,” or the missed treatment rate included in their applications and provided only limited information regarding the projected expenses. (*See* Joint Ex. 1, pp. 109-13; Joint Ex. 3, pp. 66-68). When questioned about TRC’s lack of explanation, Mr. Hyland maintained that TRC’s exclusion of the underlying assumptions was not problematic because there is no requirement that an applicant state these assumptions. (*See* Hyland, T. Vol. 6, pp. 1445-46, 1446-69, 1475-76).

86. Despite its contention that the Agency erred in accepting BMA’s home dialysis payor mix without detailed documentation of assumptions, TRC provided no documentation or explanation of its own assumptions regarding reimbursement rates, even though it projected 74.8% higher commercial insurance reimbursement per treatment than BMA. (*See* Joint Ex. 3, p. 68; Hyland, T. Vol. 6, p. 1453). Nevertheless, TRC’s witness responded to the lack of any such explanation that an applicant is not required to document the assumptions underlying its reimbursement rates. (*See* Hyland T. Vol. 6 pp. 1443-46, 1453). As discussed above, the same is true for the assumptions underlying payor mix.

87. Mr. Sullivan conceded that his opinion with regard to the level of documentation that is adequate amounts to nothing more than mere disagreement with the Agency. (Sullivan, T. Vol. 5, p. 1098; *see also* Hyland, T. Vol. 6, p. 1422).

88. Furthermore, both Mr. Hyland and Mr. Sullivan acknowledged that the Agency is not limited to the information presented in the application in evaluating conformity and thus could rely on information outside of the application in evaluating conformity. (Sullivan, T. Vol. 5, pp. 1101-02; Hyland, T. Vol. 6, p. 1340). In fact, the Agency considered, *inter alia*, Agency findings from other dialysis reviews in evaluating BMA’s projections, and the Agency findings expressly noted statistics from the CMS web site. (*See* McKillip T. Vol. 8, pp. 1912-13; Joint Ex. 2, pp. 114-221, 244).

89. TRC’s identified no statute, rule or other standard requiring any certain documentation to support BMA’s projections. TRC’s criticisms therefore amount to simple disagreement with BMA’s projections and the Agency’s determination that BMA’s projections were reasonable, credible and supported.

Historical Data

90. TRC also criticized BMA's home payor mix projections because they were not mathematically based on historical data from any existing BMA facility.

91. Mr. Swann testified that he was generally familiar with the payor mixes at BMA facilities across the state and that, with that understanding in mind, he started his projections with an assumption as to the number of commercial patients he thought it was reasonable to expect at the proposed facility. (Swann, T. Vol. 7, pp. 1636, 1656-57).

92. Mr. Swann projected a different home payor mix, in part, based on his belief and understanding as to recent trends in BMA's home hemo programs, particularly BMA's efforts to educate patients on the benefits of home hemo for working people, who are disproportionately covered by commercial insurance; and that working people increasingly choose home hemo over other modalities. (Swann, T. Vol. 3, pp. 768-69, Vol. 7, p. 1639, 1650-51). Indeed, DaVita's own website represents that one of the benefits of home hemo is that it allows many patients to continue working. (Hyland, T. Vol. 6, pp. 1477-79; Joint Ex. 108).

93. Mr. Swann also testified that the growth in home hemo influenced his payor mix projections. (*See, e.g.*, Swann, T. Vol. 3, pp. 602). For example, Mr. Swann testified that while the dialysis industry overall was growing at a rate of 3%, home hemo services were growing at the rate of 87%. Mr. Swann presented this data to the Agency in another application filed during the review of the BMA Application. *Id.*

94. Similarly, Mr. Swann's projections were influenced by his understanding that the passage of the Affordable Care Act and North Carolina's recent decision not to expand its Medicaid program would likely increase the pool of patients who purchase commercial insurance. (Swann, T. Vol. 7, pp. 1654, 1822).

95. The Agency does not require or sanction any particular methodologies or assumptions. (Frisone, T. Vol. 2, p. 519). Mr. Sullivan acknowledged that there is no single way to make projections. (Sullivan, T. Vol. 5, pp. 1097-98).

96. The Agency does not expect every assumption to be supported with independently verifiable data, and Ms. Frisone testified that sometimes an applicant must rely on its best judgment as to what will happen in the future when making projections. (Frisone, T. Vol. 2, pp. 419-20; McKillip, T. Vol. 2, p. 340). Similarly, Mr. Sullivan testified that historical experience is not always a good indicator of the future. (Sullivan, T. Vol. 5, pp. 1097-98).

97. Ms. Frisone did not interpret the reference in BMA's application to "historical performance" to mean that the projected payor mix was based on a corporate average or a particular facility but that it was more generally based on a corporate historical experience tempered by any changes BMA anticipated for this particular project. (Frisone, T. Vol. 2, p. 434).

98. Although Mr. Sullivan opined that assumptions should be grounded in historical data where there is meaningful data available, Mr. Swann testified that he did not think the historical payor mix from any existing BMA facility with a home program would be a good

indicator for the likely payor mix at the proposed facility. (Sullivan, T. Vol. 5, p. 1095; Swann, T. Vol. 3, p. 603).

99. Mr. Sullivan suggested that BMA should have used the payor mix of its “existing patient population” on the basis that BMA had identified a specific population of existing BMA patients at other facilities that it would serve at the proposed facility. (Sullivan, T. Vol. 4, pp. 1005-06).

100. However, BMA did not assume that the projected patients at the proposed facility would be actual patients at the time of the application and that because of the high turnover rate among dialysis patients, it was not reasonable to expect that the patients who will receive services at the proposed facility almost two years later would be the same patients receiving services at BMA facilities at the time the application was written. (Swann, T. Vol. 3, p. 635, Vol. 7, pp. 1622-23). Rather, Mr. Swann expected overall utilization to increase, but some portion of the existing patient base would be replaced with new dialysis patients as existing patients died, received transplants, moved, or regained kidney function. (Swann, T. Vol. 3, p. 606).

101. Mr. Swann’s testimony is consistent with the Agency’s understanding of the projections at the time of the review. Mr. McKillip did not understand the BMA Application to represent that the projected patients were all existing BMA patients at the time the application was submitted and that, indeed, such an assumption would be “dubious” in light of the turnover rate among patients in the dialysis industry. (McKillip, T. Vol. 1, pp. 257-58, Vol. 2, p. 369; Frisone, T. Vol. 2, p. 501; *see also* Sullivan, T. Vol. 5, pp. 1092-94).

102. No statute, rule or other standard requires BMA to project payor mix as TRC advocates. TRC’s criticisms therefore amount to simple disagreement with BMA’s projections and the Agency’s determination that BMA’s projections were reasonable, credible and supported.

Reasonableness of Home Projections

103. With respect to the PD projections, neither of TRC’s expert witnesses were of the opinion that BMA’s projected payor mix for PD was unreasonable. (Sullivan T. Vol. 5, p. 1099; Hyland, T. Vol. 6, p. 1402). To the contrary, Mr. Sullivan testified that the payor mix projections for PD appeared to be consistent with BMA’s historical experience for PD services. (Sullivan T. Vol. 5, p. 1099).

104. With respect to the home hemo projections, Mr. Sullivan and Mr. Hyland each offered the opinion that the projection that 87% of home hemo treatments would be commercially reimbursed was unreasonable. (Sullivan, T. Vol. 6, p. 1408; Hyland, T. Vol. 5, p. 1307).

105. Mr. Sullivan argued that BMA’s commercial insurance accounted for 25% of the gross revenues projected by BMA. (Sullivan, T. Vol. 4, pp. 1015-16). However, Mr. Sullivan also acknowledged that this figure failed to account for the contractual allowances which reduce commercial insurance revenue by 40 percent. (Sullivan, T. Vol. 5, pp. 1180-81).

106. Furthermore, although TRC contends the home hemo payor mix significantly overstated the amount of commercial reimbursement BMA could expect to receive, Mr. Hyland conceded that the BMA Application projected only about 5% higher net commercial revenue than the TRC Application. (Hyland, T. Vol. 6, pp. 1458-60).

107. Mr. Sullivan also opined that 87% commercial reimbursement was unreasonable in light of the historical information regarding BMA's home payor mixes that was available to the Agency. (Sullivan, T. Vol. 4, pp. 1040-42; TRC Ex. 271, p. TRC 001504; TRC Ex. 272, p. 5).

108. Mr. Sullivan cited five prior BMA applications and/or agency findings on BMA applications (BMA Hickory; BMA Wake (TRC Ex. 223); FMC South Rocky Mount (TRC Ex. 226); BMA Fayetteville (TRC Ex. 232); and FMC Sea Spray (TRC Ex. 236)), and claimed that "the actual percentages of Commercial Insurance for Home Hemodialysis services ranged from 0% to 29.1%" in the five applications and/or findings he reviewed. (TRC Ex. 271, p. TRC 001504). However, as discussed below, most of the percentages cited by Mr. Sullivan were not specific to home hemo patients, most did not reflect current data, and none provided a meaningful basis for comparison to predict payor mix at the proposed facility.

109. Mr. Sullivan purported to rely on the required state agency findings from a 2012 BMA Hickory application. (TRC Ex. 271, p. TRC 001510). While Mr. Sullivan's report suggests that the findings demonstrate that 26.6% of home hemo treatments were reimbursed by commercial insurance, neither the findings nor the application were introduced into evidence. Therefore, the undersigned cannot determine if such percentage reflected only home hemo patients or an aggregated percentage with other groups; nor can the undersigned determine the number of home hemo patients reflected nor the time period reflected.

110. Mr. Sullivan relied on an excerpt from a 2010 BMA Wake application (TRC Ex. 271, p. TRC 001510), which reflected only 1 home hemo patient as of December 31, 2009. (TRC Ex. 223, p. TRC 0018; Sullivan, T. Vol. 5, p. 1137). Thus, no meaningful conclusions can be drawn based on one patient, four years earlier.

111. Mr. Sullivan also relied on an excerpt from the August 2013 FMC South Rocky Mount application (TRC Ex. 271, p. TRC 001511) which proposed to transfer an existing home program of 33 patients, only 5 of whom were home hemo patients. (See TRC Ex. 226, p. TRC 00374). The application projected 29.05% of its home dialysis treatments at the new facility would be reimbursed by commercial insurance based on the performance of the existing program, but reflected the historical *aggregate* commercial mix for both home hemo and PD populations. (TRC Ex. 226, p. TRC 00378; Swann, T. Vol. 4, pp. 850-54). Because the aggregated payor mix was weighted heavily toward PD patients (85%), it does not necessarily reflect the commercial mix for the 15% of home hemo patients at that facility accurately.

112. Mr. Sullivan also relied on an excerpt from the March 15, 2012 BMA Fayetteville application. (TRC Ex. 271, p. TRC 001512). The application represented that of the 67 patients existing home patients at that facility as of December 31, 2011, only 10 (or 15%) were home hemo patients. (TRC Ex. 232, p. TRC 00203). Like the FMC South Rocky Mount applications,

because the aggregated payor mix is weighted heavily toward PD patients, it offers little insight into the commercial mix for home hemo patients. (*See* TRC Ex. 232, pp. TRC 00195-96).

113. Additionally, Mr. Sullivan's analysis was not objective or persuasive, since it relied entirely on counsel for TRC to identify findings and/or applications on which his opinion was based. He made no attempt to obtain or review other sets of findings or applications to verify if the findings he reviewed were representative or to identify different or additional information. (Sullivan, T. Vol. 5, pp. 1134-35). Additionally, Mr. Sullivan acknowledged that he had reviewed other applications that contained historical information about BMA's home dialysis payor mixes which he did not include in his analysis. (*See* Sullivan, T. Vol. 5, pp. 1135-38; TRC Ex. 271, p. TRC 001504; TRC Ex. 224).

114. In fact, substantial evidence was available to the Agency at the time of the review that supported the reasonableness of BMA's home hemo payor mix projections, which Mr. Sullivan failed to consider.

115. For example, the March 15, 2013 FMC Stallings Station application filed the same day as the BMA Application was available to the Agency at the time of the review. (McKillip, T. Vol. 2, p. 315-16; TRC Ex. 229). In the Stallings Station application, BMA projected an aggregated payor mix for all three modalities because Mr. Swann did not have access to data that broke the historical payor mix at that facility down by modality. (Swann, T. Vol. 7, p. 1785). The application represented that 10.8% of all the in-center and home dialysis treatments provided at Stallings Station were historically reimbursed by commercial insurance (TRC Ex. 229, p. TRC 00289-99), which experience is very similar to the aggregate projection of 11.6% in the BMA Application, and Mr. Swann believed this data would likely reflect the trends he was relying upon in projecting the home dialysis payor mix for the BMA Application. (*See* Joint Ex. 66; Swann, T. Vol. 4, p. 871).

116. Similarly, the TRC Application presented historical payor mix for the Wake Forest Dialysis Center, which included both in-center and home treatments. (Joint Ex. 3, p. 47). That information demonstrated that historically, 22.8% of all treatments provided at Wake Forest Dialysis Center were reimbursed by commercial insurance, more than twice the aggregate percentage of 11.6% of treatments projected by the BMA Application to be reimbursed by commercial insurance. (Joint Ex. 3, p. 47; Joint Ex. 66).

117. Likewise, in seven separate applications filed by TRC or related entities since 2009 TRC itself projected an aggregated commercial percentage ranging from 11% to 27.3%. (*See* Swann, T. Vol. 7, pp. 1669-73; Joint Ex. 70).

118. Mr. Sullivan also offered the opinion that the projection of commercial reimbursement for 87% of home hemo treatments was unreasonable because most commercial insurance policies only cover 30 months of treatment before Medicare becomes the patient's primary insurer. (Sullivan, T. Vol. 4, pp. 1020-21). Nevertheless, the CMS statistic cited by the CON Section suggests that approximately 24% of dialysis patients nationally have commercial insurance as their primary coverage at a given time. (*See* Frisone, T. Vol. 2, p. 486; Joint Ex. 2 p. 244).

119. Further, Mr. Sullivan acknowledged that if BMA assumed that the home hemo patients would be new patients, it would be reasonable to assume that they would have commercial insurance as their primary payor; but appeared to contend that BMA's application assumed the home hemo patients would transfer from BMA's existing facilities and therefore were part of its *existing* patient base. (Sullivan, T. Vol. 4, p. 1020).

120. However, Mr. Swann testified that the BMA Application did not assume that the transferring patients were those who were receiving care at BMA facilities at the time the application was submitted, and he emphasized that the high turnover rate among dialysis patients and the growing interest in home hemo underlied his assumption that the home hemo patients would be relatively new patients at the time that they transferred. (See Swann T. Vol. 3, p. 599, Vol. 7, pp. 1622-23).

121. Similarly, the Agency witnesses did not assume that the patients projected to transfer were the same patients receiving care at BMA facilities at the time of the review, and Mr. McKillip testified that it would be a dubious assumption in light of the high turnover rate among dialysis patients. (McKillip, T. Vol. 1, pp. 257-58, Vol. 2, p. 369; Frisone, T. Vol. 2, p. 501).

122. Mr. Sullivan himself acknowledged that turnover is common in the dialysis industry such that everyone in the industry is aware of the turnover among the population. (Sullivan, T. Vol. 5, p. 1094).

123. In fact, despite any 30-month limitation for most commercial insurance policies, about 24% of all dialysis patients nationwide have commercial insurance as their primary payor, as recognized by the Agency. (Sullivan, T. Vol. 5, p. 1121; Joint Ex. 2, p. 244).

124. In the aggregate, BMA projected that 11.6% of its patients would have commercial insurance as their primary payor (less than half the national percentage). BMA simply assumed that those commercially insured patients would disproportionately choose home hemo rather than in-center or PD. (See Swann, T. Vol. 7, pp. 1657-58; Sullivan, T. Vol. 5, p. 1116; Joint Ex. 109; Joint Ex. 66). Importantly, TRC acknowledged that in light of the small number of projected total home hemo patients, BMA's projected 87% commercial percentage for home hemo equated to only *three individual patients* in the second operating year. (Joint Ex. 109; Hyland, T. Vol. 6, pp. 1409-10). Accordingly, the Agency recognized the very small number of home hemo patients in deeming BMA's projections reasonable. (McKillip, T. Vol. 1, p. 235; Frisone, T. Vol. 2, p. 522).

125. No statute, rule or other standard prevents BMA from projecting payor mix as it did. TRC's criticisms amount to simple disagreement with BMA's projections and the Agency's determination that BMA's projections were reasonable, credible and supported.

Recalculation of Financials Assuming Different Payor Mix

126. Mr. Sullivan offered two recalculations of BMA's financial projections assuming what he viewed as two "more reasonable" payor mix projections in an attempt to demonstrate that BMA's project would not be financially feasible as required by Criterion 5. (See TRC Ex. 171; Sullivan, T. Vol. 5, pp. 1142-46).

127. Mr. Sullivan testified that had the Agency undertaken similar recalculations, his changed assumptions would have led to a “pretty dramatic swing” in the gross revenues that would “potentially call into question the overall feasibility of the project.” (Sullivan, T. Vol. 4, pp. 1028-29).

First Recalculation – Home Hemo Payor mix same as In-Center

128. In the first recalculation, Mr. Sullivan assumed the same payor mix for home hemo that BMA projected for its in-center treatments, including that 5.2% of treatments would be reimbursed by commercial insurance. (See TRC Ex. 271, p. TRC 001497).

129. However, even TRC’s own witness testimony would support no such assumption. Witnesses for both TRC and BMA testified consistently that the percentage of commercially insured home hemodialysis treatments is higher than the percentage of commercially insured in-center treatments. (Hines, T. Vol. 1, p. 173; Wells, T. Vol. 4, pp. 903-07; Barber, T. Vol. 4, p. 965).

130. Prior CON applications further demonstrate that commercially insured percentages tend to be far higher for home dialysis than for in-center dialysis. (See, e.g., TRC Ex. 224 (BMA Raleigh application, 27.1% commercial for home treatments vs. 13.1% commercial for in-center); TRC Ex. 226 (FMC South Rocky Mount application, 29.05% commercial for home treatments vs. 12.2% for in-center); TRC Ex. 228 (BMA Dunn application, 40.5% commercial for home treatments vs. 6.9% for in-center); TRC Ex. 230 (BMA Fayetteville application, 29.4% commercial for home treatments vs. 10.9% for in-center)).

131. During the review, Mr. Hyland submitted a similar recalculation for the Agency’s review as part of his written comments. (See Joint Ex. 2, pp. 38-41). However, Mr. McKillip testified that the Agency did not find Mr. Hyland’s recalculation persuasive because there was no basis to assume the home payor mix would mirror the in-center mix and because Mr. Hyland, like Mr. Sullivan, made no adjustments for contractual allowances. (McKillip, T. Vol. 8, pp. 1913-14).

Second Recalculation – Home Hemo Payor mix same as PD

132. In his second recalculation, Mr. Sullivan assumed the same payor mix for home hemo that BMA projected for its PD treatments, including that 24.9% of treatments would be reimbursed by commercial insurance. (See TRC Ex. 271, pp. TRC 001500-01).

133. Assuming that the payor mix for home hemo and PD would be identical, Mr. Sullivan’s report calculated a loss of approximately \$113,000 in the second operating year. (See, TRC Ex. 271, p. TRC 001503).

134. However, Mr. Sullivan also testified that this calculation was “incomplete” because he had not adjusted the contractual allowances to account for the changed payor mix. (Sullivan, T. Vol. 4, pp. 1030-32, Vol. 5, p. 1159). He acknowledged that the contractual allowances were likely to change and that once they were adjusted, the impact on the financial projections would be less severe than his recalculation. (Sullivan, T. Vol. 4, pp. 1030-32).

Indeed, Mr. Sullivan was not sure that the project would show a loss in the second year if the home hemo payor mix mirrored the PD payor mix. (Sullivan, T. Vol. 5, p. 1162).

135. The BMA Application assumed that contractual allowances would be equal to 40% of commercial reimbursement and self-pay revenue, consistent with the Agency's understanding of the application. (Swann, T. Vol. 7, p. 1679; Sullivan, T. Vol. 5, p. 1149; Frisone, T. Vol. 2, p. 493).

136. Mr. Sullivan acknowledged that if the contractual allowances in his recalculation were adjusted to reflect a projected 40% contractual allowance, without changing any other assumptions, the recalculation would demonstrate a *profit* of approximately \$58,000 in the project's second operating year. (Sullivan, T. Vol. 5, p. 1148-56; *see also* BMA Ex. 423; McKillip, T. Vol. 8, pp. 1913-14).

137. Mr. Sullivan nevertheless expressed concern that bad debt and ancillary revenues might also change if lower commercial revenues were projected, depending on the assumptions underlying those projections, but he was unable to calculate how either figure would change. (Sullivan, T. Vol. 5, pp. 1156-58).

138. However, the assumptions for bad debt in BMA's Application were based on the total number of treatments for all modalities and thus would not be impacted by a change in the payor mix. (Swann, T. Vol. 7, pp. 1717-19; TRC Ex. 247). Similarly, he testified that the ancillary revenue was based on a fixed number from BMA's internal feasibility model and thus would not be affected by a change in the payor mix. (Swann, T. Vol. 7, p. 1721).

139. Therefore, even if BMA had assumed that its home hemo payor mix would mirror that of its PD population, TRC's expert's analysis could not show that BMA's proposed facility would not be profitable in the second operating year. Consequently, such an assumption would not have affected BMA's conformity with Criterion 5 or the outcome of the review.

140. TRC's criticism of BMA's financial projections is focused on BMA's projected payor mix for home hemo, which represents only 9% of BMA's projected patients, and ignores the overall payor mix, which is not inconsistent with BMA's historical experience or that of TRC. No statute, rule or other standard prevents BMA from projecting payor mix as it did. TRC's criticisms amount to simple disagreement with BMA's projections and the Agency's determination that BMA's projections were reasonable, credible and supported.

Criterion 4

141. Mr. Hyland also offered the opinion that BMA should have been found nonconforming with Criterion 4 based solely on his opinion that the BMA Application was nonconforming to Criterion 5. (Hyland, T. Vol. 6, pp. 1484-85).

Criterion 13c

142. Criterion 13c requires an applicant to demonstrate "[t]hat the elderly and the medically underserved . . . will be served by the applicant's proposed services and the extent to

which each of these groups is expected to utilize the proposed services.” N.C. Gen. Stat. § 131E-183(a)(13)c.

143. The Agency typically measures conformity to Criterion 13c by looking at the projected payor mix for Medicare and Medicaid, both of which are considered medically underserved. (*See* McKillip, T. Vol. 1 p. 219).

144. In evaluating BMA’s conformity to Criterion 13c, the Agency reviewed and considered the projected payor mixes for each of the three modalities BMA was proposing to offer. (McKillip, T. Vol. 2 pp. 345-46, Vol. 8, pp. 1935-36; Joint Ex. 2, p. 247).

145. The Agency findings specifically noted that 91.1% of in-center patients at the proposed facility would be Medicare or Medicare/Medicaid beneficiaries because the majority of patients would be in-center patients. (Joint Ex. 2, p. 247; McKillip, T. Vol. 2, pp. 365-66).

146. The BMA Application represented that the average Medicaid payor mix for its facilities was 4.5% in 2012 and included demographic statistics showing that the poverty level in Franklin County was similar to the statewide average. (Joint Ex. 1, pp. 47-48, 91). In the aggregate, BMA projected that 5.44% of the treatments provided at the proposed Franklin County facility would be reimbursed by Medicaid, 21% higher than BMA’s statewide average. (Sullivan, T. Vol. 5, p. 1127).

147. Mr. Sullivan did not have the opinion that the BMA Application was nonconforming to Criterion 13c. (Sullivan, T. Vol. 5, p. 1166).

148. Mr. Hyland, however, opined that BMA had not demonstrated that the medically underserved would have adequate access to home hemo and PD because BMA projected lower levels of Medicare and Medicaid utilization for these services than for in-center. (Hyland, T. Vol. 6, pp. 1479-80).

149. However, the Agency noted that the BMA Application specifically represented that it would provide all services to all patients regardless of income, racial or ethnic origin, gender, physical or medical conditions, age, ability to pay, or any other factor that would classify a patient as underserved; accordingly, Mr. McKillip assumed that any patient who wanted to receive home treatments would have access. (*See* McKillip, T. Vol. 2, pp. 361-63; Joint Ex. 2, p. 243).

150. TRC identified no Agency error, nor any rule or other standard that BMA or the Agency failed to meet. TRC’s criticisms amount to simple disagreement with BMA’s projections and the Agency’s conclusion that BMA projected sufficient access.

The TRC Application

151. Because approval of the TRC Application would create a surplus of stations in Franklin County, the Agency determined that the TRC Application was nonconforming to Criteria 1, 4, 6, and 18a. (Joint Ex. 4, pp. 328-351).

Criterion 1

152. Criterion 1 requires that a proposed project be consistent with applicable policies and need determinations in the SMFP. N.C. Gen. Stat. § 131E-183(a)(1).

153. Policy ESRD-2 prohibits relocation of existing dialysis stations into a contiguous area if the proposal would result in a surplus of dialysis stations in the county that would gain stations as a result of the proposed project. (Joint Ex. 4, p. 330).

154. Although the January 2013 SDR showed a deficit of 10-stations in Franklin County, that deficit had been eliminated prior to the decision on the TRC Application. (*See, e.g., Randolph T. Vol. 1, pp. 131-32*).

155. Accordingly, the Agency correctly determined that approval of the TRC Application would have resulted in a surplus of stations in Franklin County because the TRC Application proposed to relocate two stations from Wake County. The Agency therefore found the TRC Application nonconforming to Criterion 1.

Criterion 4

156. Criterion 4 requires an applicant to demonstrate that the least costly or most effective alternative has been proposed where there are alternative methods of meeting the need for the proposed project. N.C. Gen. Stat. § 131E-183(a)(4).

157. In its discussion of the alternatives considered, the TRC Application did not address the possible alternative of establishing a 10-station facility by relocating only stations currently within Franklin County. (Randolph, T. Vol. 1, pp. 151-52).

158. The Agency found that the TRC Application had not proposed the most effective alternative and was therefore nonconforming to Criterion 4 for two reasons: (1) TRC's proposal would result in a surplus of stations in Franklin County, and (2) the TRC Application could not be approved as a result of its nonconformities with other review criteria. (Frisone, T. Vol. 2, pp. 421-22; Joint Ex. 4, pp. 337-38).

Criterion 6

159. Criterion 6 requires that an applicant demonstrate that its proposed project will not result in unnecessary duplication of existing or approved health service capabilities. N.C. Gen. Stat. § 131E-183(a)(6).

160. At the time of the Agency's decision regarding the TRC Application, approval of the project would have created a two-station surplus in Franklin County.

161. Accordingly, the Agency determined that the TRC Application failed to demonstrate that it would not result in unnecessary duplication of existing and approved dialysis stations in Franklin County and was therefore nonconforming to Criterion 6. (Frisone T. Vol. 2, p. 413; Joint Ex. 4, pp. 340-41).

Criterion 18a

162. Criterion 18a requires that an applicant demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition would have a positive impact upon cost effectiveness, quality, and access to the proposed services.

163. The Agency determined that the TRC Application did not demonstrate that it would have a positive impact on cost effectiveness because its approval would result in a surplus of stations in Franklin County and the TRC Application included no discussion to suggest that a surplus of stations would have a positive impact on cost effectiveness. (Frisone, T. Vol. 2, pp. 415-16; Joint Ex. 4, pp. 350-51).

164. Accordingly, the Agency determined that the TRC Application was nonconforming to Criterion 18a. (See Frisone, T. Vol. 2, p. 416).

Based upon the foregoing Findings of Fact, the Undersigned makes the following

CONCLUSIONS OF LAW

1. 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. Similarly, to the extent that some of these Conclusions of Law are Findings of Fact, they shall be so considered without regard to the given label.

2. A court 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. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder of parties.

4. TRC timely filed its petitions for contested case hearing under N.C. Gen. Stat. § 131E-188(a).

5. The Office of Administrative Hearings has jurisdiction over all the parties and the subject matter jurisdiction of this action.

6. The subject matter of these contested cases is the Agency's decisions to approve the BMA Application and to disapprove the TRC Application. See N.C. Gen. Stat. § 131E-188(a) (providing for administrative review of an Agency decision to issue, deny, or withdraw a certificate of need); *Britthaven, Inc. v. N.C. Dep't of Human Res.*, 118 N.C. App. 379, 382, 455 S.E.2d 455, 459 (1995).

7. Under N.C. Gen. Stat. § 131E-183(a), the Agency "shall determine that an application either is consistent with or not in conflict with [the statutory review] criteria before a certificate of need for the proposed project shall be issued."

8. To obtain a CON for a proposed project, a CON application must satisfy all of the review criteria set forth in N.C. Gen. Stat. § 131E-183(a). *Presbyterian-Orthopaedic Hosp. v. N.C. Dep't of Human Res.*, 122 N.C. App. 529, 534-35, 470 S.E.2d 831, 834 (1996).

9. The Agency determines whether an application is consistent with or not in conflict with the review criteria set forth in N.C. Gen. Stat. § 131E-183 and any applicable standards, plans, and criteria promulgated thereunder in effect at the time the review commences. *See* 10A N.C.A.C. 14C .0207.

10. Upon the Agency's decision to issue, deny, or withdraw a certificate of need, any affected person is entitled to a contested case hearing. N.C. Gen. Stat. § 131E-188. Likewise, any affected person may intervene in a contested case hearing. *Id.*

11. TRC is an affected person within the meaning of the statute because it provides services similar to those proposed in the BMA Application in the BMA review and was an applicant in its own review. *See* N.C. Gen. Stat. § 13E-188(c).

12. As Petitioner, TRC bears the burden of proof on each and every element of its case. *Overcash v. N.C. Dep't of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447-48 (2006).

13. The burden of persuasion placed upon TRC is by a "preponderance of the evidence." N.C. Gen. Stat. § 150B-29(a). In deciding the case based on the preponderance of the evidence, the ALJ must give "due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency." N.C. Gen. Stat. § 150B-34(a).

14. In contested cases, "[u]nder N.C. General Statute § 150B-23(a), the ALJ is to determine whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and that the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule." *Britthaven*, 118 N.C. App. at 382, 455 S.E.2d at 459.

15. The exercise of an applicant's right to an evidentiary hearing under the contested case provision of N.C. Gen. Stat. § 131E-188(a) does not commence a *de novo* proceeding by the ALJ intended to lead to a formulation of the final decision. *Britthaven*, 118 N.C. App. at 382, 455 S.E.2d at 459. To do so would misconstrue the nature of contested case hearings under the CON law and the Administrative Procedure Act. *Id.* Accordingly, the ALJ may not overturn the initial agency decision because the judge might have made a different judgment if he or she had been the person making the initial agency decision.

16. In order to prevail, TRC must satisfy both (1) the independent prima facie requirement of a showing of substantial prejudice under N.C. Gen. Stat. § 150B-23(a) and (2) its burden in showing that "the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule." *See* N.C. Gen. Stat. § 150B-23.

17. When considering the Agency decision in a contested CON case, the ALJ is limited to a review of the information presented or available to the CON Section at the time of the review. *See, e.g., Britthaven*, 118 N.C. App. at 382, 455 S.E.2d at 459; *In re Wake Kidney Clinic*, 85 N.C. App. 639, 643, 355 S.E.2d 788, 791, (1987). Therefore, testimony related to information not presented or reasonably available to the Agency during its review of the applications were accepted for a limited purpose and not accepted for the truth of the matter asserted.

18. The appropriate standard of review in this case depends upon the issue being reviewed. When a party charges that a state agency erred in interpreting a statutory term, the reviewing court may freely substitute its judgment for that of the agency. *Britthaven*, 118 N.C. App. at 384, 455 S.E.2d at 460. However, when a party questions whether the Agency's decision was supported by the evidence or whether it was arbitrary or capricious, the appropriate standard is the whole record test. *Britthaven*, 118 N.C. App. at 386, 455 S.E.2d at 461.

19. Under the whole record test, "a court must examine all the record evidence – that which detracts from the agency's findings and conclusions as well as that which tends to support them – to determine whether there is substantial evidence to justify the agency's decision." *Good Hope Health Sys. v. Dep't of Health & Human Servs.*, 189 N.C. App. 534, 543, 659 S.E.2d 456, 462 (2008) (quoting *Watkins v. N.C. State Bd. Of Dental Exam'rs*, 358 N.C. 190, 199, 593 S.E.2d 764, 769 (2004)). Substantial evidence is "relevant evidence a reasonable mind might accept as adequate to support a conclusion." N.C. Gen. Stat. § 150B-2(8b). The whole record test merely gives the reviewing court the capability to determine whether the administrative decision has a rational basis in the evidence. *Carillon Assisted Living, LLC, v. N.C. Dep't of Health & Human Servs.*, 175 N.C. App. 265, 270, 623 S.E.2d 629, 633 (2006).

20. When employing the whole record test, a reviewing court may not substitute its opinion for that of the Agency even if it would reach a different conclusion given its consideration of the whole record. *Gordon v. N.C. Dep't of Corr.*, 173 N.C. App. 22, 34, 618 S.E.2d 280, 289 (2005); *Watkins v. N.C. State Bd. of Dental Exam'rs*, 358 N.C. at 199, 593 S.E.2d at 769. The whole record test cannot be used as a "tool of judicial intrusion." *E. Carolina Internal Med.*, 211 N.C. App. at 407, 710 S.E.2d at 253 (quoting *Hosp. Grp. of W. N. Carolina, Inc. v. N.C. Dep't of Human Res.*, 76 N.C. App. 265, 268, 332 S.E.2d 748, 751 (1985)).

21. Under the whole record test, even an error in the Agency's analysis of an applicant may be harmless if it does not affect the outcome in the review. *Britthaven*, 118 N.C. App. at 386-89, 455 S.E.2d at 461-633. If a reviewing court finds that the Agency's analysis included an error that if correctly decided would have led to the same decision, the error is harmless under the whole record test. *Id.*

22. The "arbitrary and capricious" standard is a difficult one to meet. *Blalock v. N.C. Dep't of Health and Human Servs.*, 143 N.C. App. 470, 475, 546 S.E.2d 177, 181 (2001).

23. Administrative agency decisions may be reversed as arbitrary and capricious only if they are "patently in bad faith," or "whimsical" in the sense that "they indicate a lack of fair and careful consideration" or "fail to indicate any course of reasoning in the exercise of

judgment.” *ACT-UP Triangle v. Comm’n for Health Servs.*, 345 N.C. 699, 707, 483 S.E.2d 388, 393 (1997) (internal citation and quotations omitted).

24. By contrast, alleged errors of law such as decisions in violation of a constitutional provision, in excess of statutory authority or jurisdiction, or based upon unlawful procedures are reviewed under a *de novo* standard of review. See, e.g., *City of Rockingham v. N.C. Dep’t of Env’t & Natural Res.*, 736 S.E.2d 764, 767 (N.C. App. 2012).

25. North Carolina law gives great deference to an agency’s interpretation of a law it administers. *Frye Reg’l Med. Ctr. v. Hunt*, 350 N.C. 39, 45, 510 S.E.2d 159, 163 (1999). Furthermore, the Agency’s interpretation and application of the statutes and rules it is empowered to enforce are entitled to deference as long as the agency’s interpretation is reasonable and based on a permissible construction of the statute. *Good Hope Health Sys. v. N.C. Dep’t of Health & Human Servs.*, 189 N.C. App. 534, 544, 659 S.E.2d 456, 463 (2008), *aff’d*, 632 N.C. 504, 666 S.E.2d 749 (2008); see also *Carpenter v. N.C. Dep’t of Human Res.*, 107 N.C. App. 278, 279, 419 S.E.2d 582, 584 (1992), *disc. rev. improvidently allowed*, 333 N.C. 533, 427 S.E.2d 874 (1993).

26. North Carolina law presumes that the Agency properly has performed its duties. See, e.g., *In re Broad & Gales Creek Cmty. Assoc.*, 300 N.C. 267, 280, 266 S.E.2d 645, 654 (1980); *Adams v. N.C. State Bd. Of Registration for Prof’l Eng’g & Land Surveyors*, 129 N.C. App. 292, 297, 501 S.E.2d 660, 663 (1998); *In re Land & Mineral Co.*, 49 N.C. App. 529, 531, 272 S.E.2d 6, 7, *disc. rev. denied*, 302 N.C. 397, 297 S.E.2d 351 (1981) (holding that “[t]he official acts of a public agency . . . are presumed to be made in good faith and in accordance with the law”).

27. The arguments raised by TRC against the BMA Application do not amount to alleged errors of law, and therefore *de novo* review is inappropriate. Instead, TRC argues, in effect, that the Agency acted arbitrarily or capriciously by determining that BMA conformed with applicable review criteria and/or that such determinations were unsupported by substantial evidence.

Substantial Prejudice

28. TRC failed to demonstrate substantial prejudice to its legal rights resulting from the Agency’s approval of the BMA Application as required by N.C. Gen. Stat. § 150B-23.

29. Under the Administrative Procedure Act, a petitioner must “establish that *the agency* named as the respondent has . . . substantially prejudiced the petitioner’s rights.” N.C. Gen. Stat. § 150B-23(a) (emphasis added). See also *Britthaven*, 118 N.C. App. at 382, 455 S.E.2d at 459 (noting “the ALJ is to determine whether the petitioner has met its burden in showing that *the agency* substantially prejudiced petitioner’s rights”) (emphasis in original).

30. TRC cannot meet its burden of establishing substantial prejudice by virtue of the fact that TRC is currently the dialysis facility operating in Franklin County, and that approval of the BMA Application will result in increased competition. See *CaroMont Health, Inc. v. N.C. Dep’t of Health & Human Servs.*, ___ N.C. App. ___, ___, 751 S.E.2d 244, 250-51 (2013) (holding that a provider challenging an agency decision to grant a CON must show specific

evidence of harm beyond any harm resulting from additional competition arising from the approval).

31. TRC adduced no evidence of facts tending to show substantial prejudice. TRC simply contends that the Agency's decision to approve the BMA Application substantially prejudiced its rights because it eliminated the station deficit in Franklin County and therefore the subsequently-filed TRC Application did not demonstrate conformity with the review criteria to which the station deficit was a relevant consideration.

32. The evidence establishes that it was the manner in which TRC proposed to structure its project that rendered its application nonconforming to the relevant review criteria, not any action by the Agency.

33. It is entirely an applicant's choice how to structure a proposed project, and the Agency simply reviews whatever an applicant proposes against the review criteria. (Frisone, T. Vol. 2, p. 515). No statute, rule or policy prevented TRC from proposing the same project using only stations from within Franklin County. (Frisone, T. Vol. 2, p. 508; Hyland, T. Vol. 6, p. 1384). Although TRC proposed to relocate 8 stations from its existing Franklin County facility and 2 stations from its existing Wake County facility, TRC had sufficient stations at its existing facility in Franklin County to have proposed to relocate all 10 stations from that facility. (*See, e.g., Hyland, T. Vol. 6, p. 1378; Frisone, T. Vol. 2, p. 508*).

34. In fact, internal emails between TRC personnel strongly suggest that TRC proposed to move two stations from Wake County for the specific purpose of reducing the county deficit below 10 in an attempt to deny its competitor BMA the opportunity to establish a facility in Franklin County. (Joint Ex. 46).

35. TRC knew before it submitted the TRC Application that BMA had applied, that approval of the BMA Application would eliminate the deficit, and that any TRC proposal to transfer stations into Franklin County could not be approved if the BMA Application were approved; but alternatively, if TRC proposed only to relocate only existing stations within Franklin County, the TRC Application could be approved regardless of whether the BMA Application were approved. (*See Hyland, T. Vol. 6, pp. 1385-88*).

36. Had TRC proposed to relocate all 10 stations from its Franklin County facility, the proposed project would have had no impact on the number of stations in Franklin County and would therefore have been consistent with Policy ESRD-2 and conforming with Criteria 1, 4, 6, and 18a.

37. But for TRC's choice to propose to relocate two stations from Wake County into Franklin County, *both* the BMA Application and the TRC Application could have been approved.

38. Therefore, any prejudice TRC suffered as a result of the approval of the BMA Application was a direct result of its own choices, not the result of action taken by the Agency.

39. Because TRC has failed to establish an essential element of its case, specifically substantial prejudice, the Undersigned cannot reverse the Agency's decision to award a CON to BMA. N.C. Gen. Stat. § 150B-23(a).

BMA Application

40. The Agency properly determined that the BMA Application conformed to all applicable statutory and regulatory review criteria and standards. TRC failed to meet its burden under N.C. Gen. Stat. § 150B-23 to show that the Agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule by approving the BMA Application.

41. With regard to the Agency's determination that the BMA Application was conforming to Criteria 5 and 13c, TRC identified no rule, policy or objective standard that BMA or the Agency failed to meet. Instead, TRC's criticisms amount to mere disagreement with BMA's projections and the Agency's discretionary determination that such projections were reasonable, credible and supported. TRC has not raised any errors of law requiring a *de novo* review. Rather, TRC's argument is that the Agency erred in determining that BMA's projections of the payor mix for home hemo and PD were reasonable, which is a factual determination delegated to the Agency's discretion.

42. A review of the Agency's determination regarding the reasonableness of an applicant's projections is subject to the whole record test. *See, e.g., Craven Reg'l Med. Auth. v. N.C. Dep't of Health & Human Servs.*, 176 N.C. App. 46, 52-53, 625 S.E.2d 837, 841 (2006). "A reasonable projection of something that will occur in the future, by its very nature, cannot be established with absolute certainty." *Craven Reg'l Med. Auth.*, 176 N.C. App. at 53, 625 S.E.2d at 841.

43. The Agency properly determined that the BMA Application was conforming to Criterion 5, and such determination is supported by substantial evidence.

44. Criterion 5 requires that the proposed project be financially feasible in the long-term based upon reasonable projections of costs and charges. N.C. Gen. Stat. § 131E-183(a)(5).

45. The Agency, in its discretion, reviews long-term feasibility by determining whether the applicant has reasonably projected that the project will be profitable by the end of the second operating year.

46. No statute or rule requires an applicant to document its assumptions or methodology underlying its projected payor mix or to project payor mix using any particular methodology.

47. With respect to BMA's projected payor mix for PD, substantial evidence in the record supports the Agency's determination that the commercial percentage projected for PD was reasonable.

48. With respect to BMA's projected payor mix for home hemo, substantial evidence in the record supports the Agency's determination that the commercial percentage projected for home hemo was reasonable.

49. Whether the substantial evidence supporting the Agency's determination was actually relied upon by the Agency is irrelevant because the ALJ is not limited to that part of the evidence that the Agency actually relied upon; but may also consider other evidence that was available to the Agency. *See In re Wake Kidney Clinic*, 85 N.C. App. at 643, 355 S.E.2d at 791.

50. Because the Agency's finding that the BMA Application was conforming to Criterion 5 was supported by substantial evidence, its finding that the BMA Application was conforming to Criterion 4 is likewise proper and supported by substantial evidence.

51. The Agency properly determined that the BMA Application was conforming to Criterion 13c, and such determination is supported by substantial evidence.

52. There is substantial evidence in the record supporting the Agency's determination that BMA projected adequate levels of service to the medically underserved.

TRC Application

53. The Agency decision to disapprove the TRC Application was proper, and TRC failed to meet its burden to show that the Agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule by disapproving its application.

54. TRC contends that the Agency's disapproval of the TRC Application was erroneous because the 10-station deficit was eliminated by the prior approval of the BMA Application.

55. However, as discussed above, TRC failed to establish Agency error in the approval of the BMA Application and therefore TRC's argument is without merit.

56. The Agency properly found the TRC Application nonconforming with Criteria 1, 4, 6, and 18a since its proposed project would result in a surplus of stations in Franklin County.

Conclusion

57. TRC failed to carry its burden as petitioner under N.C. Gen. Stat. § 150B-23 to show error in the Agency's decision to approve the BMA Application and/or its decision to deny the TRC Application.

58. TRC also failed to meet its burden under N.C. Gen. Stat. Section 150B-23 to demonstrate that the Agency's approval of BMA's Application substantially prejudiced its rights.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby enters the following FINAL DECISION under N.C. Gen. Stat. §§ 150B-34 and 133-188 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.


IT IS HEREBY ORDERED that the decisions of the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Certificate of need Section in the reviews of the BMA Application and the TRC Application are hereby **AFFIRMED**.

NOTICE

Under the provisions of N.C. Gen. Stat. § 131E-188(b), any party wishing to appeal the final decision of the Administrative Law Judge must file a Notice of Appeal with the Office of Administrative Hearings and serve the Notice on the N.C. Department of Health and Human Services and all other affected persons who were parties to the contested case. The appealing party must file the Notice within 30 days of the receipt of the written notice of the Final Decision. Under N.C. Gen. Stat. § 131E-188(b1), before filing an appeal of a final decision granting a certificate of need, the affected person shall deposit a bond with the Clerk of the Court of Appeals. In conformity with the Office of Administrative Hearings Rule 26 N.C.A.C. 03.012 and the North Carolina Rule of Civil Procedure, N.C. Gen. Stat. 1A-1, Article 2, this Final Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

IT IS SO ORDERED.

This the 23rd day of June, 2014.



Craig Croom
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA IN THE OFFICE OF
COUNTY OF DUPLIN ADMINISTRATIVE HEARINGS

Office of 13 DOJ 16255
Administrative Hearings

VINCENT DALE DONALDSON, Administrative Petitioner

Petitioner,)

)

v.)

)

N.C. SHERIFFS' EDUCATION)

)

AND TRAINING STANDARDS)

)

COMMISSION,)

)

PROPOSAL FOR DECISION

Respondent.)

)

)

)

)

On November 12, 2013, Administrative Law Judge Eugene J. Cella heard this case in Wilmington, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Vincent Dale Donaldson, *Pro Se*
203 Clinic Circle Drive
Rose Hill, North Carolina 28458

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

ISSUES

Did Petitioner knowingly make a material misrepresentation of any information required for certification as a justice officer to the North Carolina Sheriffs' Education and Training Standards Commission?

Did Petitioner commit the misdemeanor offenses of cruelty to animals and denying animals adequate food and medical attention?

Has the Petitioner committed or been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules, such that Petitioner's application for certification is subject to denial?

Does the Petitioner possess the good moral character that is required of a sworn justice officer?

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail the proposed Denial of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on June 19, 2013.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B.0204(c)(1) and (2) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant for certification has:

(1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or has

(2) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

4. 12 NCAC 10B. 0204(d)(5) states the Sheriffs' Commission may deny the certification of a justice officer when the Commission finds that the applicant has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

5. The Petitioner is an applicant for certification through the Duplin County Sheriff's Office. Petitioner has not previously held certification through the Sheriffs'

Commission. Petitioner currently holds certification through the North Carolina Criminal Justice Education and Training Standards Commission.

Material Misrepresentation

6. On May 19, 2005, Petitioner completed a Form F-5A Application for Certification through the North Carolina Criminal Justice Education and Training Standards Commission. Question number 3 of this application states:

3. Have you ever used any illegal drugs? (If yes, please explain on a separate sheet).

7. Petitioner answered "No" to question number 3, indicating that he had never used any illegal drugs. Petitioner signed the May 19, 2005 Form F-5A before a Notary, certifying that his answers to each and every statement were true and complete. At the time Petitioner completed this form he was 42 years old, had earned his high school diploma, and had served in the United States Marine Corps from August 1980 until his honorable discharge in 2003.

8. On April 11, 2012, Petitioner completed a Form F-3 Personal History Statement in furtherance of his application for certification through the Sheriffs' Commission. Question number 39 of the Sheriffs' Commission Form F-3 asked Petitioner the following:

39. Have you ever used any illegal drugs including but not limited to marijuana, steroids, opiates, pills, heroin, cocaine, crack, LSD, etc., to include even one time use or experimentation?

9. Petitioner responded to question number 39, stating he had used marijuana last on October 31, 1980. This response was inconsistent with Petitioner's response to the 2005 Criminal Justice application, wherein Petitioner stated he had never used any illegal drugs.

10. The Petitioner indicates he failed to disclose the drug use on his 2005 Form F-5A because he was not a frequent drug user and the usage occurred 25 years prior to Petitioner completing the 2005 Form F-5A. Petitioner indicates he only used marijuana on one occasion in 1980, and he therefore believed this single usage did not need to be reported.

11. This Court finds that at the time Petitioner completed the 2005 Form F-5A, Petitioner knew the plain meaning of question 3, which requires the disclosure of the use of "any illegal drugs." Petitioner's failure to disclose his past marijuana use on the 2005 Form F-5A constitutes a material misrepresentation of information required for certification or accreditation from the Sheriffs' Commission or the North Carolina Criminal Justice Education and Training Standards Commission. Petitioner's application is therefore subject to denial or a lesser sanction pursuant to 12 NCAC 10B.0204(c)(1) and 12 NCAC 10B .0205 (2).

12. Although Petitioner made a material misrepresentation within the meaning of 12 NCAC 10B.0204(c)(1), this court finds that Petitioner did not violate 12 NCAC 10B.0204(c)(2),

in that there is no evidence that Petitioner designedly attempted to obtain certification through false pretense, cheating, or fraud.

13. Petitioner's failure to disclose a civil judgment levied against him was an unintentional error and was not a material misrepresentation. A civil judgment was levied against Petitioner on June 7, 2000 in Onslow County, North Carolina. The judgment was in favor of McFadyen Music, Inc. At that time, Petitioner was deployed with the United States Marines and Petitioner's wife was handling the family finances. The debt was for a clarinet that was used by Petitioner's daughter. At the time Petitioner completed his 2012 F-3 Personal History Statement, Petitioner had no recollection of this past judgment.

Cruelty to Animals

14. Petitioner was charged with cruelty to animals and failing to provide adequate food and medical attention for the alleged neglect of certain dogs on or about September 16, 2005. The alleged abuse took place at the property owned by Petitioner located at 222 Regalwood Drive, Jacksonville, North Carolina. At the time of the alleged neglect, Petitioner was not residing at the Regalwood Drive residence. Petitioner had accepted a job through the North Carolina Department of Corrections and had moved with his wife to Raleigh, North Carolina in order to serve as a detention officer. Petitioner's son and daughter, who are both adults, were living at the Regalwood Drive residence in the fall of 2005 when the alleged neglect took place.

15. Petitioner was not aware that animals were being kept at his property in Jacksonville and was unaware of the alleged abuse of animals at his property. Petitioner was not advised of this until he was contacted by animal control. At that time, Petitioner was residing in Raleigh, North Carolina. The criminal charges issued against Petitioner were dismissed by the Onslow County District Attorney's Office upon verification that Petitioner was not living at the Regalwood Drive residence and upon verification that Petitioner had no knowledge that animals were being neglected.

16. This Court finds that Petitioner did not commit the class B misdemeanor offense of cruelty to animals in 2005 and further finds that Petitioner did not intentionally deprive animals of necessary food and medical treatment in 2005.

Commission and/or Conviction of 4 or more crimes or unlawful acts

17. The Petitioner was convicted of Driving While Impaired, Level 5, on August 29, 2000, in violation of North Carolina General Statute § 20-138.1 (case No. 2000 CR 055811). Petitioner does not dispute this conviction. Pursuant to 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by the Respondent, a Level 5 Driving While Impaired conviction constitutes a Class A misdemeanor conviction.

18. The Petitioner was convicted of misdemeanor worthless check on a closed account on March 18, 1994, in violation of North Carolina General Statute § 14-107 (d) (4) (case

number 1994 CR 003737). Petitioner does not dispute this conviction. Pursuant to 12 NCAC 10B .0103 (10) (a), and the Class B Misdemeanor Manual adopted by the Respondent, a worthless check conviction constitutes a Class A misdemeanor conviction.

19. Petitioner has been convicted of two (2) Class A misdemeanor offenses. However, as set out above, this Court finds that Petitioner did not commit the offenses of cruelty to animals and depriving animals of food and medical attention. Therefore, Petitioner has not committed or been convicted of any combination of four (4) or more crimes or unlawful acts defined as either Class A or Class B misdemeanors pursuant to the Commissions' Rules. Given the undisputed record in this case and the evidence presented, Petitioner has not violated 12 NCAC 10B .0204 (d) (5).

Good Moral Character

20. Petitioner is married and has raised and supported six (6) children. Petitioner became a United States Marine in 1980 and served with the Marines until his retirement in 2003. Petitioner served 21 years and 10 months and was honorably discharged. Petitioner then obtained his probationary certification from the North Carolina Criminal Justice Education and Training Standards Commission in 2005 and his general Criminal Justice certification in 2006.

21. Petitioner has the support of the Duplin County Sheriff's Office. Lieutenant Mitchell with the Duplin County Sheriff's Office testified at the administrative hearing. The evidence presented indicates Petitioner has a reputation of being honest and hard working and that Petitioner would make an exceptional detention officer. This Court finds this testimony to be credible.

22. The Court finds that Petitioner is of good moral character within the meaning of 12 NCAC 10B .0301 (a) (8).

23. Further, despite Petitioner's serious error in judgment when completing the May 19, 2005, Form F-5A Application for Certification, there was substantial mitigating evidence and extenuating circumstances presented at the administrative hearing which warrants a lesser sanction than the denial of Petitioner's certification.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 NCAC 10B .0204(d)(5), the Commission may revoke, suspend, or deny the certification of a detention officer when the Commission finds that the applicant for certification or certified officer has committed or been convicted of:

(5) any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103(10)(a) as a Class A misdemeanor

or defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor regardless of the date of commission or conviction.

3. Pursuant to 12 NCAC 10B .0103(2), “convicted” or “conviction” means and includes, for purposes of that Chapter, the entry of (a) a plea of guilty; (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or (c) a plea of no contest, nolo contendere, or the equivalent.

4. Petitioner has been convicted of two (2) class A misdemeanors pursuant to the Commission’s Rules. Petitioner’s Driving While Impaired conviction and Worthless Check conviction each constitute separate class A misdemeanor convictions.

5. The record in this case establishes that Petitioner did not commit the misdemeanor offenses of cruelty to animals and denying animals adequate food and medical attention. Therefore, Petitioner has not committed or been convicted of any combination of four or more crimes or unlawful acts defined in 12 NCAC 10B .0103 (10)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103 (10)(b) as a Class B misdemeanor regardless of the date of commission or conviction. Petitioner’s certification is not subject to denial pursuant to 12 NCAC 10B .0204 (d) (5).

6. Pursuant to 12 NCAC 10B.0204(c)(1) and (2), the Sheriffs’ Commission may deny the certification of a justice officer when the Commission finds that the applicant for certification has:

(1) knowingly made a material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission; or has

(2) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

7. The period of denial for a material misrepresentation is 5 years pursuant to 12 NCAC 10B .0205 (2). However, the Commission may issue a lesser sanction when extenuating circumstances brought out at the administrative hearing warrant such a reduction.

8. The Petitioner knowingly made a material misrepresentation of information required for certification through the North Carolina Criminal Justice Education and Training Standards Commission by failing to disclose on his 2005 Form F-5A Application for Certification that Petitioner had previously used marijuana, an illegal drug. At the time Petitioner made this material misrepresentation, Petitioner was approximately 42 years old, had

graduated from high school, and had served as a United States Marine for 21 years and 10 months. Petitioner knew the plain meaning of question 3 on the F-5A Form and chose not to disclose this information. Petitioner's application for certification is subject to denial pursuant to 12 NCAC 10B .0204 (c)(1) based on Petitioner's material misrepresentation.

9. This Court further finds that Petitioner did NOT knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating, obtain or attempt to obtain certification through the North Carolina Sheriffs' Education and Training Standards Commission.

10. Petitioner is of good moral character within the meaning of 12 NCAC 10B .0301 (a) (8).

11. The Petitioner's knowing material misrepresentation of information required for certification through the Sheriffs' Commission constitutes a violation of 12 NCAC 10B .0204(c)(1). The Respondent's proposed denial of Petitioner's certification is therefore supported by substantial evidence. However, pursuant to 12 NCAC 10B .0205 (2), the Commission may either reduce or suspend the periods of sanction or substitute a period of probation in lieu of revocation, suspension, or denial when extenuating circumstances brought out at the administrative hearing warrant such a reduction.

PROPOSAL FOR DECISION

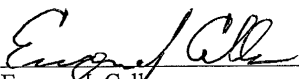
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends that Petitioner's certification be issued and that Petitioner be given a verbal and/or written warning for making a material misrepresentation on the May 19, 2005 Form F-5A. Such a reduced sanction is warranted due to the extenuating circumstances brought out at the administrative hearing. Petitioner is of good moral character and has served honorably in the United States Marine Corps for over 20 years. Petitioner would like to obtain certification in order to give back to the community and to continue to support his family financially. Petitioner has the support of the Duplin County Sheriff's Office and is considered to be a hard worker and suited for employment in law enforcement. Petitioner's lapse in good judgment is isolated to the misrepresentation related to prior drug use on his 2005 Form F-5A. Given Petitioner's reputation, substantial achievements, and service, a lesser sanction than the denial of his certification is appropriate.

NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 11th day of April, 2014.


Eugene J. Celka
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

GREGG SIPLER,

Petitioner,

v.

UNIVERSITY OF NORTH CAROLINA AT
GREENSBORO,

Respondent.

2014 APR 21 PM 12:45

OFFICE OF
ADMIN HEARINGS

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 18692

PROPOSED DECISION

The above-captioned case was heard before the Honorable Selina M. Brooks, Administrative Law Judge, on April 15, 2014 in High Point, North Carolina.

APPEARANCES

FOR PETITIONER:

Gregg Sipler
Pro Se

FOR RESPONDENT:

Stephanie A. Brennan
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, N.C. 27602

EXHIBITS

Admitted for Petitioner:

- Ex. 1 Preventive Maintenance Request for Compressors
- Ex. 2 Handwritten Notes re Compressors

Admitted for Respondent:

- Ex. 1 Cover Letter & CV
- Ex. 2 Position Posting
- Ex. 3 9/6/07 Appointment Letter
- Ex. 4 9/21/07 Personnel Action Form
- Ex. 5 Performance Planning
- Ex. 6 Performance Management Plan – Interim Review signed 3/12/12
- Ex. 7 Performance Management Plan – Interim Review signed 1/30/13
- Ex. 8 12/7/12 T. White Notes

- Ex. 9 4/16/13 Letter from T. White re Emergency PO
- Ex. 10 Manufacturer Maintenance Schedule
- Ex. 11 Photos
- Ex. 12 Invoice from Pattons, Inc.
- Ex. 13 4/17/13 Purchase Order
- Ex. 14 4/26/13 Email from R. Carney
- Ex. 15 5/13/13 Notice of Pre-Disciplinary Conference
- Ex. 16 5/28/13 Notice of Termination
- Ex. 17 5/28/13 Sipler Grievance Letter
- Ex. 18 6/12/13 Step 2 Grievance Management Review
- Ex. 20 9/30/13 Letter from R. Taylor – final agency decision

WITNESSES

Called by Petitioner: Gregg Sipler
Called by Respondent: Raymond Carney
Dan Durham
Dan Moore
Tom White

ISSUES

The issue for consideration is whether Respondent had just cause to terminate Petitioner's employment for gross inefficient job performance.

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, 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 interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case. In the absence of a transcript, the Undersigned relied upon her notes to refresh her recollection.

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.
2. At the time of his termination, Petitioner was a permanent State employee subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act).

3. Respondent, the University of North Carolina at Greensboro ("UNCG") is subject to Chapter 126 of the North Carolina General Statutes, and was Petitioner's employer.
4. From 2007 until his termination in 2013, Petitioner was employed by Respondent as a HVAC Supervisor II. This was a high level position supervising approximately ten employees. R. Exs. 1, 2, 3 & 4
5. One of Petitioner's primary job responsibilities was preventive maintenance of HVAC and related equipment, including performing preventive maintenance and making sure equipment was included in the preventive maintenance system. R. Ex. 5
6. Respondent communicated to Petitioner on his interim reviews in 2011-12 and 2012-13 that there were serious concerns about Petitioner's performance of preventive maintenance duties and that this area needed serious improvement. R. Exs. 6 & 7
7. Preventive maintenance and care of six lab air compressors in the basement of the Sullivan Science Center on campus fell within Petitioner's responsibility. This responsibility was set forth in Petitioner's job description, performance plan and performance reviews. Furthermore, Petitioner's supervisor told him that preventive maintenance was his responsibility. R. Exs. 5, 6 & 7 Preventive maintenance for the six lab air compressors should be entered in the preventive system in accordance with the manufacturer's guidelines. R. Ex. 10
8. In December 2012, Petitioner's direct supervisor, Tom White, discovered that a replacement air compressor for one of the six lab air compressors in the Sullivan Science Center had not been installed. He requested that Petitioner take care of the installation. When White spoke to Petitioner about the compressor, he learned that preventive maintenance was not being done on the six lab air compressors and that they were not in the preventive maintenance system. White directed Petitioner to do the preventive maintenance on the compressors and make sure they were put into the preventive maintenance system. R. Ex. 8
9. On April 16, 2013, it was discovered that five of the six lab air compressors for the Sullivan Science Building had failed. An emergency request for the purchase of replacement air compressors was made at a serious financial impact of \$20,238.44. R. Exs. 9, 12 & 13
10. Failure to perform preventive maintenance resulted in failed compressors, compromised system performance and also could have resulted in a total failure of this critical system with a major impact on University research. It was determined after the compressor failures that this equipment was not in the preventive maintenance system and preventive maintenance was not being done on the equipment. R. Exs. 11 & 14

11. Respondent issued a notice of pre-disciplinary conference to Petitioner and a pre-disciplinary conference was held. As a result of the air compressor failures, Respondent terminated Petitioner for gross inefficient job performance. R. Exs. 15 & 16
12. Petitioner appealed the decision through UNCG's grievance process, and the Respondent affirmed the dismissal. R. Exs. 17, 18, & 19
13. Petitioner was out for some periods of time for worker's compensation leave, but he was present in the months leading up to the incident. Petitioner's periods of worker's compensation leave did not excuse his failure to ensure that preventive maintenance was done on the lab air compressors.
14. Petitioner's testimony was not credible and his exhibits also were not credible.
15. The testimony of Respondent's witnesses was credible and was substantiated, in significant part, by credible documentary evidence.
16. As explained in Findings of Fact 1 through 15, from the hearing testimony as well as the presentation of Respondent's exhibits, Respondent demonstrated with substantial evidence that Petitioner failed to satisfactorily perform job requirements as set out in the job description, work plan, or as directed by the management of the work unit or agency; and, his act or failure to act caused or resulted in the loss of or damage to state property or funds that results in a serious adverse impact on the State and/or work unit.
17. No evidence was presented that Petitioner was under any duress or coercion that may have contributed to his conduct.
18. No evidence was presented that there are mitigating factors.
19. No evidence was presented that Respondent had improper motivation for dismissing Petitioner or made any improper considerations.
20. Respondent's dismissal of Petitioner was reasonably related to the seriousness of the offense and the record of the Petitioner in his service with UNCG.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the just cause issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. Respondent met its burden of proving by a preponderance of evidence that it had just cause to terminate Petitioner. Petitioner's arguments to the contrary are without merit.

3. A career State employee may be terminated only for just cause. N.C.G.S. § 126-35(a) (2013). The State employer bears the burden of demonstrating just cause. N.C.G.S. § 126-35(d) (2013).
4. To demonstrate just cause, a State employer may show "gross inefficient job performance." 25 NCAC 01J .0614. Gross Inefficiency (Grossly Inefficient Job Performance) "means a type of unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in . . . the loss of or damage to state property or funds that result in a serious impact on the State or work unit."
5. In this contested case, that evidence shows that Petitioner's actions concerning preventive maintenance of the lab air compressors, detailed in the above Findings of Fact, constituted gross inefficient job performance.
6. Respondent demonstrated with credible and substantial evidence that Petitioner's conduct was gross inefficient job performance in that it: (1) was failure to perform job requirements as specified in the job description, work plan or as directed by management; and (2) resulted in the loss of or damage to state property that resulted in a serious impact on the University.
7. The University demonstrated with credible and substantial evidence that it had just cause for terminating Petitioner.
10. Respondent followed all of the required procedures to terminate Petitioner for gross inefficient job performance.
11. Petitioner's termination was reasonably related to the seriousness of the offense and the record of the Petitioner in his service with UNCG.
12. Based on Petitioner's actions, and in light of his work history, the decision to terminate Petitioner was just.
13. Based on all foregoing Findings of Fact and Conclusions of Law, Petitioner's actions constituted gross inefficient job performance. Considering the totality of the circumstances, and utilizing guiding principles of equity and fairness, Respondent had just cause to terminate Petitioner.

On the basis of the above Conclusions of Law, the Undersigned issues the following:

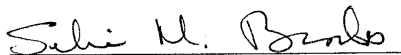
DECISION

It is hereby ordered that Respondent has sufficiently proved it had just cause to terminate Petitioner based on his gross inefficient job performance, and Respondent's decision to terminate Petitioner is **AFFIRMED**.

NOTICE

Under the provisions of North Carolina General Statute 150B-456, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, The Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 21st day of April, 2014.



Selina Brooks
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
7/23/2014 11:51 AM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

FINAL DECISION

APPEARANCES

ISSUES

891

Carolina, should be exempt from use taxes pursuant to N.C. Gen. Stat. § 105-164.13(12)d., which authorizes an exemption for “durable medical supplies.”

EXHIBITS

The parties introduced the following exhibits admitted into evidence at hearing:

Petitioners:

| Exhibit No. | Description |
|--------------------|---|
| 1 | Sales and Use Technical Bulletin 13-3 (dated 8/1/2000) |
| 2 | Sales and Use Technical Bulletin 13-1 (dated 12/1/2008) |
| 3 | Sales and Use Technical Bulletin 11 (pages 1-2) |
| 4 | Petitioners’ Responses to Interrogatory Nos. 24 & 25 |
| 5 | Copy of package inserts for products ordered from MVAP |
| 6 | Policy & Procedures of American Academy of Sleep Medicine page 55 |

Respondent:

| | |
|----|---|
| 1 | 2007 Invoices from MVAP |
| 2 | Sleep Study Prescription |
| 3 | Sleep Study Prescription |
| 4 | Sleep Study Prescription and Prescription to purchase supplies |
| 5 | Sleep Study Prescription and Prescription to purchase supplies |
| 6 | Sleep Medical Billing Statements |
| 7 | Sleep Medical Center 2014 Policies Procedures |
| 8 | MVAP Invoices 2004-2010 |
| 9 | Feeling Great Notice of Final Determination |
| 10 | Sleep Medical Notice of Final Determination |
| 11 | The Department’s Spreadsheet of Feeling Great’s Purchases from MVAP |
| 12 | The Department’s Spreadsheet of Sleep Medical’s Purchases from MVAP |

WITNESSES

For Petitioners: Sandra Wrightenberry, President of Petitioners
 Jeff Shumaker, Clinical Supervisor for Petitioners

For Respondent: Ginny Upchurch, Assistant Director of Sale and Use Tax Division, North
 Carolina Department of Revenue

UPON DUE CONSIDERATION of the written contentions of the parties, the exhibits admitted, and the sworn testimony of each witness presented at the hearing, assessing its weight

and credibility in light of the demeanor of the witness; the opportunity of the witness to see, hear, know, and recall relevant facts and occurrences; the interests and predisposition of the witness; whether the testimony of the witness is reasonable and consistent with the other credible evidence; and, based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Petitioner Feeling Great, Inc. (hereinafter, "Feeling Great"), headquartered in Durham, North Carolina, began business in 2001 selling durable medical equipment. In 2003, it opened a sleep diagnostic testing facility. For business reasons attributed to a change in federal laws, the testing facility was separated and incorporated as Sleep Medical, Inc. ("Sleep Medical") in 2007. On April 4, 2012, Respondent issued Proposed Assessments totaling approximately \$29,000.00 for failure to pay use taxes, based on audit periods of July 1, 2004 through June 30, 2010 for Feeling Great, and January 1, 2008 through April 30, 2010 for Sleep Medical.
2. Sleep Medical uses sophisticated durable medical equipment--an Alice Diagnostic Sleep System--to perform sleep studies. Patients are attached to "the Alice" by electrodes in order to gather data diagnostic of various sleep disorders (e.g., sleep apnea). Each of the five (5) diagnostic tests or procedures that Sleep Medical offers is assigned a single five-digit Current Procedural Terminology ("CPT") Code number. The medical personnel who conduct the tests--licensed Respiratory Therapists and Sleep Technologists--are trained to follow a very specific sequence of steps for each test, including the utilization of consumable supplies, as set out in procedural manuals maintained by their respective governing professional associations. Based on these sources and their own selection of equipment and supplies complying with their requirements, Sleep Medical maintains an internal procedures manual, which itself is subject to audit by the American Association of Sleep Medicine.
3. Services at Sleep Medical are initiated by a comprehensive physician's prescription--known as a "Certificate of Medical Necessity"--that includes patient information, specific clinical observations or symptoms justifying the need for the test ordered (including IDC-9 diagnosis code(s)), and designates the specific test required, typically by name (or acronym) and CPT code. Based on this document, Petitioners' clinical supervisor orders supplies for each test. These may include, e.g., scissors, gauze, tape, nail polish remover, cotton tip applicators (Q-tips), stik-it, exam gloves, disinfectant, adhesive tape remover, air fragrance, AAA batteries, alcohol prep pads, a tape measure, and a marking pencil. Some portion of the creams or adhesives used during the procedure may be left over, but most of these supplies have a single use before they are consumed or discarded. Sleep Medical's bill to the patient and/or the patient's third-party payor bears a single amount for each test. All of these tests are covered by Medicare and Medicaid. Petitioners charge all of their patients the Medicaid-allowable amount for each test-specific CPT code. No individual supply items or particular services rendered during the course of the

sleep study are itemized in the bill submitted to the payor(s). All are “bundled” under the single officially-designated CPT code number into a single price.

4. Respondent audited Petitioners’ purchases from their primary medical supply source, MVAP Medical Supplies, Inc. in California, including reviews of the companies’ “purchase invoices” and Certificates of Medical Necessity, and concluded that use taxes were due on most of the supplies ordered. Respondent based its tax assessments on the determination that the supplies “are not sold or dispensed to the patients on prescription,” and that the “majority of the supplies at issue are disposable items that are neither ‘drugs required by federal law to be dispensed only on prescription,’ nor over-the-counter drugs containing a ‘Drug Facts’ label,” as referenced in the statutory definitions of these products.

5. In its Notices of Final Determination, Respondent complained that, “Taxpayer does not bill ... for the items used in conducting the sleep study test. Rather, Taxpayer bills the patient or the patient’s insurance company for the sleep study test.” When cross-examined about this practice, Petitioners’ Clinical Supervisor responded that it could be “illegal” to do otherwise--an apparent reference to “unbundling,” one of the more notorious forms of provider fraud. As described in a Centers for Medicare & Medicaid Services (“CMS”) “fact sheet:”

“Unbundling” occurs when multiple procedure codes are billed for a group of procedures that are covered by a single comprehensive code. The way this form of fraud works is that the reimbursement for the individual codes billed separately is higher than the reimbursement for the single comprehensive code that should be used. For example, a laboratory might receive an order for a panel of tests on a patient. Instead of bundling the tests and billing for them together, the laboratory might attempt to increase its income by billing for each test separately. ... Providers should be familiar with applicable Medicaid rules on which services need to be bundled or billed together.

“Common Types of Healthcare Fraud,” Centers for Medicare & Medicaid Services, [http://www.cms.gov/Medicare- Medicaid- Coordination/Fraud- Prevention/Medicaid- Integrity- Education/Downloads/fwa-factsheet.pdf](http://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Downloads/fwa-factsheet.pdf) [Viewed 7/11/2014]

6. Petitioners argue that their supplies are “Durable medical supplies sold on prescription,” exempted by N.C. Gen. Stat. Ann. § 105-164.13(12)d. This statute was not referenced in the Notices of Final Determination, but Respondent’s Assistant Director of Sale and Use Tax Division testified that under the Department’s interpretation of the statute, the supplies from MVAP did not fall within this exemption.

7. N.C. Gen. Stat. Ann. § 105-164.13 reads, in pertinent part:

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are

specifically exempted from the tax imposed by this Article:

* * *

Medical Group.

(12) Sales of any of the following items:

* * *

- c. Durable medical equipment sold on prescription.
- d. Durable medical supplies sold on prescription.

NC Gen. Stat. 105-164.3 “Definitions,” includes “(8c) Durable medical supplies. - Supplies related to use with durable medical equipment that are eligible to be covered under the Medicare or Medicaid program.”

8. The exemption of “durable medical supplies” first became law in 1999. The original version of the statute read:

Durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription of a physician, dentist, or other professional person licensed to prescribe. This exemption applies whether or not the item is purchased by a Medicare or Medicaid beneficiary.

Session Laws 1999-438. This language was enacted as Section 5 of Senate Bill 1112, but it was initially proposed as Senate Bill 884, introduced by then-Senator Roy Cooper. A Fiscal Note prepared by the Legislature’s staff for Senate Bill 884 indicates that the aim of the legislation was to “exempt durable medical equipment and medical sundries” that were “covered by Medicare [but] taxable under North Carolina law.” Forty-nine such items had been identified. The fiscal note uses the term “medical sundries” to describe “easily and frequently disposed of items like latex gloves, gauze, medical tape, and syringes.”

9. Revenue regulation 17 NCAC 07B .1404, “Medical Supplies and Equipment,” describes §105-164.13(12)d as exempting from the use tax “durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription.”
10. Medicaid routinely authorizes the purchase of durable medical equipment and associated “supplies” under a single prescription. See also, e.g., *Mazer v. N.C. Department of Health and Human Services*, 12DHR01733, 2012 WL 6902865 (NC OAH, 20 Nov. 2012), concerning purchase of a wheelchair under a “proper Certificate of Medical Necessity and Prior Approval Form signed by a ‘Provider/Board Certified Practitioner,’” and a form labeled Attachment C to Respondent’s Clinical Coverage Policy No. 5A, titled “*How a Recipient Obtains Durable Medical Equipment and Supplies*.”
11. The unambiguous wording of §§ 105-164.13(12)d and 105-164.3(8c), taken together, and its legislative history, evinces the Legislature’s intention to exempt from the use tax

consumable items necessary for or associated with the use of durable medical equipment such as, and including, Petitioners' Alice Diagnostic Sleep System.

12. Petitioners timely initiated this contested case hearing before the Office of Administrative Hearings on September 24, 2013 by filing Petitions seeking review of the Notices of Final Determination issued by the North Carolina Department of Revenue on July 30, 2013.
13. To the extent that portions of the following Conclusions of Law include Findings of Fact, such are incorporated by reference into these Findings of Fact.

CONCLUSIONS OF LAW

1. To the extent that portions of the foregoing Findings of Fact include Conclusions of Law, such are incorporated by reference into these Conclusions of Law.
2. The parties and the subject matter of this contested case hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §§ 150B-1(e) and 150B-23.
3. The North Carolina Sales and Use Tax Act generally imposes a State and local use tax on purchases of tangible personal property . . . purchased inside or outside this State for storage, use, or consumption in this State. N.C. Gen. Stat. §§ 105-164.3(44), 105-164.3(46), 105-164.3(49), 105-164.3(50), 105-164.6, 105-468, 105-483, 105-498, and 105-517. Use tax is payable by the person who purchases the taxable tangible personal property. N.C. Gen. Stat. § 105-164.6. "Use" means the "exercise of any right, power, or dominion whatsoever over tangible personal property." N.C. Gen. Stat. § 105-164.3(49). The taxable event for assessment of the use tax occurs when possession of the property is transferred to the purchaser within the taxing state for storage, use or consumption. *Colonial Pipeline Co. v. Clayton*, 275 N.C. 215, 166 S.E.2d 671 (1969). The burden of proof rests on the petitioner challenging an agency decision. *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447 (2006).
4. "Special canons of statutory construction apply when the term under consideration is one concerning taxation. When the meaning of a term providing for taxation is ambiguous, it is construed against the state and in favor of the taxpayer unless a contrary legislative intent appears. But when the statute provides for an exemption from taxation, a contrary rule applies, and any ambiguities are resolved in favor of taxation. The underlying premise when interpreting taxing statutes is: Taxation is the rule; exemption the exception. In all tax cases, the construction placed upon the statute by the Commissioner of Revenue, although not binding, will be given due consideration by a reviewing court. *Despite these special rules, our primary task in interpreting a tax statute, as with all other statutes, is to ascertain and adhere to the intent of the Legislature.* The cardinal principle of statutory construction is that the intent of the Legislature is controlling. [Emphasis the Court's.] [Citing:] *Matter of North Carolina Inheritance Taxes*, 303 N.C. 102, 106, 277 S.E.2d 403, 407 (1981)." *Cape Hatteras Electric Membership Corp. v. Lay*, __ N.C. App. __, 708 S.E.2d 399, 403-04 (2011).

5. “Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnancy between them, the *special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, . . .* unless it appears that the legislature intended to make the general act controlling; and this is true *a fortiori* when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage.” *National Food Stores v. Board of Alcoholic Control*, 268 N.C. 624, 628-29, 151 S.E.2d 582, 586 (1966) (quoting 82 C.J.S. *Statutes* § 369 (1953)).
6. Supplies purchased and utilized by Petitioners with durable medical equipment in performing diagnostic studies, pursuant to physicians’ Certificates of Medical Necessity, and paid for by Medicare and Medicaid, as well as other payors, with an inclusive payment determined by the single CPT code applicable to the procedure, are exempted from use taxes by the terms of N.C. Gen. Stat. Ann. § 105-164.13(12)d.

FINAL DECISION

NOW THEREFORE, based on the foregoing, it is hereby **ORDERED** that Petitioners’ claim for exemption pursuant to N.C. Gen. Stat. Ann. § 105-164.13(12)d should be, and hereby is, **ALLOWED**.

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. **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.

IT IS SO ORDERED.

This the 23rd day of July, 2014.

A handwritten signature in black ink, appearing to read 'J. Randolph Ward', is written above a horizontal line.

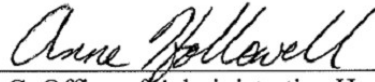
J. Randolph Ward
Administrative Law Judge

On this date mailed to:

David C Franklin
Attorney At Law
3400 Croasdaile Dr, Ste 205
DURHAM, NC 27705
Attorney For Petitioner

Perry J Pelaez
Assistant Attorney General, NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
Attorney For Respondent

This the 23rd day of July, 2014.



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