

NORTH CAROLINA REGISTER

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December 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
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28:19	04/01/14	03/11/14	04/16/14	06/02/14	06/20/14	08/01/14	01/2015	12/27/14
28:20	04/15/14	03/25/14	04/30/14	06/16/14	06/20/14	08/01/14	01/2015	01/10/15
28:21	05/01/14	04/09/14	05/16/14	06/30/14	07/21/14	09/01/14	01/2015	01/26/15
28:22	05/15/14	04/24/14	05/30/14	07/14/14	07/21/14	09/01/14	01/2015	02/09/15
28:23	06/02/14	05/09/14	06/17/14	08/01/14	08/20/14	10/01/14	01/2015	02/27/15
28:24	06/16/14	05/23/14	07/01/14	08/15/14	08/20/14	10/01/14	01/2015	03/13/15
29:01	07/01/14	06/10/14	07/16/14	09/02/14	09/22/14	11/01/14	01/2015	03/28/15
29:02	07/15/14	06/23/14	07/30/14	09/15/14	09/22/14	11/01/14	01/2015	04/11/15
29:03	08/01/14	07/11/14	08/16/14	09/30/14	10/20/14	12/01/14	01/2015	04/28/15
29:04	08/15/14	07/25/14	08/30/14	10/14/14	10/20/14	12/01/14	01/2015	05/12/15
29:05	09/02/14	08/11/14	09/17/14	11/03/14	11/20/14	01/01/15	01/2015	05/30/15
29:06	09/15/14	08/22/14	09/30/14	11/14/14	11/20/14	01/01/15	01/2015	06/12/15
29:07	10/01/14	09/10/14	10/16/14	12/01/14	12/22/14	02/01/15	05/2016	06/28/15
29:08	10/15/14	09/24/14	10/30/14	12/15/14	12/22/14	02/01/15	05/2016	07/12/15
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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.

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

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

Application by: Tom Konsler
Off-Site System Consortium
3623 Hawk Ridge Rd
Chapel Hill, NC 27516

For: Innovative Approval of Off-Site Systems

DHHS Contact: Nancy Deal
1-919-707-5875
Fax: 919-845-3973
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/approvedproducts.htm>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services Director, DHSR intends to adopt the rule cited as 10A NCAC 14E .0308 and amend the rule cited as 10A NCAC 14E .0101, .0104, .0109, .0111, .0201, .0202, .0206, .0207, .0302-.0307, .0309-.0311, .0313, and .0315.

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

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: December 19, 2014

Time: 9:00 a.m.

Location: Dorothea Dix Campus, Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC

Reason for Proposed Action: The proposed amendments and adoptions of rules in Chapter 10A NCAC 14E Certifications of Clinics for Abortion are in response to enactment of Session Law 2013-366 s.4(c), Part IV. Amend Women's Right to Know Act, which became effective on July 29, 2013. This act requires the Department of Health and Human Services to amend rules pertaining to clinics certified by the Department to be suitable facilities for the performance of abortions under G.S. 14-45.1. The Department was authorized to apply any requirement for the licensure of ambulatory surgical centers to the standards applicable to clinics certified by the Department to be suitable facilities for the performance of abortions.

These rules were drafted upon the recommendation of a stakeholder committee consisting of certified abortion clinic representatives, physicians, professional licensing agencies, the public, and DHHS staff. The rule language sets standards by which clinics shall address the on-site recovery phase of patient care, protect patient privacy, provide quality assurance, and ensure that patients with complications receive the necessary medical attention, while not unduly restricting access. In addition, the rules have been revised to be consistent with current medical terminology and standard best practices for the annual inspection process for certified clinics, building code and sanitation requirements, the governing authority responsibilities, the policies and procedures the clinic shall have on site, requirements to be included in the medical record, requirements to be included in personnel records and of clinic personnel, requirements of nursing staff and supervisor, and with procedure room procedures.

These rules seek to provide improvements in the care and safety of women who undergo abortion procedures.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2701, email DHSR.RulesCoordinator@dhhs.nc.gov.

Comment period ends: January 30, 2015

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)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14E – CERTIFICATIONS OF CLINICS FOR ABORTION

SECTION .0100 – CERTIFICATION PROCEDURE

10A NCAC 14E .0101 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Abortion" means the termination of a pregnancy as defined in G.S. 90-21.6.
- (4)(2) "Clinic" means a freestanding facility (a facility neither physically attached nor operated by a licensed hospital) for the

- performance of abortions completed during the first 20 weeks of pregnancy.
- (2)(3) "Complication" includes but is not limited to hemorrhage, infection, uterine perforation, cervical ~~laceration~~ laceration, or retained products of conception.
- (3)(4) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (4)(5) "~~Fetal age~~" "Gestational age" means the length of pregnancy as indicated by the date of ~~conception~~, the first day of the last normal monthly menstrual period, if known, or as determined by ultrasound.
- (5)(6) "Governing authority" means the individual, ~~agency or group~~ agency, group, or corporation appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the abortion clinic is ~~vested~~ vested pursuant to Rule .0302 of this Subchapter.
- (7) "Health Screening" means an evaluation of an employee or contractual employee, including tuberculosis testing, to identify any underlying conditions that may affect the person's ability to work in the clinic.
- (6)(8) "New ~~facility~~ clinic" means one that is not certified as an abortion clinic by the Division as of July 1, ~~1994~~, 2014, and has not been certified within the previous six months of the application for certification.
- (9) "Registered Nurse" means a person who holds a valid license issued by the North Carolina Board of Nursing to practice professional nursing in accordance with the Nursing Practice Act, Article 9A, Chapter 90 of the North Carolina General Statutes.

Authority G.S. 14-45.1(a); 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0104 PLANS

~~Three~~ Prior to issuance of a certificate pursuant to Rule .0107 of this Subchapter, a clinic shall submit two copies of the plans ~~will be required to the division~~ for certification ~~purposes~~ purposes when the clinic requires a review by the Division and the Department of Insurance, according to the North Carolina Administration and Enforcement Requirements Code, 2012 edition, including subsequent amendments and editions. Copies of the North Carolina Administration Code is available from the International Code Council at http://www.ecodes.biz/ecodes_support/Free_Resources/2012NorthCarolina/12NorthCarolina_main.html at no cost. When the local jurisdiction has authority from the North Carolina Building Code Council to review the plans, the clinic shall submit only one copy of the plans to the Division. In that case, the clinic shall submit an additional set of plans directly to the local jurisdiction.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0109 RENEWAL

Each certificate, unless previously suspended or revoked, shall be renewable annually ~~without charge~~ upon the filing of an ~~application~~ application, payment of the non-refundable renewal fee as defined in G.S. 131E-269, and ~~its~~ approval by the Division.

Authority G.S. 14-45.1(a); 131E-269; 143B-10.

10A NCAC 14E .0111 INSPECTIONS

- (a) ~~The Division shall make such inspections as it may deem necessary.~~ Any clinic certified by the Division to perform abortions shall be subject to inspections by authorized representatives of the Division annually and as it may deem necessary as a condition of holding such license.
- (b) The Division shall have authority to investigate any complaint relative to the care, ~~treatment~~ treatment, or ~~complications~~ complication of any patient.
- (c) Authorized representatives of the Division shall make their identities known to the person in charge prior to inspection of the clinic.
- (~~e~~)(d) Representatives of the Division may review any records in any medium necessary to determine compliance with the ~~rules~~ rules of this Subchapter, while maintaining the confidentiality of the complainant and the patient, unless otherwise required by law.
- (e) An inspection shall be considered whenever the purpose of the inspection is to determine whether the clinic complies with the rules of this Subchapter or whenever there is reason to believe that some condition exists which is not in compliance with the rules of this Subchapter.
- (f) The clinic shall allow the Division to have immediate access to its premises and the records necessary to conduct an inspection and determine compliance with the rules of this Subchapter.
- (g) A clinic shall file a plan of correction for cited deficiencies within 10 business days of receipt. The Division shall review and respond to a written plan of correction within 10 business days of receipt.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

SECTION .0200 – MINIMUM STANDARDS FOR CONSTRUCTION AND EQUIPMENT

10A NCAC 14E .0201 BUILDING CODE REQUIREMENTS

- (a) The physical plant for a ~~facility~~ clinic must meet or exceed minimum requirements of the North Carolina State Building Code for Group B occupancy (business office facilities) which is incorporated herein by reference including subsequent ~~amendments~~ amendments and editions. Copies of ~~The North Carolina Building Code, Volume One, General Construction,~~ may be obtained for thirty dollars (\$30.00) from the N.C. Department of Insurance, P.O. 26387, Raleigh, NC 27611. the Code can be obtained from the International Code Council

online at <http://www.iccsafe.org>, or accessed electronically free of charge at <http://www.ecodes.biz>.

(b) The requirements contained in this Section shall apply to new ~~facilities—clinics~~ and to any alterations, repairs, rehabilitation work, or additions which are made to a previously certified facility.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0202 SANITATION

~~Abortion clinics—Clinics~~ that are certified by the Division to perform abortions must comply with the ~~rules—Rules~~ governing the sanitation of hospitals, nursing and rest homes, sanitariums, sanatoriums and educational and other institutions, contained in

15A NCAC 18A .1300 which is hereby incorporated by reference including subsequent amendments and editions. Copies of 15A NCAC 18A .1300 may be obtained at no charge from the Division of Public Health, Environmental Health Section, Environmental Health Services, Division of Environmental Health, N.C. Department of Environment and Natural Resources, 1630-1632 Mail Service Center, Raleigh, NC ~~27699-1630; 27699-1632~~, or accessed electronically free of charge from the Office of Administrative Hearings at <http://www.ncoah.com>.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0206 ELEMENTS AND EQUIPMENT

The physical plant shall provide ~~appropriate elements and~~ equipment to carry out the functions of the ~~facility—clinic~~ with the following minimum requirements:

(1) Mechanical requirements

(a) Temperatures and humidities:

(i) The mechanical systems shall be designed to provide the temperature and humidities shown in this Paragraph:

Area	Temperature	Relative Humidity
Procedure	70-76 degrees F.	50-60 %
Recovery	75-80 degrees F.	30-60 %

(b) All air supply and exhaust systems for the procedure suite and recovery area shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown herein shall be considered as minimum acceptable rates.

(i) The ventilation system shall be designed and balanced to provide the pressure relationships ~~shown herein—detailed in Sub-item (b)(vii) of this Rule.~~

(ii) All air supplied to procedure rooms shall be delivered at or near the ceiling of the room and all exhaust or return from the area shall be removed near the floor level at not less than three inches above the floor.

(iii) Corridors shall not be used to supply air to or exhaust air from any procedure or recovery room except to maintain required pressure relationships.

(iv) All ventilation or air conditioning systems serving procedure rooms shall have a minimum of one filter bed with a minimum filter efficiency of 80 percent.

(v) Ventilation systems serving the procedure or recovery rooms shall not be tied in with the soiled holding or work rooms, janitors' closets or locker rooms if the air is to be recirculated in any manner.

(vi) Air handling duct systems shall not have duct ~~linings in ducts serving procedure or recovery rooms—linings.~~

(vii) The following general air pressure relationships to adjacent areas and ventilation rates shall apply:

Area	Pressure Relationship	Minimum Air Changes/Hour
Procedure	P	6
Recovery	P	6
Soiled work, janitor's—Janitor's closet, toilets—Toilets,		
Soiled holding	N	10
Clean work or Clean holding	P	4

(P = positive pressure N = negative pressure)

(2) Plumbing And Other Piping ~~Systems—Systems.~~

(a) Medical Gas and Vacuum Systems

(i) Piped-in medical gas and vacuum systems, if installed, shall meet the requirements

- of ~~NFPA 99-1990, NFPA-99-2012~~, type one system, which is hereby incorporated by reference including subsequent amendments and editions. Copies of ~~NFPA-99-1990~~ NFPA-99-2012 may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, ~~for twenty eight dollars and fifty cents (\$28.50).~~ or accessed electronically free of charge at <http://www.nfpa.org>.
- (ii) If inhalation anesthesia is used in any concentration, the facility must meet the requirements of ~~NFPA 70-1993 NFPA 70-2011~~ and ~~NFPA 99-1990, NFPA 99-2012~~, current editions relating to inhalation anesthesia, which are hereby incorporated by reference including subsequent amendments and editions. Copies of ~~NFPA 70-1993 NFPA 70-2011~~ and ~~NFPA 99-1990 NFPA 99-2012~~ may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, ~~for thirty two dollars and fifty cents (\$32.50) and twenty eight dollars and fifty cents (\$28.50) respectively.~~ or accessed electronically free of charge at <http://www.nfpa.org>.
- (b) Lavatories and sinks for use by medical personnel shall have the water supply spout mounted so that its discharge point is a minimum distance of five inches above the rim of the fixture with mixing type fixture valves ~~which that~~ can be operated without the use of the hands.
- (c) Hot water distribution systems shall provide hot water at hand washing and bathing facilities at a minimum temperature of 100 degrees F. and a maximum temperature of 116 degrees F.
- (d) Floor drains shall not be installed in procedure rooms.
- (e) Building drainage and waste systems shall be designed to avoid installations in the ceiling directly above procedure rooms.
- (3) ~~Electrical Requirements~~ Requirements.
- (a) Procedure and recovery rooms, and paths of egress from these rooms to the outside shall have at a minimum, listed battery backup lighting units of one and one-half hour capability that will automatically provide at least five foot candles of illumination at the floor in the event ~~of needed for~~ a utility or local lighting circuit failure.
- (b) Essential electrically operated medical equipment necessary for the safety of the patient shall have, at a minimum, battery backup.
- (c) Receptacles located within six feet of sinks or lavatories shall be ground-fault protected.
- (d) ~~Provide at~~ At least one wired-in, ionization-type smoke detector ~~shall be~~ within 15 feet of each procedure or recovery room entrance.
- (4) ~~Each facility and its grounds shall be maintained to minimize hazards and enhance safety for staff and patients.~~ Buildings systems and medical equipment must have preventative maintenance conducted as recommended by the equipment manufacturers' or installers' literature to assure ~~satisfactory operation.~~ operation in compliance with manufacturer's instructions.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0207 AREA REQUIREMENTS

The following areas shall comply with Rule .0206 of this Section, and are considered minimum requirements for clinics that are certified by the Division to perform abortions; ~~abortion clinics;~~

- (1) ~~Receiving-receiving~~ area;
- (2) ~~Examining-examining~~ room;
- (3) ~~Preoperative-preoperative~~ preparation and holding room;
- (4) ~~Individual-individual~~ patient locker facilities or equivalent;
- (5) ~~Operating-procedure~~ room;
- (6) ~~Recovery-recovery~~ room;
- (7) ~~Clean-clean~~ workroom;
- (8) ~~Soiled-soiled~~ workroom;
- (9) ~~Medicine-medicine~~ room ~~(may may be defined as area in the clean workroom if a self-contained secure cabinet complying with security requirements of state and federal laws is provided);~~ provided;

- (10) ~~Linen Storage. Separate~~ separate and distinct areas for storage and handling clean and soiled ~~linen shall be provided; linen;~~
- (11) ~~Patient~~ patient toilet;
- (12) ~~Personnel~~ personnel lockers and toilet facilities;
- (13) ~~Laboratory; laboratory;~~
- (14) ~~Nourishment~~ nourishment station with storage and preparation area for serving meals or in-between meal snacks;
- (15) ~~Janitor's~~ janitor's closets appropriately located;
- (16) ~~Adequate~~ adequate space and equipment for assembling, sterilizing and storing medical and surgical supplies;
- (17) ~~Storage~~ storage space for medical records; and
- (18) ~~Office~~ office space for nurses' charting, doctors' charting, communications, counseling, and business functions.

Authority G.S. 14-45.1(a); 143B-10.

SECTION .0300 –GOVERNING AUTHORITY

10A NCAC 14E .0302 GOVERNING AUTHORITY

~~The governing authority shall designate a person to have authority and responsibility for the administrative and professional functions of the clinic.~~

(a) The governing authority, as defined in Rule .0101(6) of this Subchapter, shall appoint a chief executive officer or a designee of the clinic to represent the governing authority and shall define his or her authority and duties in writing. This person shall be responsible for the management of the clinic, implementation of the policies of the governing authority and authorized and empowered to carry out the provisions of these Rules.

(b) The chief executive officer or designee shall designate, in writing, a qualified person to act in his or her behalf during his absence. In the absence of the chief executive officer or designee, the person on the grounds of the clinic who is designated by the chief executive officer or designee to be in charge of the clinic shall have reasonable access to all areas in the clinic related to patient care and to the operation of the physical plant.

(c) When there is a planned change in ownership or in the chief executive officer, the governing authority of the clinic shall notify the Division.

(d) The clinic's governing authority shall adopt operating policies and procedures that shall:

- (1) specify the individual to whom responsibility for operation and maintenance of the clinic is delegated and methods established by the governing authority for holding such individuals responsible;
- (2) provide for at least annual meetings of the governing authority, for which minutes shall be maintained; and
- (3) maintain a policies and procedures manual designed to ensure professional and safe care for the patients which shall be reviewed, and revised when necessary, at least annually, and

shall include provisions for administration and use of the clinic, compliance, personnel quality assurance, procurement of outside services and consultations, patient care policies and services offered.

(e) When the clinic contracts with outside vendors to provide services such as laundry, or therapy services, the governing authority shall be responsible to assure the supplier meets the same local and state standards the clinic would have to meet if it were providing those services itself using its own staff.

(f) The governing authority shall provide for the selection and appointment of the professional staff and the granting of clinical privileges and shall be responsible for the professional conduct of these persons.

(g) The governing authority shall be responsible for ensuring the availability of supporting personnel to meet patient needs and to provide safe patient care.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0303 POLICIES AND PROCEDURES AND ADMINISTRATIVE RECORDS

(a) The following essential documents and references shall be on file in the administrative office of the clinic:

- (1) documents evidencing control and ownerships, such as deeds, leases, or incorporation or partnership papers;
- (2) policies and procedures of the governing authority, as required by Rule .0302 of this Section;
- (3) minutes of the governing authority meetings, if applicable;
- (4) minutes of the clinic's professional and administrative staff meetings;
- (5) a current copy of the rules of this Subchapter;
- (6) reports of inspections, reviews, and corrective actions taken related to licensure; and
- (7) contracts and agreements related to licensure to which the clinic is a party.

(b) All operating licenses, permits, and certificates shall be displayed on the licensed premises.

(c) The governing authority shall prepare a manual of clinic policies and procedures for use by employees, medical staff, and contractual physicians to assist them in understanding their responsibilities within the organizational framework of the clinic. These shall include:

- (1) ~~Patient~~ patient selection and exclusion criteria, criteria; and clinical discharge criteria, criteria;
- (2) policy and procedure for validating the full and true name of the patient;
- (2)(3) ~~Policy~~ policy and procedure for each type of abortion procedure performed at the clinic, clinic;
- (4) policy and procedure for the provision of patient privacy in the recovery area of the clinic;

- ~~(3)(5) Protocol~~ protocol for determining gestational age as defined in Rule .0101(5) of this Subchapter; ~~fetal age.~~
- ~~(4)(6) Protocol~~ protocol for referral of patients for whom services have been ~~declined, declined;~~ and
- ~~(5)(7) Protocol~~ protocol for discharge instructions that informs patients who to contact for post-procedural ~~emergencies. —problems and questions.~~

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0304 ADMISSION AND DISCHARGE

- (a) There shall be on the premises throughout all hours of operation an employee authorized to receive patients and to make administrative decisions on their disposition.
- (b) All patients shall be admitted only under the care of a physician who is currently licensed to practice medicine in North Carolina.
- (c) Any patient not discharged within 12 hours following the abortion procedure shall be transferred to a general hospital.
- (d) Following admission and prior to obtaining the consent for ~~surgery required by Rule .0305(a) of this Section, the procedure,~~ representatives of the clinic's management shall provide to each patient the following information:
 - (1) ~~Aa~~ A fee schedule and any extra charges routinely applied;
 - (2) ~~The the~~ name of the attending physician(s) and hospital admitting privileges, if any. In the absence of admitting privileges a statement to that effect shall be included;
 - (3) ~~Instructions—instructions~~ instructions for post-procedure ~~emergencies—problems and questions~~ as outlined in Rule .0313(d) of this Section;
 - (4) ~~Grievance~~ grievance procedures a patient may follow if dissatisfied with the care and services rendered; and
 - (5) ~~The the~~ telephone number of the Complaints Investigation Branch of the Division.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0305 MEDICAL RECORDS

- (a) A complete and permanent record shall be maintained for all patients ~~including; including the date and time of admission and discharge; the full and true name; address; date of birth; nearest of kin; diagnoses; duration of pregnancy; condition on admission and discharge; referring and attending physician; a witnessed, voluntarily signed consent for each surgery or procedure and signature of the physician performing the procedure; and the physician's authenticated history and physical examination including identification of pre-existing or current illnesses, drug sensitivities or other idiosyncrasies having a bearing on the operative procedure or anesthetic to be administered.~~
 - (1) the date and time of admission and discharge;
 - (2) the patient's full and true name;
 - (3) the patient's address;

- (4) the patient's date of birth;
- (5) the patient's emergency contact information;
- (6) the patient's diagnoses;
- (7) the patient's duration of pregnancy;
- (8) the patient's condition on admission and discharge;
- (9) a witnessed, voluntarily-signed consent for each surgery or procedure and signature of the physician performing the procedure;
- (10) the patient's history and physical examination including identification of pre-existing or current illnesses, drug sensitivities or other idiosyncrasies having a bearing on the procedure or anesthetic to be administered; and
- (11) documentation that indicates all items listed in Rule .0304(d) of this Section were provided to the patient.

- (b) All other pertinent information such as pre- and ~~post-operative~~ post-procedure instructions, laboratory report, drugs administered, report of ~~operation—abortion procedure,~~ and follow-up ~~instruction—instruction,~~ including family planning ~~advice—advice,~~ shall be recorded and authenticated.
- (c) If Rh is negative, the significance shall be explained to the patient and so recorded. The patient in writing may reject Rh immunoglobulin or ~~accept the appropriate desensitization material.~~ A written record of the patient's decision shall be a permanent part of her medical record.
- (d) An ultrasound examination shall be performed and the ~~results posted—results,~~ including gestational age, placed in the patient's medical record for any patient who is scheduled for an abortion procedure.
- (e) The ~~facility—clinic~~ shall maintain a daily procedure log of all patients receiving abortion services. This log shall contain at least ~~the following: patient name, estimated length of gestation, type of procedure, name of physician, name of RN on duty, and date and time of procedure.~~
 - (1) patient name;
 - (2) estimated length of gestation;
 - (3) type of procedure;
 - (4) name of physician;
 - (5) name of Registered Nurse on duty; and
 - (6) date and time of procedure.

- (f) Medical records shall be the property of the clinic and shall be preserved or retained in the State of North Carolina for a ~~period of not less than at least 20 10 years from the date of the most recent discharge, unless the client is a minor, in which case the record must be retained until three years after the client's 18th birthday,~~ regardless of change of clinic ownership or administration. Such medical records shall be made available to the Division upon request and shall not be removed from the premises where they are retained except by subpoena or court order.
- (g) The ~~facility—clinic~~ shall have a written plan for destruction of medical records to identify information to be retained and the manner of destruction to ensure confidentiality of all material.
- (h) Should a ~~facility—clinic~~ cease operation, arrangements shall be made for preservation of records for at least ~~20 10~~ years. The clinic shall ~~notify the Division, in writing, concerning the~~

~~arrangements.~~ send written notification to the Division of these ~~arrangements.~~

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0306 PERSONNEL RECORDS

(a) Application. Each prospective employee or contractual employee must submit an application for employment which includes education, training, experience, and references.

(b) Personnel Records:

- (1) A record of each employee shall be maintained which includes the following:
 - (A) employee's identification;
 - (B) resume of education and work experience;
 - (C) verification of valid license (if required), education, training, and prior employment experience; and
 - (D) verification of references.
- (2) Personnel records shall be confidential.
- (3) Notwithstanding the requirement found in Subparagraph (b)(2) of this Rule, representatives of the Division conducting an inspection of the clinic shall have the right to inspect personnel records.

~~(b)(c)~~ Job Descriptions:

- (1) The ~~facility—clinic~~ shall have a written description which describes the duties of every position.
- (2) Each job description shall include position title, authority, specific ~~responsibilities~~ responsibilities, and minimum qualifications. Qualifications shall include education, training, experience, special ~~abilities—abilities~~ abilities, and valid license or certification required.
- (3) The ~~facility—clinic~~ shall review annually ~~and~~ and, if needed, update all job descriptions, ~~and~~ descriptions. The clinic shall provide a ~~current copy—the updated job description~~ current copy of the updated job description to each employee or contractual employee assigned to the position.

(d) All persons having direct responsibility for patient care shall be at least 18 years of age. All other personnel, paid or unpaid, working in the clinic shall be at least 16 years of age.

~~(e)(e)~~ The ~~facility—clinic~~ shall provide an orientation program to familiarize each new employee or contractual employee with the ~~facility, —clinic,~~ its policies and the employee's job responsibilities.

~~(f)(f)~~ The governing authority shall be responsible for implementing health standards for employees, as well as contractual employees, which are consistent with recognized professional practices for the prevention and transmission of communicable diseases.

~~(g)(g)~~ Employee and contractual employee records for health ~~screening, —screening~~ screening as defined in Rule .0101(7) of this Subchapter, education, training and verification of professional certification shall be available for review by the Division.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0307 NURSING SERVICE

(a) The clinic shall have an organized nursing staff under the supervision of a nursing supervisor who is currently licensed as a Registered Nurse and who has responsibility and accountability for all nursing services.

(b) The nursing supervisor shall be responsible and accountable to the chief executive officer or designee for:

- (1) provision of nursing services to patients; and
- (2) developing a nursing policy and procedure manual and written job descriptions for nursing personnel.

(c) The clinic shall have an adequate number of licensed and ancillary nursing personnel on duty to assure that staffing levels meet the total nursing needs of patients based on the number of patients in the clinic and their individual nursing care needs.

~~(a)(d)~~ There shall be a minimum of at least one registered nurse Registered Nurse with experience in post-operative or post-partum care who is currently licensed to practice professional nursing in North Carolina on duty in the clinic at all times ~~when patients are in the facility—clinic.~~

~~(b)~~ There shall be supporting personnel sufficient to meet patient needs and to provide safe patient care.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0308 QUALITY ASSURANCE

(a) The governing authority shall establish a quality assurance program for the purpose of providing standards of care for the clinic. The program shall include the establishment of a committee that shall evaluate compliance with clinic procedures and policies.

(b) The committee shall determine corrective action, if necessary.

(c) The committee shall consist of at least one physician who is not an owner, the chief executive officer or designee, and other health professionals as indicated. The committee shall meet at least once per quarter.

(d) The functions of the committee shall include development of policies for selection of patients, approval for adoption of policies, review of credentials for staff privileges, peer review, tissue inspection, establishment of infection control procedures, and approval of additional procedures to be performed in the clinic.

(e) Records shall be kept of the activities of the committee for a period not less than 10 years. These records shall include:

- (1) reports made to the governing authority;
- (2) minutes of committee meetings including date, time, persons attending, description and results of cases reviewed, and recommendations made by the committee; and
- (3) information on any corrective action taken.

(f) Orientation, training or education programs shall be conducted to correct deficiencies that are uncovered as a result of the quality assurance program.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0309 LABORATORY SERVICES

(a) Each clinic shall have the capability to provide or obtain laboratory tests required in connection with the procedure to be performed.

(b) The governing authority shall establish written policies requiring examination by a pathologist of all surgical specimens except for those types of specimens which the governing authority has determined do not require examination.

~~(a)(c)~~ Pre-operative Tests. As a minimum, there shall be performed for each patient the following laboratory tests which must be recorded—Each patient shall have the following performed and a record of the results placed in the patient's medical record prior to the abortion:

- (1) Pregnancy—pregnancy testing, except when a positive diagnosis of pregnancy has been established by ultrasound;
- (2) Anemia—anemia testing (hemoglobin or hematocrit); and
- (3) Rh factor testing.

~~(b)(d)~~ Blood and Blood Products. Those patients—Patients requiring the administration of blood shall be transferred immediately to a local hospital having blood bank facilities.

~~(e)(e)~~ The facility—clinic shall have instructions—maintain a manual in a location accessible by employees, that includes the procedures, instructions, and manufacturer's instructions for each test procedure performed, including:

- (1) Sources—sources of reagents, standard and calibration procedures, and quality control procedures; and
- (2) Information—information concerning the basis for the listed "normal" ranges.

~~(d)(f)~~ The facility—clinic shall perform and document, at least quarterly, calibration of equipment and validation of test results.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0310 EMERGENCY BACK-UP SERVICES

(a) Each clinic shall have a written plan for the transfer of emergency cases from the clinic to a nearby hospital when hospitalization becomes necessary.

(b) The clinic shall have procedures, personnel, and suitable equipment to handle medical emergencies which may arise in connection with services provided by the clinic.

(c) The clinic shall have a written agreement between the clinic and a nearby hospital to facilitate the transfer of patients who are in need of emergency care. A clinic that has documentation of its efforts to establish such a transfer agreement with a hospital that provides emergency services and has been unable to secure such an agreement shall be considered to be in compliance with this Rule.

(d) The facility—clinic shall provide intervention for emergency situations. These provisions shall include:include but are not limited to:

- (1) Basic—basic cardio-pulmonary life support;

(2) Emergency—emergency protocols for:

~~(a)(A)~~ Venous—access—supplies, administration of intravenous fluids;

~~(b)(B)~~ Air way—support—and—oxygen, establishing and maintaining airway support;

~~(C)~~ oxygen administration;

~~(e)(D)~~ utilizing a bag-valve-mask resuscitator—Bag valve mask unit with oxygen reservoir, reservoir;and

~~(d)(E)~~ utilizing aSuction suction machine; and

~~(F)~~ utilizing an automated external defibrillator;

(3) Emergency—emergency lighting available in the operating room;—procedure room as set forth in Rule .0206 of this Subchapter; and

(4) Ultrasound—ultrasound equipment.

Authority G.S. 14-45.1(a); 90-21.83; 143B-10; S.L. 2013-366, s. 4(c).

10A NCAC 14E .0311 SURGICAL SERVICES

(a) ~~Facilities.~~ Clinics. The operating—procedure room shall be maintained exclusively for surgical—abortion procedures and shall be so designed and maintained to provide an atmosphere free of contamination by pathogenic organisms. The facility—clinic shall establish procedures for infection control and universal precautions.

(b) Tissue Examination:

(1) The physician performing the abortion is responsible for examination of all products of conception (P.O.C.) prior to patient discharge. Such examination shall note specifically the presence or absence of chorionic villi—and villi,fetal parts—parts, or the amniotic sac. The results of the examination shall be recorded in the patient's medical record.

~~(2)~~ The facility shall have written procedures, supplies and equipment available for gross and microscopic evaluation of abortion specimens. If placental or fetal tissue is not identified by gross examination, a microscopic examination must be done on the P.O.C. In cases where the microscopic evaluation is negative for chorionic villi and fetal parts, or the weight of the P.O.C. falls substantially below the appropriate weight range for the fetal age, a microscopic examination by a board certified or board eligible pathologist shall be done on the P.O.C.

~~(3)~~ The results of this examination, the findings of further patient evaluation and any subsequent treatment must be recorded in the patient's medical record.

~~(2)~~ Based on gestational age, if adequate tissue is not obtained, ectopic pregnancy or an incomplete procedure shall be considered and

evaluated by the physician performing the procedure.

- (4)(3) ~~The facility clinic~~ shall establish procedures for obtaining, identifying, storing and transporting specimens.
- (5) ~~The facility shall establish a method for follow up of patients on whom no villi are seen.~~

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0313 POST-OPERATIVE CARE

(a) ~~Patients~~ A patient whose pregnancy is terminated on an ambulatory basis ~~should~~ shall be observed in the ~~abortion clinic~~ for a reasonable number of hours, not less than one, to insure to ensure that no immediate post-operative complications are present. Thereafter, patients may be discharged according to a physician's order and the clinic's protocols, such patients may be discharged if their course has been uneventful.

(b) Any patient having an adverse condition or complication known or suspected to have occurred during or after the performance of the abortion shall be transferred to ~~the back up~~ a hospital for evaluation or admission.

(c) The following criteria must be documented prior to discharge:

- (1) the patient must be ambulatory with a stable blood pressure and pulse; and
- (2) bleeding and pain must be controlled.

~~(e) Any non-ambulatory patient shall be accompanied by an attending medical or nursing staff member during any transfer within or outside the facility.~~

(d) Written instructions shall be issued to all patients in accordance with the rules/orders of the physician in charge of the abortion service and shall include the following:

- (1) symptoms and complications to be looked ~~for~~ for; and
- (2) ~~activities to be avoided,~~
- (3)(2) ~~specific~~ a dedicated telephone number to be used by the patients should any complication occur or question arise. This number must be answered by a person 24 hours a day, seven days a week. A recorded phone message only is unacceptable.

(e) The clinic shall have a defined protocol for triaging post-operative calls and complications. This protocol shall establish a pathway for physician contact to ensure ongoing care of complications which the operating physician is incapable of managing.

Authority G.S. 14-45.1(a); 143B-10.

10A NCAC 14E .0315 HOUSEKEEPING

~~Abortion clinics~~ Clinics that are certified by the Division to perform abortions shall meet the standards for sanitation as required by the Division of ~~Environmental Health~~ Public Health, Environmental Health Section, in the rules and regulations governing the sanitation of private hospitals, nursing and rest homes, sanitariums, sanatoriums, and educational and other institutions, ~~10 NCAC 10A,~~ set forth in 15A NCAC 18A .1300,

including subsequent amendments and editions, with special emphasis on the following:

- (1) ~~There must be cleaning of such a frequency as to maintain the floors, walls, woodwork and windows in a manner to minimize the spread of dust particles in the atmosphere. Accumulated~~ must be cleaned, and accumulated waste material must be removed at least ~~daily~~ daily;
- (2) ~~The~~ the premises must be kept free from rodents and insect ~~infestation~~ infestation;
- (3) ~~Bath~~ bath and toilet facilities must be maintained in a clean and sanitary condition at all ~~times~~ times; and
- (4) ~~Linen~~ which linen that comes directly in contact with the patient shall be provided as needed for each individual patient. No such linen shall be interchangeable from one patient to another before being properly cleaned, sterilized, or laundered.

Copies of 15A NCAC 18A .1300 may be obtained at no charge from the Division of Public Health, Environmental Health Section, 1632 Mail Service Center, Raleigh, NC, 27699-1632, or accessed electronically free of charge from the Office of Administrative Hearings at <http://www.ncogh.com>.

Authority G.S. 14-45.1(a); 143B-10.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rules cited as 10A NCAC 43K .0101, .0102 and .0103.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://cph.publichealth.nc.gov/>

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: January 5, 2015

Time: 10:00 a.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: *SL 2013-45 required that Public Health adopt temporary and permanent rules to include pulse oximetry screening for critical congenital heart defects (CCHD) in the Newborn Screening Program so that newborns in North Carolina are screened at 24 to 48 hours of age for this defect. CCHD potentially affects up to 200 newborns each year in North Carolina. Timely diagnosis can prevent major disease complications and death which are possible outcomes if critical congenital heart defects are not detected. The proposed permanent rules replace the temporary rules, which expire April 21, 2015. The permanent rules assure that all medical facilities and attending providers of neonates and infants in NC (as defined in the rules) are using a consistent screening protocol based on national standards. The rules also assure that all medical facilities and attending providers of neonates and*

infants have a consistent and standardized written plan for evaluation and follow up of positive critical congenital heart defect screenings. Further, the rules provide for data collection, reporting and monitoring of screening for critical congenital heart defects.

Comments may be submitted to: Chris Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919) 707-5006, email chris.hoke@dhhs.nc.gov

Comment period ends: January 30, 2015

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)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 43 – PERSONAL HEALTH

SUBCHAPTER 43K – NEWBORN SCREENING FOR CRITICAL CONGENITAL HEART DEFECTS

10A NCAC 43K .0101 DEFINITIONS

As used in this Section:

- (1) "Neonate" means any term infant less than 28 days of age or any preterm infant less than 28 days corrected age.
- (2) "Infant" means a person who is less than 365 days of age.
- (3) "Critical congenital heart defects" (CCHD) means heart conditions present at birth that are dependent on therapy to maintain patency of the ductus arteriosus for either adequate pulmonary or systemic blood flow and that require catheter or surgical intervention in the first year of life. Critical congenital heart defects are associated with significant morbidity and mortality and may include

hypoplastic left heart syndrome, pulmonary atresia, tetralogy of Fallot, total anomalous pulmonary venous return, transposition of the great arteries, tricuspid atresia, and truncus arteriosus.

- (4) "Medical facility" means a birthing center, licensed hospital, or licensed ambulatory surgery center where scheduled or emergency births occur or where inpatient neonatal services are provided.
- (5) "Pulse oximetry" means a non-invasive transcutaneous assessment of arterial oxygen saturation using near infrared spectroscopy. This screening test measures with high reliability and validity the percentage of hemoglobin that is oxygenated, also known as the blood oxygen saturation.
- (6) "Positive screening" means the final result is a failed or abnormal pulse oximetry screening for critical congenital heart defects for a neonate or infant using a screening protocol based on the most current American Academy of Pediatrics and American Heart Association (AAP/AHA) recommendations. This includes neonates or infants who have not yet been confirmed to have critical congenital heart defects or have other conditions to explain abnormal pulse oximetry results. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.
- (7) "Negative screening" means the final result is a passed or normal pulse oximetry screening for critical congenital heart defects for a neonate or infant using a screening protocol based on the most current AAP/AHA recommendations.
- (8) "Attending providers of the neonate or infant" means the health care providers, such as pediatricians, family physicians, physician assistants, midwives, nurse practitioners, neonatologists, and other specialty physicians, who perform neonatal and infant assessments and review positive and negative pulse oximetry screening results to perform an evaluation and to create a plan of care for the neonate or infant prior to discharge from the care of the health care provider. This includes health care providers who attend to neonates or infants in hospitals, birthing centers, homes, or other locations.

Authority G.S. 130A-125.

10A NCAC 43K .0102 SCREENING REQUIREMENTS

(a) All medical facilities and attending providers of a neonate or infant shall assure the following:

- (1) Screening of every neonate for critical congenital heart defects (CCHD) using pulse oximetry shall be performed at 24 to 48 hours of age using a protocol based upon and in accordance with the most current recommendations from the American Academy of Pediatrics and American Heart Association (AAP/AHA) which are incorporated by reference including subsequent amendments and editions, unless a diagnostic neonatal echocardiogram has been performed. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.
- (2) Screening of neonates and infants in neonatal intensive care units for critical congenital heart defects using pulse oximetry screening shall be performed using a written protocol based on the AAP/AHA recommendations as soon as the neonate or infant is stable and off oxygen and before discharge unless a diagnostic echocardiogram is performed on the neonate or infant after birth and prior to discharge from the medical facility.
- (3) Only U.S. Food and Drug Administration approved pulse oximetry equipment is used and maintained to screen the neonate or infant for the presence of critical congenital heart defects.

(b) Parents or guardians may object to the critical congenital heart defects screening at any time before the screening is performed in accordance with G.S. 130A-125.

(c) All medical facilities and attending providers of the neonate or infant shall have and implement a written plan for evaluation and follow up of positive critical congenital heart defect screenings.

- (1) Evaluation and follow up of a positive screening for all neonates shall be in accordance with the most current published recommendations from the American Academy of Pediatrics and American Heart Association (AAP/AHA) which is incorporated by reference including subsequent amendments and editions. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health

Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.

- (2) For neonates with positive screenings who are born in a birthing facility, a home, or other location, the AAP/AHA recommended evaluation and follow up shall occur as soon as possible but no later than 24 hours after obtaining the positive screening result.
- (3) Attending providers of neonates and infants in neonatal intensive care units must have a written process for evaluation and follow up of positive screenings in place at their medical facility.
- (4) Options for neonatal or infant echocardiograms may include on-site, telemedicine, or by transfer or referral to an appropriate medical facility with the capacity to perform and interpret a neonatal or infant echocardiogram. Echocardiograms must be interpreted as recommended by the most current recommendations from the AAP/AHA, which are incorporated by reference including subsequent amendments and editions. A copy of the recommendations is available for inspection at the NC Division of Public Health, Women's and Children's Health Section, Children and Youth Branch, 5601 Six Forks Road, Raleigh, NC 27609. In addition, the recommendations can be accessed at the American Academy of Pediatrics website at: <http://pediatrics.aappublications.org/content/128/5/e1259.full.pdf+html?sid=85e81711-f9b8-43d1-a352-479168895a72>.

Authority G.S. 130A-125.

10A NCAC 43K .0103 REPORTING REQUIREMENTS

(a) All medical facilities and attending providers of neonates or infants performing critical congenital heart defect (CCHD) screening shall report the information described below about positive screenings to a statewide CCHD database maintained by the Perinatal Quality Collaborative of North Carolina (PQCNC). The following information must be reported by medical facilities and attending providers within seven days of all positive screenings:

- (1) date and time of birth of the neonate or infant, gestational age, and the medical facility or birth location, and
- (2) age in hours at time of screening; all pulse oximetry saturation values, including initial, subsequent, and final screening results; final diagnosis if known; any known interventions and treatment, and any need for transport or

transfer; and the location of the transfer or transport if known.

(b) Within two weeks of receiving a positive screening, PQCNC shall report the above information from the CCHD database to the NC Birth Defects Monitoring Program using a process that provides a unique identifier for the neonate or infant. The unique identifier shall be retained by the source medical facility or attending provider for help with identification of the neonate or infant.

(c) All medical facilities and attending providers of neonates or infants performing critical congenital heart defect screening shall report aggregate information described below quarterly and no later than 15 days after the end of each quarter of the state fiscal year to a statewide CCHD database maintained by the Perinatal Quality Collaborative of North Carolina (PQCNC).

(d) PQCNC shall report the aggregate information described below to the NC Birth Defects Monitoring Program within 30 days after the end of each quarter of the state fiscal year.

(e) The required quarterly aggregate information from medical facilities and attending providers of neonates or infants reported to the statewide CCHD database and that PQCNC reports to the NC Birth Defects Monitoring Program shall include the total unduplicated counts of:

- (1) live births;
- (2) neonates and infants who were screened;
- (3) negative screenings;
- (4) positive screenings;
- (5) neonates or infants whose parents or guardians objected to the critical congenital heart defect screenings;
- (6) transfers into the medical facility, not previously screened; and
- (7) neonates and infants not screened and the reasons if known which include a diagnostic echocardiogram being performed after birth and prior to discharge, transfer out of the medical facility before screening, or death.

Authority G.S. 130A-125.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 10A NCAC 48B .0103, .1301 and .1304-.1308.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://cph.publichealth.nc.gov/>

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: January 16, 2015

Time: 10:00 a.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: *The General Assembly recently enacted and the Governor signed SL 2012-126, which is "an act to promote efficiency and effectiveness in the administration of*

human services..." This law provides all North Carolina counties the option to consolidate their human services agencies, including public health, into a single agency under the direct control of a human services director appointed and supervised by the county manager. When a county consolidates human services under this law, the local health director no longer reports to the local board of health – the local health director reports to the Human Services Director appointed by the County Manager. The proposed amendments are technical in nature and are required to align the local health department accreditation governance standards to this legislation. The amendment to .1304 simply conforms the rule to the current law that in some counties the local health director will report to the board of health and in others will report to the Human Services Director. The other amendments recognize that some counties will appoint advisory committees and may want to delegate certain non-regulatory functions to this advisory committee. This change has been requested by several county commissioners. The proposed amendments do not add to the burden of counties who have chosen to form a consolidated human services agency, nor do they affect those counties who have chosen to retain a separate local health department overseen by a local board of health.

Comments may be submitted to: Chris Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919) 707-5006, email chris.hoke@dhhs.nc.gov

Comment period ends: January 30, 2015

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)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 48 – LOCAL HEALTH DEPARTMENT ACCREDITATION

**SUBCHAPTER 48B – LOCAL HEALTH DEPARTMENT
ACCREDITATION STANDARDS**

SECTION .0100 – GENERAL PROVISIONS

**10A NCAC 48B .0103 ACCREDITATION
REQUIREMENTS**

(a) To receive an accreditation status of "accredited," a local health department must satisfy all of the accreditation standards contained in this Subchapter. In order to satisfy the accreditation standards, the local health department shall satisfy activities under the standards according to the following proportions:

- (1) Standard 1. Agency core functions and essential services:
 - (A) The local health department must satisfy at least 26 of the 29 activities listed in the benchmarks contained in Sections .0200 and .0300 of this Subchapter;
 - (B) The local health department must satisfy at least 23 of the 26 activities listed in benchmarks contained in Sections .0400 through .0600 of this Subchapter;
 - (C) The local health department must satisfy at least 34 of 38 activities listed in the benchmarks contained in Sections .0700 through .1100 of this Subchapter;
- (2) Standard 2. Facilities and administrative services: The local health department must satisfy at least 24 of the 27 activities listed in the benchmarks contained in Section .1200 of this Subchapter; and
- (3) Standard 3. Board of health: The local health department must satisfy at least ~~25 of the 28~~ 24 of the 27 activities listed in the benchmarks contained in Section .1300 of this Subchapter.

(b) In order to satisfy an activity, the local health department must satisfy all of the requirements prescribed for that activity. Failure to complete any activity requirement associated with an activity means that the activity is not satisfied.

Authority G.S. 130A-34.1.

SECTION .1300 - GOVERNANCE

10A NCAC 48B .1301 BENCHMARK 34

(a) Benchmark: The local board of health shall exercise its authority to adopt and enforce rules necessary to protect and promote the public's health.

(b) Activities:

- (1) The local board of health shall have operating procedures which shall comply with state law.
- ~~(2) The local board of health shall review its operating procedures annually.~~
- ~~(2)(3)~~ (3) The local board of health shall have access to legal counsel.

- ~~(3)(4)~~ (4) The local board of health shall follow the procedures for adopting rules in G.S. 130A-39.
- ~~(4)(5)~~ (5) The local board of health shall evaluate the need for the adoption or amendment of local rules or ordinances.

10A NCAC 48B .1304 BENCHMARK 37

(a) Benchmark: The local board of health shall assure the development, implementation and evaluation of local health services and programs to protect and promote the public's health.

(b) Activities:

- (1) The local board of health or the consolidated human services director shall assure that a qualified local health ~~director, director has been appointed~~ in accordance with G.S. 130A-40 or ~~40.1, is in place to lead the agency.~~ 40.1
- (2) The local board of health shall approve policies for the administration of local public health programs.
- (3) The local board of health or the consolidated human services director shall describe and define the knowledge, skills, and abilities that must be met by the local health director, consistent with the requirements in G.S. 130A-40.
- (4) The local board of health or the consolidated human services director shall review and approve the job description of the local health director.
- (5) The local board of health or the consolidated human services director shall conduct an annual performance review of the health director.
- (6) The local board of health or the consolidated human services director shall approve policies for the recruitment, retention and workforce development for agency staff.

Authority G.S. 130A-34.1.

10A NCAC 48B .1305 BENCHMARK 38

(a) Benchmark: The local board of health shall participate in the establishment of public health goals and objectives.

(b) Activities:

- (1) The local board of health shall annually review reports provided by the local health department on the community's health.
- (2) The local board of health or the advisory committee on health shall review community health assessment data and citizen input used to plan and monitor progress toward health-related goals.
- (3) The local board of health or the advisory committee on health shall assure that individuals, agencies, and organizations have the opportunity to participate in the development of goals, objectives and strategies for community health improvement.

Authority G.S. 130A-34.1.

10A NCAC 48B .1306 BENCHMARK 39

(a) Benchmark: The local board of health shall assure the availability of resources to implement the essential services described in G.S. 130A-34.1(e)(2).

(b) Activities:

- (1) The local board of health or the advisory committee on health shall communicate with the board of county commissioners, units of government and private foundations in support of local health department efforts to secure national, state and local financial resources.
- (2) The local board of health shall review fiscal reports to assure essential services of public health are being provided in accordance with local, state and federal requirements.
- (3) The local board of health shall annually review and approve the local health department budget and approve fees in accordance with G.S. 130A-39(g).
- (4) The local board of health or the advisory committee on health shall communicate with the board of county commissioners, units of government and private foundations in support of the development, implementation and evaluation of public health programs and a community health improvement process.
- (5) The local board of health shall assure that the proposed budget for the local health department meets maintenance of effort requirement in the consolidated agreement between the Division of Public Health and local health department.

Authority G.S. 130A-34.1.

10A NCAC 48B .1307 BENCHMARK 40

(a) Benchmark: The local board of health or the advisory committee on health shall advocate in the community on behalf of public health.

(b) Activities:

- (1) The local board of health or the advisory committee on health shall inform elected officials and community boards about community health issues.
- (2) The local board of health or the advisory committee on health shall communicate support for the enactment and retention of laws and rules and the development of public health interventions that protect health and ensure safety.

Authority G.S. 130A-34.1.

10A NCAC 48B .1308 BENCHMARK 41

(a) Benchmark: The local board of health or the advisory committee on health shall promote the development of public health partnerships.

(b) Activities:

- (1) The local board of health or the advisory committee on health shall take actions to foster community input regarding public health issues.
- (2) The local board of health or the advisory committee on health shall take actions to foster local health department partnership-building efforts and staff interactions with the community.
- (3) The local board of health or the advisory committee on health shall take actions to foster the coordination of resources to enhance partnerships and collaboration to achieve public health objectives.

Authority G.S. 130A-34.1.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0401; 09C .0303; and repeal the rule cited as 12 NCAC 09B .0228.

Link to agency website pursuant to G.S. 150B-19.1(c):

<http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

Proposed Effective Date: April 1, 2015

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Anyone desiring a public hearing has until 5:00 p.m. on December 16th, 2014 to make the request. That allows the required 15 days from the publishing date of December 1, 2014. Demands may be emailed or mailed to: Trevor Allen, Criminal Justice Standards Division, P.O. Drawer 149, Raleigh, NC 27602; email address tjallen@ncdoj.gov.*

Reason for Proposed Action: *The Wildlife Resources Commission has decided to amend the training requirements for Wildlife Enforcement Officers. Currently these officers must complete the Wildlife Basic Law Enforcement Training program. These revisions will now require these officers to complete the Basic Law Enforcement Training Program (required for all other law enforcement officers). The revisions to these three rules are needed to effect this change.*

Comments may be submitted to: *Trevor J. Allen, Criminal Justice Standards Division, P.O. Drawer 149, Raleigh, NC 27602; phone (919) 779-8205; fax (919) 779-8210; email tjallen@ncdoj.gov*

Comment period ends: January 30, 2015

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)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B – STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT; EDUCATION; AND TRAINING

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0228 BASIC TRAINING - WILDLIFE ENFORCEMENT OFFICERS

~~(a) The basic training course for wildlife enforcement officers appointed by the Wildlife Resources Commission as authorized under G.S. 113-136 shall consist of at least 652 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a wildlife enforcement officer.~~

~~(b) Each basic training course for wildlife enforcement officers shall include the following identified topical areas and minimum instructional hours for each area:~~

- ~~(1) Course Orientation 2 Hours~~
- ~~(2) Arrest Search & Seizure/Constitutional Law 28 Hours~~
- ~~(3) Law Enforcement Communications and Information System 8 Hours~~
- ~~(4) Elements of Criminal Law 24 Hours~~
- ~~(5) Subject Control/Arrest Techniques 48 Hours~~
- ~~(6) Juvenile Law and Procedures 8 Hours~~
- ~~(7) First Responder 40 Hours~~
- ~~(8) Firearms 48 Hours~~

- ~~(9) Hunter Safety 12 Hours~~
- ~~(10) Patrol Techniques 16 Hours~~
- ~~(11) Field Notetaking and Report Writing 12 Hours~~
- ~~(12) Domestic Violence Response 12 Hours~~
- ~~(13) Criminal Investigation 12 Hours~~
- ~~(14) Field & Custodial Interviews 16 Hours~~
- ~~(15) Controlled Substances 10 Hours~~
- ~~(16) ABC Laws and Procedures 4 Hours~~
- ~~(17) Explosives & Hazardous Materials 12 Hours~~
- ~~(18) Law Enforcement Drivers Training 48 Hours~~
- ~~(19) Preparing for Court and Testifying in Court 12 Hours~~
- ~~(20) Game and Fish Laws 36 Hours~~
- ~~(21) Motorboat Laws 16 Hours~~
- ~~(22) Boating Procedures & Small Boat Handling 20 Hours~~
- ~~(23) Dealing with Problem Animal Situations 4 Hours~~
- ~~(24) Basic Field Identification of Fishes 6 Hours~~
- ~~(25) Basic Field Identification of Game Animals, Game Birds and Non-Game Animals 2 Hours~~
- ~~(26) Identification of Migratory Waterfowl 2 Hours~~
- ~~(27) Endangered Species 2 Hours~~
- ~~(28) Trapping 8 Hours~~
- ~~(29) Water Safety and Swimming 20 Hours~~
- ~~(30) Knotsmanship, A Practical Use of Rope 2 Hours~~
- ~~(31) Wildlife Law Enforcement and the Media 8 Hours~~
- ~~(32) Motorboat Accident Investigation 12 Hours~~
- ~~(33) Crowd Management 12 Hours~~
- ~~(34) Rapid Deployment 8 Hours~~
- ~~(35) Covert Activities 2 Hours~~
- ~~(36) Basic Photography 4 Hours~~
- ~~(37) Motor Vehicle Laws 20 Hours~~
- ~~(38) Physical Training 60 Hours~~
- ~~(39) Standardized Field Sobriety Training 32 Hours~~
- ~~(40) Ethics 4 Hours~~

~~(c) The "Wildlife Basic Training Manual" as published by the North Carolina Wildlife Resources Commission shall be used as the basic curriculum for delivery of wildlife enforcement officer basic training courses. Copies of this publication may be inspected at the office of the agency:~~

~~The Division of Enforcement Training Office
North Carolina Wildlife Resources Commission
1751 Varsity Drive
NCSU Centennial Campus
Raleigh, North Carolina 27606-2576~~

~~and may be obtained from the Wildlife Resources Commission for ninety five dollars (\$95.00) per copy.~~

~~(d) Commission accredited schools that are accredited to offer the "Basic Training: Wildlife Enforcement Officers" course are: The Division of Enforcement Training Office of the North Carolina Wildlife Resources Commission.~~

Authority G.S. 17C-6; 17C-10.

SECTION .0400 – MINIMUM STANDARDS FOR COMPLETION OF TRAINING

Note: The italicized text was approved by the Rules Review Commission on October 16, 2014 and will be effective January 1, 2015.

12 NCAC 09B .0401 TIME REQUIREMENT FOR COMPLETION OF TRAINING

(a) Each criminal justice officer, with the exception of law enforcement officers, holding probationary certification shall ~~satisfactorily complete~~ complete, with passing scores, a commission accredited ~~Commission-accredited~~ basic training course ~~which that~~ includes training in the skills and knowledge necessary to perform the duties of his ~~or her~~ office. The officer shall complete ~~such the~~ course within one year from the date of his original ~~appointment~~ appointment, as determined by the date of the probationary certification.

(b) Each law enforcement officer, ~~except wildlife enforcement officers, officer~~ shall have ~~satisfactorily completed~~ with passing scores in its entirety the accredited basic training course as prescribed in ~~12 NCAC 09B Rule .0205(b)~~ .0205 of this Subchapter prior to obtaining probationary certification.

~~(c) Each wildlife enforcement officer shall have satisfactorily completed in its entirety the Basic Training Wildlife Enforcement Officers' course stipulated in 12 NCAC 09B .0228(b) prior to obtaining probationary certification.~~

~~(d)(c)~~ If a trainee completes the basic training course prior to being employed as a law enforcement officer, the trainee shall be duly appointed and sworn as a law enforcement officer within one year of ~~the completion of training~~ successfully passing the comprehensive written exam as specified in Rule .0406 of this Subchapter for that basic training course to be recognized under these Rules. ~~This one year period shall begin with the successful completion of the State Comprehensive Examination.~~

~~(e)(d)~~ If local confinement supervisory and administrative personnel complete basic training prior to being employed by a facility in a supervisory and administrative position ~~which that~~ requires certification, ~~such the~~ personnel shall be duly appointed to a local confinement facility supervisory and administrative position within one year of the completion of training for ~~that the~~ basic training course specified in 12 NCAC 09B .0205. ~~to be recognized under these Rules.~~ This one year period shall begin with the ~~successful completion~~ date the applicant achieves a passing score on of the ~~State Comprehensive Examination~~ comprehensive written exam, as specified in Rule .0411 of this Subchapter.

Authority G.S. 17C-2; 17C-6; 17C-10.

SUBCHAPTER 09C – ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0300 – CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

12 NCAC 09C .0303 PROBATIONARY CERTIFICATION

(a) Before a prospective criminal justice officer may be administered the oath of office, exercise the power of arrest, or commence active service as an officer, the employing agency shall have in its possession the person's Probationary Certification.

(b) The Commission shall certify as a probationary officer a person meeting the minimum standards for criminal justice ~~employment~~ employment, as specified in Rule .0101 of this Subchapter when the person's employing agency submits a completed Report of Appointment to the Standards Division.

(1) The Standards Division shall issue the person's Probationary Certification to the employing agency.

(2) If an oath is required, the official administering an oath of office to the person shall be presented the person's Probationary Certification prior to the swearing. The administering official shall sign and date the oath on the Probationary Certification. The employing agency shall return a copy of the signed Probationary Certification to the Standards Division within 10 days of the administration of the officer's oath.

(3) If no oath is required, the officer's department head shall endorse the Probationary Certification and enter the date on which the officer's service commenced, returning a copy of the certification to the Standards Division within 10 days of the commencement of the officer's service.

(c) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner terminated for cause.

(d) Before a prospective law enforcement officer, ~~except wildlife enforcement officers, officer~~ can ~~may~~ be issued a Probationary Certification, the prospective officer ~~must~~ shall have successfully completed the required basic training course stipulated in 12 NCAC 09B .0205(b).

~~(e) Before a prospective wildlife enforcement officer can be issued a Probationary Certification, the prospective officer must have successfully completed the required basic training course stipulated in 12 NCAC 09B .0228(b).~~

~~(f)(e)~~ An applicant for certification who holds a valid Probationary Certification issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be certified as a probationary law enforcement officer as specified under Paragraphs (b), (c) and (d) of this Rule.

~~(g)(f)~~ Where the local governing authority lawfully declares the existence of a public emergency, the department head of the criminal justice agency of the jurisdiction may swear persons as law enforcement officers without first obtaining Probationary Certification for those officers. The employing agency shall obtain Probationary Certification for such emergency officers not more than 20 days after the administration of their oath of office.

Authority G.S. 17C-6; 17C-10.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rule cited as 15A NCAC 07K .0208.

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

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: December 17, 2014

Time: 11:30 a.m.

Location: NOAA/NCNERR Auditorium, 101 Pivers Island Road, Beaufort, NC 28516

Reason for Proposed Action: 15A NCAC 07K .0208 exempts single family residences from CAMA permit requirements that are 40 feet landward of normal high water or normal water level. The proposed rule change deletes the requirement of obtaining signed statement of no objection from adjacent property owners, extends the permit timeframe to three years and allows materials other than wood to be used for an accessway to the water.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808; fax (252) 247-3330

Comment period ends: January 30, 2015

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)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 07 – COASTAL MANAGEMENT

**SUBCHAPTER 07K – ACTIVITIES IN AREAS OF
ENVIRONMENTAL CONCERN WHICH DO NOT
REQUIRE A COASTAL AREA MANAGEMENT ACT
PERMIT**

**SECTION .0200 – CLASSES OF MINOR MAINTENANCE
AND IMPROVEMENTS WHICH SHALL BE EXEMPTED
FROM THE CAMA MAJOR DEVELOPMENT PERMIT
REQUIREMENT**

**15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES
EXEMPTED**

(a) All single family residences constructed within the ~~Estuarine Coastal~~ Shoreline Area of Environmental Concern which are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted. This exemption does allow for the construction of ~~an~~ a generally shore perpendicular access to the ~~water in accordance with Rule 07H .0209(d)(10) water~~, providing that the access shall be no wider than six feet and may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

(b) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence which has a built upon area of 25 percent or less and:

- (1) has no stormwater collection system; and
- (2) is at least 40 feet from waters classified as ORW.

(c) Before beginning any work under this exemption, the Department of Environment and Natural Resources representative must be notified of the proposed activity to allow on-site review. Notification may be by telephone, in person or in writing. Notification must include:

- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community and water body;
- (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level;
- (3) ~~confirmation that a written statement has been obtained, signed by the adjacent riparian property owners indicating that they have no objections to the proposed work.~~

(d) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been

located the maximum feasible distance back on the lot but not less than forty feet.

(e) Construction of the structure authorized by this exemption shall be completed ~~within one year~~ by December 31 of the third year of the issuance date of this ~~permit~~ exemption or the general authorization expires.

Authority G.S. 113A-103(5)c.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0105, .0202, .0203, .0223, .0404; 10C .0205, .0206, .0306, .0314, .0316, .0401, .0402, .0407; 10D .0102, .0103, and .0104.

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

Proposed Effective Date: August 1, 2015

Public Hearing:

Date: January 6, 2015

Time: 7:00 p.m.

Location: Auditorium, Bladen Community College, 7418 NC Hwy 41W, Dublin, NC 28332

Public Hearing:

Date: January 7, 2015

Time: 7:00 p.m.

Location: Courthouse, 212 W Elm St., Graham, NC 27253

Public Hearing:

Date: January 8, 2015

Time: 7:00 p.m.

Location: South Stanly High School, 40488 South Stanly School Road, Norwood, NC 28128

Public Hearing:

Date: January 13, 2015

Time: 7:00 p.m.

Location: Enloe Multi-purpose Room, Tri-County Community College, 21 Campus Circle, Murphy, NC 28906

Public Hearing:

Date: January 14, 2015

Time: 7:00 p.m.

Location: Morganton Municipal Auditorium, 401 S. College Street, Morganton, NC 28655

Public Hearing:

Date: January 15, 2015

Time: 7:00 p.m.

Location: Wilkes Community College, The Walker Center, 1328 S. Collegiate Drive, Wilkesboro, NC 28697

Public Hearing:

Date: January 20, 2015

Time: 7:00 p.m.

Location: Swain Auditorium, 200 E. Church St., Edenton, NC 27932

Public Hearing:

Date: January 21, 2015

Time: 7:00 p.m.

Location: Courthouse, 302 Broad St, New Bern, NC 28560

Public Hearing:

Date: January 22, 2015

Time: 7:00 p.m.

Location: Johnston Community College, 245 College Rd., Smithfield, NC 27577

Reason for Proposed Action: Every year the Wildlife Resources Commission adjusts the regulation of hunting, trapping, fishing, and land use through rule-making. The proposed amendments to these 16 rules will alter some creel limits, manners of take, game land use activities, trout stream access, seasons and equipment usage. Some of these proposed changes come from public requests while the rest are developed by the agency in order to effectively manage the wildlife resources and public game lands of the state. Each individual proposed change to each rule is explained and offered for public comment through the Commission's web site and at nine public hearings.

Comments may be submitted to: Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1701

Comment period ends: February 8, 2015

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 10B .0404; 10C .0206; 10D .0102, and .0103
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**

☒ **No fiscal note required by G.S. 150B-21.4 15A**
NCAC 10B .0105, .0202, .0203, .0223; 10C .0205, .0306, .0314, .0316, .0401, .0402, .0407; and 10D .0104

**CHAPTER 10 – WILDLIFE RESOURCES AND WATER
SAFETY**

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0100 – GENERAL REGULATIONS

15A NCAC 10B .0105 MIGRATORY GAME BIRDS

(a) Cooperative State Rules:

- (1) The taking of sea ducks (scoter, eider and old squaw) during any federally-announced season for only these species shall be limited to the waters of the Atlantic Ocean, and to those coastal waters south of US 64 which are separated by a distance of at least 800 yards of open water from any shore, island or marsh.
- (2) Tundra swans may be taken during the open season by permit only subject to annual limitations imposed by the U.S. Fish and Wildlife Service. Based upon the annual limitations imposed by the U.S. Fish and Wildlife Service, the Wildlife Resources Commission shall issue nontransferable swan permits to applicants who will be selected at random by computer, and only one swan may be taken under each permit which must be cancelled at the time of the kill by cutting out the month and day of the kill. Accompanying the permit is a tag which must be affixed to the swan at the time and place of the kill. The tag must be affixed in accordance with instructions provided with the permit. In addition, a preaddressed post-paid card is supplied to each permittee on which to report the number of days hunted and the details of the kill if made. It is unlawful to hunt swans without having the permit and the tag in possession or to possess a swan without the cancelled permit in possession and the tag properly affixed to the swan. It is unlawful to possess a swan permit or tag while hunting that was assigned to another person or to alter the permit or tag in any way other than cutting out the proper month and day of kill.

(b) Notwithstanding the provisions of G.S. 113-291.1(a) and (b), the following restrictions apply to the taking of migratory game birds:

- (1) No migratory game bird may be taken:
 - (A) With a rifle;
 - (B) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so as

to limit its total capacity to not more than three shells.

- (2) No migratory game bird may be taken:
 - (A) From or by the use of a sinkbox or any other type of low floating device affording the hunter a means of concealment beneath the surface of the water;
 - (B) With the aid of bait, or on, over or within 300 yards of any place where any grain, salt or other feed is exposed so as to constitute an attraction to migratory game birds or has been so exposed during any of the 10 consecutive days preceding the taking, except that this Part shall not apply to standing crops, flooded croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting;
 - (C) With the aid of live decoys, or on, over or within 300 yards of any place where tame or captive migratory game birds are present, unless such birds are and have been for a period of 10 consecutive days prior to such taking confined within an enclosure which eliminates the audibility of their calls and totally conceals them from the sight of wild migratory game birds.
- (3) Crippled waterfowl may be taken from a motorboat under power in those areas described, delineated, and designated as special sea duck hunting areas in Subparagraph (a)(1) of this Rule.
- ~~(3)~~(4) Waterfowl hunting and harassment and other unauthorized activities is prohibited on posted waterfowl management areas established by the Wildlife Resources Commission for Canada Geese and ducks restoration.
- ~~(4)~~(5) In that area of Roanoke Sound adjacent to and immediately Northeast of Roanoke Island as marked by buoys designating the waterfowl rest area, it is unlawful to harass or take any waterfowl.
- ~~(5)~~(6) The area east of US 17 is designated as an experimental September teal season zone as referenced by the Federal frameworks calling for state rules designating experimental areas.
- ~~(6)~~ It is unlawful to harass or take any geese during established goose hunting season that occurs after October 1 in each year in the Gaddy Goose Refuge, which is in that area of Anson County starting at the NC 109 bridge over the Pee Dee River and following NC 109 south to Dennis Road (SR1650); west on

~~Dennis Road to Pleasant Grove Church Road (SR 1649); continue west on Pleasant Grove Church Road to US 52; south on US 52 to Lockhart Road (SR 1652); west on Lockhart Road to Brown Creek Church Cox Road (SR 1641); west on Brown Creek Church Cox Road to NC 742; northwest on NC 742 to Lanes Creek; Lanes Creek north (downstream) to Rocky River; Rocky River downstream to the Pee Dee River; and from Pee Dee River downstream to the beginning of the NC 109 bridge.~~

(c) Reporting Requirements: For tundra swan and Canada goose seasons where a permit is required to hunt by Memorandum of Agreement with the U.S. Fish & Wildlife Service, hunter questionnaires supplied on preaddressed, postage-paid cards must be returned to the Commission and postmarked no later than April 1 following the end of the applicable season. Failure to return the questionnaire and animal parts, if required, by this date shall make the individual ineligible to receive a permit for the following applicable season. In lieu of returning a hard copy, individuals may fill out a questionnaire on-line through the Wildlife Commission web site when this option is available by April 1 following the end of the applicable season.

Authority G.S. 113-134; 113-274; 113-291.1; 113-291.2; 50 C.F.R. 20.21; 50 C.F.R. 20.105.

SECTION .0200 - HUNTING

15A NCAC 10B .0202 BEAR

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

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of Surry, Wilkes, Caldwell, Burke, and Cleveland counties.
- (2) Second Monday in November to January 1 in all of Bladen, Carteret, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender, and Sampson counties.
- (3) First Monday in December to the third Saturday thereafter in Brunswick Columbus and Robeson counties.
- (4) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Camden, Chowan, Craven, Dare, Edgecombe, Greene, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pasquotank, Pitt, Tyrrell, Washington, Wayne, and Wilson counties.
- (5) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Currituck, Gates, Hertford, and Perquimans counties.

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

(b) Restrictions

(1) For purposes of this Paragraph, "bait" means any natural, unprocessed food product that is a grain, fruit, nut, vegetable, or other material harvested from a plant crop that is not modified from its raw components. ~~not a processed food product as defined in G.S. 113-294(r) and is not a bear bait attractant, including scented sprays, aerosols, scent balls, and scent powders.~~

(2) Bears shall not be taken with the use or aid of:

- (A) any processed food product as defined in G.S. 113-294(r), any animal, animal part or product, salt, salt lick, honey, sugar, sugar-based material, syrups, candy, pastry, gum, candy block, oils, spices, peanut butter, or grease; or
- (B) any extracts of substances identified in Part (A) of this Subparagraph; or
- (C) any substances modified by substances identified in Part (A) of this Subparagraph, including any extracts of those substances; or
- (D) any bear bait attractant, including sprays, aerosols, scent balls and scent powders.

~~(2)(3)~~ Bears may be taken with the aid of bait from the first open Monday through the following Saturday only in the counties in Subparagraphs (a)(1) through (a)(5) of this Rule. In counties with a season split into two or more segments, this Subparagraph applies only to the first segment.

~~(3)(4)~~ Bears shall not be taken while in the act of consuming bait.

~~(4)(5)~~ Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraph (a)(6) of this Rule.

~~(5)(6)~~ Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Anson west of N.C. Hwy 742, Cabarrus, Chatham, Davie, Davidson, Franklin, Forsyth, Gaston, Guilford, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Union, and Wake south of N.C. Hwy 98. In all other counties and parts

of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.

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

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

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

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

Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.7; 113-305.

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

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

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

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow,

Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties.

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

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

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

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

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

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

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

(F) Monday of Thanksgiving week through ~~January 1 the fifth Saturday after Thanksgiving Day~~ in all of Cleveland, Polk, and Rutherford counties, except for South Mountain Game Land.

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

- (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
 - (C) Saturday on or nearest September 10 to the Sunday prior to the opening of the blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule to the Sunday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland, Polk, and Rutherford counties.
 - (D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (2) Restrictions
- (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
 - (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.
- (c) Open Seasons (Blackpowder Firearms and Bow and Arrow) for hunting deer:
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with blackpowder firearms and bow and arrow during the following seasons:
 - (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
 - (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.
*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
 - (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland, Polk, and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.
 - (D) The fourth Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (a)(1) of this Rule, and on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
 - (2) Restrictions
 - (A) Deer of either sex may be taken during blackpowder firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of this season only in all other counties.
 - (B) Dogs shall not be used for hunting deer during the blackpowder firearms and bow and arrow seasons, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
 - (3) As used in this Paragraph, blackpowder firearms means "Any firearm - including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system - manufactured in or before 1898; any replica of this type of firearm if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; and any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading handgun that is designed to use blackpowder, blackpowder substitute, or any other propellant loaded through the muzzle and that cannot use fixed ammunition."

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

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

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

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

Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.

15A NCAC 10B .0223 FERAL SWINE

(a) This Rule applies to hunting feral swine. There is no closed season for taking feral swine. Feral swine may be taken on private lands anytime during the day or night. Feral swine may be taken on public lands without a permit from the hours of one-half hour before sunrise until one-half hour after sunset, and from one-half hour after sunset to one-half hour before sunrise by permit only.

(b) There are no bag limit restrictions on feral swine.

(c) Manner of take. Hunters may use artificial ~~lights~~ lights, lights and electronic calls.

Authority G.S. 113-129; 113-134; 113-264; 113-291; 113-291.1; 113-291.2.

SECTION .0400 – TAGGING FURS

15A NCAC 10B .0404 TRAPPERS AND HUNTERS

(a) Every fox taken in an area of open season as provided by G.S. 113-291.4 shall be tagged at the scene of taking.

(b) Every person taking any bobcat or otter in this State, or any foxes under a depredation permit, general statute, rule, or local law that permits taking, shall obtain and affix the proper tag to each carcass or pelt before selling or transferring the same to any person or transporting the same for any purpose, except that:

- (1) A person may transport the same from the place of taking to his North Carolina residence and from his North Carolina residence to a fur tag agent or taxidermist's place of business.
- (2) A person may transport the same from the place of taking to the nearest place in this State where the appropriate tag may be obtained.
- (3) The carcass, pelt or mounted specimen is exempt from tagging requirements while in the taxidermist's place of business or after the mount is completed.
- (4) A licensed trapper may take live foxes during any legal trapping season, except foxes taken under G.S. 113-291.4, without tagging them and sell them to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).

No carcass or pelt of any bobcat, otter or fox taken within this State may be removed from the state without a proper fur tag having been affixed thereto, except a licensed taxidermist may ship the same to a tannery for processing. Any carcass or pelt

remaining in a person's possession after the end of the season, except those in a licensed taxidermist's place of business or his or her taxidermy preservation facility, shall be properly tagged by him or her within 30 40 days following the close of such ~~season-season~~, provided that no tags shall be shipped from the Commission to a person 23 consecutive days from the close of the season. When the U.S. Fish and Wildlife Service repeals its tagging requirements for otter and bobcat this Paragraph shall apply only to tagging foxes.

(c) In any case where the taking of foxes with weapons or traps and the sale thereof is authorized by local legislation, except live foxes taken by licensed trappers who live-trap foxes for sale during any open season the hunter or trapper taking any such fox shall, in the absence of a specific provision to the contrary, obtain and affix the carcass or pelt with a proper tag before selling or transferring the same to any other person, or transporting the same for any purpose than as authorized by Paragraph (a) of this Rule.

Authority G.S. 113-134; 113-276.1; 113-291.4; S.L. 1985, chs. 108, 179, 180, 664 and 722.

SUBCHAPTER 10C – INLAND FISHING REGULATIONS

SECTION .0200 – GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

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

~~(A) Alleghany County:~~

~~New River (not trout water)~~

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

~~Brush Creek (NC 21 bridge to confluence with Little River, except where posted against trespass)~~

~~Big Pine Creek~~

~~(Big) Glade Creek~~

~~Bledsoe Creek~~

~~Pine Swamp Creek~~

~~South Fork New River (not trout water)~~

~~Prather Creek~~

~~Cranberry Creek~~

~~Piney Fork~~

~~Meadow Fork~~

~~(B) Ashe County:~~

~~New River (not trout waters)~~

~~North Fork New River (Watauga County line to Sharp Dam)~~

~~Helton Creek (Virginia State line to New River)~~

~~[Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River)~~

~~[Delayed Harvest Regulations apply to portion between SR 1324 bridge and North Fork New River. See Subparagraph (a)(5) of this Rule.]~~

~~Buffalo Creek (SR 1133 bridge to NC 194 88 bridge)~~

~~Big Laurel Creek~~

~~Three Top Creek (portion not on game lands)~~

~~South Fork New River (Todd Island park) [Delayed Harvest Regulations apply.]~~

See Subparagraph (a)(5) of this Rule.]

~~Cranberry Creek
(Alleghany County line to South Fork New River)
Nathans Creek
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Roan Creek
Beaver Creek
Old Fields Creek~~

(C) — Avery County:

~~Nolichucky River (not trout waters)
North Toe River upper (Watauga Street to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespass)
North Toe River lower (SR 1164 to Mitchell County line, except where posted against trespass)
Squirrel Creek
Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line)
Wildcat Lake
Catawba River (not trout water)
Johns River (not trout water)
Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
Buck Timber Creek [Not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
Cary Flat Branch [Not Hatchery Supported trout~~

~~water. See Subparagraph (a)(2) of this Rule.]~~

~~Boyde Coffey Lake
Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
Milltimber Creek~~

(D) — Buncombe County:

~~French Broad River (not trout water)
Ivy Creek (Ivy River) (Dillingham Creek to US 19 23 bridge)
Dillingham Creek (Corner Rock Creek to Ivy Creek)
Stony Creek
Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
Reems Creek (Sugar Camp Fork to US 19 23 bridge, except where posted against trespass)
Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
Bent Creek (headwaters to N.C. Arboretum boundary line)
Lake Powhatan
Rich Branch (downstream from confluence with Rocky Branch)
Cane Creek (headwaters to SR 3138 bridge)~~

(E) — Burke County:

~~Catawba River (Muddy Creek to the City of Morganton water intake dam) [Special Regulations apply. See Subparagraph (a)(7) of this Rule.]
South Fork Catawba River (not trout water)
Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
Jacob Fork (Shinny Creek to lower South Mountain~~

- ~~State———Park
boundary) [Delayed
Harvest
Regulations apply.
See Subparagraph
(a)(5) of this Rule.]
Johns River (not trout water)
Parks———Creek
(portion not on game lands
not trout water)
Carroll———Creek
(game lands portion above
SR 1405)
Linville——River——(portion
within——Linville Gorge
Wilderness——Area,——and
portion below Lake James
powerhouse from upstream
bridge on SR 1223 to Muddy
Creek)~~
- (F)——Caldwell County:
- ~~Catawba River (not trout
water)
Johns River (not trout water)
Wilson Creek (game
lands———portion
downstream of Lost
Cove Creek to Brown
Mountain Beach dam,
except where posted
against——trespass)
[Delayed——Harvest
Regulations apply to
game lands portion
between Lost Cove
Creek and Phillips
Branch.———See
Subparagraph (a)(5) of
this Rule.)
Estes Mill Creek
(not trout water)
Mulberry Creek (portion not
on game lands not trout
water)
Boone Fork——[Not
Hatchery——Supported
trout water.———See
Subparagraph (a)(2) of
this Rule.]
Boone Fork Pond
——Yadkin River (Happy Valley
Ruritan Community Park to
SR 1515)
Buffalo Creek (mouth of
Joes Creek to McCloud
Branch)
Joes Creek (first falls
upstream of SR 1574 to~~
- ~~confluence with Buffalo
Creek)~~
- (G)——Cherokee County:
- ~~Hiwassee River (not trout water)
Shuler Creek (Joe Brown
Highway (SR 1325) bridge
to Tennessee line)
Davis Creek (confluence of
Bald and Dockery creeks to
Hanging Dog Creek)
Valley River (headwaters to
US 19 business bridge in
Murphy)
Hyatt Creek (Big
Dam Branch to Valley
River)
Junaluska——Creek
(Ashturn——Creek——to
Valley River)~~
- (H)——Clay County:
- ~~Hiwassee River (not trout water)
Fires Creek (USFS Road
340A to the foot bridge in
the US Forest Service Fires
Creek Picnic Area) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
Fires Creek (foot bridge in
the US Forest Service Fires
Creek Picnic Area to SR
1300)
Tusquitee Creek (headwaters
to lower SR 1300 bridge)
Nantahala River (not trout
water)
Buck Creek (game
land portion downstream of
US 64 bridge)~~
- (I)——Graham County:
- ~~Little Tennessee River (not trout
water)
Calderwood——Reservoir
(Cheoah Dam to Tennessee
State line)
Cheoah River (not trout
water)
Yellow——Creek
(Lake——Santeelah
hydropower
pipeline to Cheoah
River)
Santeelah——Reservoir
(not trout water)
West Buffalo Creek
Santeelah Creek (Johns
Branch to Lake
Santeelah)~~

~~Big — Snowbird
Creek (USFS foot
bridge at the old
railroad junction to
USFS Road 2579)
[Delayed Harvest
Regulations apply.
See Subparagraph
(a)(5) of this Rule.]
(Big) — Snowbird
Creek (USFS Road
2579 to SR 1127
bridge)~~

~~Tulula — Creek
(headwaters to lower bridge
on SR 1275)~~

~~Cheoah Reservoir~~

~~Fontana Reservoir (not
trout water)~~

~~Stecoah Creek~~

~~Panther — Creek
(confluence of
Stand Creek and
Rock Creek to Lake
Fontana)~~

(J) — Haywood County:

~~Pigeon River (Stamey Cove
Branch to upstream US 19-
23 bridge)~~

~~Cold Springs Creek (Fall
Branch to Pigeon River)~~

~~Jonathan Creek (upstream
SR 1302 bridge to Pigeon
River, except where posted
against trespass)~~

~~Richland Creek (Russ
Avenue (US 276) bridge to
US 19 bridge)~~

~~West Fork Pigeon River
(Tom Creek to the first game
land boundary upstream of
Lake Logan) [Delayed
Harvest Regulations apply to
the portion from Queen
Creek to the first game land
boundary upstream of Lake
Logan. See Subparagraph
(a)(5) of this Rule.]~~

(K) — Henderson County:

~~(Rocky) Broad River (Rocky
River Lane to Rutherford County
line)~~

~~Green River (Lake Summit
Powerhouse to game land
boundary)~~

~~(Big) Hungry River (SR
1885 to Green River)~~

~~French Broad River (not trout water)~~

~~Cane Creek (railroad bridge
upstream of SR 1551 to US 25
bridge)~~

~~Mud Creek (not trout water)~~

~~Clear Creek (Laurel Fork to
SR 1582)~~

~~Mills River (not trout water)~~

~~North Fork Mills River
(Hendersonville watershed
to the lower game land
boundary). [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]~~

(L) — Jackson County:

~~Tuckasegee River (confluence
with West Fork Tuckasegee
River to SR 1534 bridge at
Wilmot) [Delayed Harvest
Regulations apply to that portion
between the downstream NC 107
bridge and the falls located 275
yards upstream of US 23 441
bridge as marked by a sign on
each bank. See Subparagraph
(a)(5) of this Rule.]~~

~~Scott Creek (entire stream,
except where posted against
trespass)~~

~~Dark Ridge Creek (Jones
Creek to Scotts Creek)~~

~~Savannah Creek (Headwaters to
Bradley's Packing House on NC
116)~~

~~Greens Creek (Greens Creek
Baptist Church on SR 1730 to
Savannah Creek)~~

~~Cullowhee Creek (Tilley Creek
to Tuckasegee River)~~

~~Cedar Cliff Lake~~

~~Bear Creek Lake~~

~~Wolf Creek [Not Hatchery
Supported trout water. See
Subparagraph (a)(2) of this
Rule.]~~

~~Wolf Creek Lake~~

~~Balsam Lake~~

~~Tanasee Creek [Not Hatchery
Supported trout water. See
Subparagraph (a)(2) of this
Rule.]~~

~~Tanasee Creek Lake~~

(M) — Macon County:

~~Little Tennessee River (not
trout water)~~

~~Nantahala River (Nantahala
Dam to Swain County line)
[Delayed Harvest
Regulations apply to the~~

~~portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]~~

~~Queens Creek Lake
Burningtown Creek (Left Prong to Little Tennessee River)~~

~~Cullasaja River (Sequoyah Dam to US 64 bridge near junction of SR 1672)~~

~~Cliffside Lake~~

~~Cartoogechaye Creek (downstream US 64 bridge to Little Tennessee River)~~

(N) — Madison County:

~~French Broad River (not trout water)~~

~~Shut in Creek~~

~~West Fork Shut in Creek (lower game land boundary to confluence with East Fork Shut in Creek)~~

~~Spring Creek — upper (junction of NC 209 and NC 63 to US Forest Service road 223)~~

~~Spring Creek — lower (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~Meadow Fork Creek~~

~~Roaring Fork (Fall Branch to Meadow Fork)~~

~~Max Patch Pond~~

~~Big Laurel Creek (Mars Hill Watershed boundary to the SR 1318 bridge, also known as Big Laurel Road bridge, downstream of Bearpen Branch)~~

~~Big Laurel Creek (NC 208 bridge to US 25 70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~Spillecorn Creek~~

~~Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
Shelton Laurel Creek (NC 208 bridge at Belva)~~

~~to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~Puncheon Fork (Hampton Creek to Big Laurel Creek)~~

~~Big Pine Creek (SR 1151 bridge to French Broad River)~~

~~Ivy Creek (not trout waters)~~

~~Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)~~

(O) — McDowell County:

~~Catawba River — upper (Catawba Falls Campground to Old Fort Recreation Park)~~

~~Catawba River — lower (portion adjacent to Marion Greenway) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~Buck Creek (portion not on game lands, not trout water)~~

~~Little Buck Creek (game land portion)~~

~~Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch. [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~North Fork Catawba River (headwaters to SR 1569 bridge)~~

~~Armstrong Creek (Cato Holler line downstream to upper Greenlee line)~~

~~Mill Creek (upper railroad bridge to I 40 bridge, except where posted against trespass) [Delayed Harvest Regulations apply to that portion between US 70 bridge and I 40 bridge. See Subparagraph (a)(5) of this Rule.]~~

(P) — Mitchell County:

~~Nolichucky River (not trout water)~~

~~Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)~~

~~Little Rock Creek
(Green Creek Bridge to
Big Rock Creek, except
where posted against
trespass)~~

~~Cane Creek (SR 1219 to SR
1189 bridge) [Delayed
Harvest Regulations apply to
that portion from NC 226
bridge to SR 1189 bridge.
See Subparagraph (a)(5) of
this Rule.]~~

~~Grassy Creek (East Fork
Grassy Creek to mouth)~~

~~East Fork Grassy Creek
North Toe River (Avery
County line to SR 1121
bridge)~~

~~North Toe River (US 19E
bridge to NC 226 bridge)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]~~

~~(Q) Polk County:~~

~~Broad River (not trout water)
North Pacolet River (Joels
Creek to NC 108 bridge)
Green River (Fishtop Falls
Access Area to the natural
gas pipeline crossing)
[Delayed Harvest
Regulations apply to the
portion from Fishtop Falls
Access Area to Cove Creek.
See Subparagraph (a)(5) of
this Rule.]~~

~~(R) Rutherford County:~~

~~(Rocky) Broad River (Henderson
County line to US 64/74 bridge,
except where posted against
trespass)~~

~~(S) Stokes County:~~

~~Dan River (Virginia State line
downstream to a point 200 yards
below the end of SR 1421)~~

~~(T) Surry County:~~

~~Yadkin River (not trout water)
Big Elkin Creek (dam 440
yards upstream of NC 268
bridge to a point 265 yards
downstream of NC 268
bridge as marked by a sign
on each bank)
Ararat River (SR 1727
bridge downstream to the
NC 103 bridge)
Araat River (NC 103 bridge
to US 52 bridge) [Delayed~~

~~Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]~~

~~Stewarts Creek (not
trout water)~~

~~Pauls Creek
(Virginia State line
to 0.3 mile below
SR 1625 bridge—
lower Caudle
property line)~~

~~Fisher River
(Cooper Creek) (Virginia
State line to Interstate 77)~~

~~Little Fisher River
(Virginia State line to NC 89
bridge)~~

~~Mitchell River (0.6 mile
upstream of the end of SR
1333 to the SR 1330 bridge
below Kapps Mill Dam)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]~~

~~(U) Swain County:~~

~~Little Tennessee River (not trout
water)~~

~~Calderwood Reservoir
(Cheoah Dam to Tennessee
State line)~~

~~Cheoah Reservoir
Fontana Reservoir (not trout
water)~~

~~Alarka Creek (game
lands boundary to
Fontana Reservoir)
Nantahala River (Macon
County line to existing
Fontana Reservoir water
level)~~

~~Tuckasegee River (not trout
water)~~

~~Deep Creek (Great
Smoky Mountains
National Park boundary
line to Tuckasegee
River)
Connelly Creek (Camp
Branch to Tuckasegee
River)~~

~~(V) Transylvania County:~~

~~French Broad River (confluence
of North Fork French Broad
River and West Fork French
Broad River to the Island
Ford Road (SR 1110)
Access Area)~~

- Davidson River (Avery Creek to lower US Forest Service boundary line)
East Fork French Broad River (Glady Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Little River (confluence of Lake Dense outflow to 100 yards downstream of Hooker Falls) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Middle Fork French Broad River
West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
- (W) — Watauga County:
New River (not trout waters)
 South Fork New River (canoe launch 70 yards upstream of US 421 bridge to lower boundary of Brookshire Park)
 Meat Camp Creek
 Norris Fork Creek
 Middle Fork New River (Lake Chetola Dam to South Fork New River)
Yadkin River (not trout water)
 Stony Fork (headwaters to Wilkes County line)
 Elk Creek (SR 1510 bridge at Triplett to Wilkes County line, except where posted against trespass)
Watauga River upper (SR 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Watauga River lower (SR 1103 bridge to confluence with Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Beech Creek
 Buckeye Creek Reservoir
 Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
- Coffee Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
Laurel Creek
Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
Dutch Creek (second bridge on SR 1134 to mouth)
- (X) — Wilkes County:
Yadkin River (not trout water)
 Roaring River (not trout water)
 East Prong Roaring River (from Bullhead Creek downstream to Stone Mountain State Park lower boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 East Prong Roaring River (Stone Mountain State Park lower boundary to Brewer's Mill on SR 1943)
 Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Middle Prong Roaring River (headwaters to second bridge on SR 1736)
 Bell Branch Pond
 Boundary Line Pond
West Prong Roaring River (not trout waters)
 Pike Creek
 Pike Creek Pond
Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)
Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River) [Delayed Harvest Regulations apply.

~~See Subparagraph (a)(5) of this Rule.]~~

~~Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)~~

~~South Fork Reddies River (SR 1355 bridge to confluence with Middle Fork Reddies River)~~

~~North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)~~

~~Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)~~

~~Lewis Fork Creek (not trout water)~~

~~South Prong Lewis Fork (Fall Creek to SR 1155 bridge)~~

~~Fall Creek (SR 1300 bridge to confluence with South Prong Lewis Fork except portions posted against trespass)~~

~~Elk Creek upper (Watauga County line to lower boundary of Blue Ridge Mountain Club) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~Elk Creek lower (portion on Leatherwood Mountains development) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

~~(Y) Yancey County:~~

~~Nolichucky River (not trout water)~~

~~Cane River [Bee Branch (SR 1110) to Bowlens Creek]~~

~~Bald Mountain Creek (except portions posted against trespass)~~

~~Indian Creek (not trout water)~~

~~Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)~~

~~North Toe River (not trout water)~~

~~South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)~~

~~(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.~~

~~(A) Alleghany County:~~

~~Big Sandy Creek (portion on Stone Mountain State Park)~~

~~Stone Mountain Creek (that portion on Stone Mountain State Park)~~

~~(B) Ashe County:~~

~~Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]~~

~~Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]~~

~~(C) Avery County:~~

~~Birchfield Creek (entire stream)~~

~~Cow Camp Creek (entire stream)~~

~~Cranberry Creek (headwaters to US 19E/NC 194 bridge)~~

~~Elk River (portion on Lees McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]~~

~~Gragg Prong (entire stream)~~

~~Horse Creek (entire stream)~~

~~Jones Creek (entire stream)~~

~~Kentucky Creek (entire stream)~~

~~North Harper Creek (entire stream)~~

~~Plumtree Creek (entire stream)~~

~~Roaring Creek (entire stream)~~

~~Rockhouse Creek (entire stream)~~

~~Shawneehaw Creek (portion adjacent to Banner Elk Greenway)~~

- South Harper Creek (entire stream)
 Webb Prong (entire stream)
 Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (D) ~~Buncombe County:~~
 Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) ~~Burke County:~~
 All waters located on South Mountain State Park, except Clear Creek Reservoir, the main stream of Jacob Fork between the mouth of Shinnny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
 Nettle Branch (game land portion)
- (F) ~~Caldwell County:~~
 Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
 Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
 Rockhouse Creek (entire stream)
- (G) ~~Cherokee County:~~
 Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) ~~Graham County:~~
 Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Little Buffalo Creek (entire stream)
 South Fork Squally Creek (entire stream)
- (I) ~~Haywood County:~~
 Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]
 Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) ~~Jackson County:~~
 Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Gage Creek (entire stream)
 North Fork Scott Creek (entire stream)
 Tanasee Creek (entire stream)
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (K) ~~Madison County:~~
 Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (L) ~~Mitchell County:~~
 Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
 Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
 Wiles Creek (game land boundary to mouth)
- (M) ~~Transylvania County:~~
 All waters located on Gorges State Park
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (N) ~~Watauga County:~~
 Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Dutch Creek (headwaters to second bridge on SR 1134)
 Howard Creek (entire stream)
 Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn

- ~~Mountain developments, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]~~
~~Maine Branch (headwaters to North Fork New River)~~
~~North Fork New River (from confluence with Maine and Mine branches to Ashe County line)~~
~~Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations Apply. See Subparagraph (a)(3) of this Rule.]~~
~~Watauga River (Avery County line to SR 1580 bridge)~~
~~Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)~~
- (O) ~~Wilkes County:~~
~~Big Sandy Creek (portion on Stone Mountain State Park)~~
~~Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]~~
~~Garden Creek (portion on Stone Mountain State Park)~~
~~Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]~~
~~Widow Creek (portion on Stone Mountain State Park)~~
- (P) ~~Yancey County:~~
~~Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)~~
~~Lickskillet Creek (entire stream)~~
~~Middle Creek (game land boundary to mouth)~~
- (3) ~~Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:~~
~~(A) Ashe County:~~
- ~~Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)~~
~~Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)~~
- (B) ~~Avery County:~~
~~Wilson Creek (game land portion)~~
- (C) ~~Buncombe County:~~
~~Carter Creek (game land portion)~~
- (D) ~~Burke County:~~
~~Henry Fork (portion on South Mountains State Park)~~
- (E) ~~Jackson County:~~
~~Flat Creek~~
~~Tuckasegee River (upstream of Clarke property)~~
- (F) ~~McDowell County:~~
~~Newberry Creek (game land portion)~~
- (G) ~~Watauga County:~~
~~Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)~~
~~Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain developments, including tributaries)~~
~~Pond Creek (headwaters to Locust Ridge bridge, excluding the pond adjacent to Coffee Lake)~~
- (H) ~~Wilkes County:~~
~~Dugger Creek (portions on Blue Ridge Mountain Club, including tributaries)~~
- (4) ~~Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. Harvest or possession of trout while fishing these streams is prohibited:~~
~~(A) Avery County:~~
~~Elk River (portion on Lees McRae College property, excluding the millpond)~~
~~Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)~~
- (B) ~~Transylvania County:~~
~~Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)~~
- (C) ~~Yancey County:~~
~~South Toe River (headwaters to Upper Creek, including tributaries)~~

- ~~Upper Creek (entire stream)~~
- (5) ~~Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:~~
- (A) ~~Alleghany County:~~
~~Little River (Whitehead to a point 275 yards downstream of the intersection of SR 1128 and SR 1129 as marked by a sign on each bank)~~
- (B) ~~Ashe County:~~
~~Trout Lake~~
~~Helton Creek (Virginia state line to New River)~~
~~South Fork New River (Todd Island Park)~~
~~Big Horse Creek (SR 1324 bridge to North Fork New River)~~
- (C) ~~Burke County:~~
~~Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)~~
- (D) ~~Caldwell County:~~
~~Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)~~
- (E) ~~Clay County:~~
~~Fires Creek (USFS Road 340A to the foot bridge in the US Forest Service Fires Creek Picnic Area)~~
- (F) ~~Graham County:~~
~~(Big) Snowbird Creek (USFS foot bridge at the old railroad junction to USFS Road 2579)~~
- (G) ~~Haywood County:~~
~~West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)~~
- (H) ~~Henderson County:~~
- ~~North Fork Mills River~~
~~(Hendersonville watershed to the lower game land boundary)~~
- (I) ~~Jackson County:~~
~~Tuckasegee River (downstream NC 107 bridge falls located 275 yards upstream of the US 23 441 bridge as marked by a sign on each bank)~~
- (J) ~~Macon County:~~
~~Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)~~
- (K) ~~Madison County:~~
~~Big Laurel Creek (NC 208 bridge to the US 25 70 bridge)~~
~~Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)~~
~~Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)~~
- (L) ~~McDowell County:~~
~~Catawba River (portion adjacent to Marion Greenway)~~
~~Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)~~
~~Mill Creek (US 70 bridge to I 40 bridge)~~
- (M) ~~Mitchell County:~~
~~Cane Creek (NC 226 bridge to SR 1189 bridge)~~
~~North Toe River (US 19E bridge to NC 226 bridge)~~
- (N) ~~Polk County:~~
~~Green River (Fishtop Falls Access Area to confluence with Cove Creek)~~
- (O) ~~Surry County:~~
~~Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)~~
~~Ararat River (NC 103 bridge to US 52 bridge)~~
- (P) ~~Transylvania County:~~
~~East Fork French Broad River (Gladys Fork to French Broad River)~~
~~Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)~~
- (Q) ~~Watauga County:~~
~~Watauga River upper (SR 1114 bridge to NC 194 bridge at Valle Crucis)~~
~~Watauga River lower (SR 1103 bridge to confluence with Laurel Creek)~~
~~Coffee Lake~~
- (R) ~~Wilkes County:~~

- ~~East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)~~
~~Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)~~
~~Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)~~
~~Elk Creek upper (Watauga County line to lower boundary of Blue Ridge Mountain Club)~~
~~Elk Creek lower (portion on Leatherwood Mountains development)~~
- (6) ~~Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0316(b)]:~~
- (A) ~~Cherokee County:~~
~~Bald Creek (game land portions)~~
~~Dockery Creek (game land portions)~~
~~North Shoal Creek (game land portions)~~
- (B) ~~Graham County:~~
~~Deep Creek~~
~~Long Creek (game land portion)~~
~~Franks Creek~~
- (C) ~~Haywood County:~~
~~Hemphill Creek (including tributaries)~~
~~Hurricane Creek (including portions of tributaries on game lands)~~
- (D) ~~Jackson County:~~
~~Buff Creek~~
~~Chattooga River (SR 1100 bridge to South Carolina state line)~~
~~(lower) Fowler Creek (game land portion)~~
~~Scotsman Creek (game land portion)~~
- (E) ~~Macon County:~~
~~Chattooga River (SR 1100 bridge to South Carolina state line)~~
~~Jarrett Creek (game land portion)~~
~~Kimsey Creek~~
~~Overflow Creek (game land portion)~~
~~Park Creek~~
~~Tellico Creek (game land portion)~~
- ~~Turtle Pond Creek (game land portion)~~
- (F) ~~Madison County:~~
~~Big Creek (headwaters to the lower game land boundary, including tributaries)~~
- (G) ~~Transylvania County:~~
~~North Fork French Broad River (game land portions downstream of SR 1326)~~
~~Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)~~
- (7) ~~Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:~~
- ~~Burke County~~
~~Catawba River (Muddy Creek to City of Morganton water intake dam).~~
~~Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length. There are no bait restrictions and no closed season.~~
- (b) ~~Fishing in Trout Waters~~
- (1) ~~Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits, and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].~~
- (2) ~~Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.~~
- (A) ~~Open Season. There is a year round open season for the licensed taking of trout.~~
- (B) ~~Creel Limit. The daily creel limit is four trout.~~
- (C) ~~Size Limit. The minimum size limit is seven inches.~~
- (D) ~~Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess~~

~~natural bait while fishing wild trout waters except those waters listed in Subparagraph (a)(6) of this Rule.~~

~~(E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.~~

(a) For purposes of this Rule, the following definitions apply:

- (1) "Natural bait" means any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell.
- (2) "Artificial lure" means a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell.
- (3) "Youth anglers" are individuals under 16 years of age.

(b) For purposes of this Rule, 15A NCAC 10C .0316, and 15A NCAC 10D .0104, the following classifications apply:

- (1) "Public Mountain Trout Waters" are all waters included in this Rule and so designated in 15A NCAC 10D .0104.
- (2) "Catch and Release/Artificial Flies Only Trout Waters" are Public Mountain Trout Waters where only artificial flies having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
- (3) "Catch and Release/Artificial Lures Only Trout Waters" are Public Mountain Trout Waters where only artificial lures having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
- (4) "Delayed Harvest Trout Waters" are Public Mountain Trout Waters where between October 1 and one-half hour after sunset on the Friday before the first Saturday of the following June it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing. From 6 a.m. on the first Saturday in June until noon that same day only youth anglers may fish and these waters have no bait or lure restrictions. From noon on the first Saturday in June until October 1 anglers of all ages may fish and these waters have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
- (5) "Hatchery Supported Trout Waters" are Public Mountain Trout Waters which have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
- (6) "Special Regulation Trout Waters" are Public Mountain Trout Waters where watercourse-specific regulations apply. Waters designated

as such do not include tributaries unless otherwise noted.

(7) "Wild Trout Waters" are Public Mountain Trout Waters which are identified as such in this Rule or 15A NCAC 10D .0104. Only artificial lures having only single hook may be used. No person shall possess natural bait while fishing these waters. Waters designated as such do not include tributaries unless otherwise noted.

(8) "Wild Trout Waters/Natural Bait" are Public Mountain Trout Waters where all artificial lures and natural baits, except live fish, may be used provided they are fished using only one single hook. Waters designated as such include tributaries unless otherwise noted.

(9) "Undesignated Waters" are all other waters in the state. These waters have no bait or lure restrictions.

(c) Seasons, creel and size limits. Seasons, creel and size limits for trout in all waters are listed in 15A NCAC 10C .0316.

(d) Classifications. This paragraph designates waters in each county that have a specific classification. Waters on game lands are so designated in 15A NCAC 10D .0104, unless otherwise indicated in this Paragraph. All other waters are classified as Undesignated Waters.

(1) Alleghany

(A) Delayed Harvest Trout Waters are as follows:
Little River (S.R. 1133 bridge to 275 yards downstream of the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank])

(B) Hatchery Supported Trout Waters are as follows:
Big Pine Creek
Bledsoe Creek
Brush Creek (N.C. 21 bridge to confluence with Little River, except where posted against trespassing)
Cranberry Creek
(Big) Glade Creek
Little River (275 yards downstream from the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank] to McCann Dam)
Meadow Fork
Pine Swamp Creek
Piney Fork
Prathers Creek

(C) Wild Trout Waters are as follows:
Big Sandy Creek (portion on Stone Mountain State Park)
Stone Mountain Creek (portion on Stone Mountain State Park)

(2) Ashe County

(A) Catch and Release/Artificial Lures Only Trout Waters are as follows:

- Big Horse Creek (Virginia state line to Mud Creek at S.R. 1363, excluding tributaries)
- (B) Delayed Harvest Trout Waters are as follows:
Big Horse Creek (S.R. 1324 bridge to North Fork New River)
Helton Creek (Virginia state line to New River)
South Fork New River (upstream end of Todd Island to the S.R. 1351 bridge)
Trout Lake
- (C) Hatchery Supported Trout Waters are as follows:
Beaver Creek (N.C. 221 to South Fork New River)
Big Horse Creek (Mud Creek at S.R. 1363 to S.R. 1324 bridge)
Big Laurel Creek (S.R. 1315 bridge to confluence with North Fork New River)
Buffalo Creek (S.R. 1133 bridge to N.C. 194-88 bridge)
Cranberry Creek (Alleghany Co. line to South Fork New River)
Nathans Creek
North Fork New River (Watauga Co. line to Sharp Dam)
Old Fields Creek (N.C. 221 to South Fork New River)
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
Roan Creek
Three Top Creek (except game land portion)
- (3) Avery County
- (A) Catch and Release/Artificial Flies
Only Trout Waters are as follows:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
Wilson Creek (game land portion)
- (C) Hatchery Supported Trout Waters are as follows:
Boyde Coffey Lake
Elk River (S.R. 1305 crossing immediately upstream of Big Falls to the Tennessee state line)
Linville River (Land Harbor line [below dam] to the Blue Ridge Parkway boundary line, except where posted against trespassing)
- Milltimber Creek
North Toe River — upper (Watauga St. to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespassing)
North Toe River — lower (S.R. 1164 to Mitchell Co. line, except where posted against trespassing)
Squirrel Creek
Wildcat Lake
- (D) Wild Trout Waters are as follows:
Birchfield Creek
Cow Camp Creek
Cranberry Creek (headwaters to U.S. 19E/N.C. 194 bridge)
Gragg Prong
Horse Creek
Kentucky Creek
North Harper Creek
Plumtree Creek
Roaring Creek
Rockhouse Creek
Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
South Harper Creek
Webb Prong
- (4) Buncombe County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
Carter Creek (game land portion)
- (B) Hatchery Supported Trout Waters are as follows:
Bent Creek (headwaters to N.C. Arboretum boundary line)
Cane Creek (headwaters to S.R. 3138 bridge)
Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
Dillingham Creek (Corner Rock Creek to Ivy Creek)
Ivy Creek (Ivy River) (Dillingham Creek to U.S. 19-23 bridge)
Lake Powhatan
Reems Creek (Sugar Camp Fork to U.S. 19-23 bridge, except where posted against trespassing)
Rich Branch (downstream from the confluence with Rocky Branch)
Stony Creek
Swannanoa (S.R. 2702 bridge near Ridgecrest to Wood Avenue bridge [intersection of N.C. 81 and U.S. 74A in Asheville], except where posted against trespassing)
- (5) Burke County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:

- Henry Fork (portion on South Mountains State Park)
- (B) Delayed Harvest Trout Waters are as follows:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Hatchery Supported Trout Waters are as follows:
Carroll Creek (game land portion above S.R. 1405)
Henry Fork (lower South Mountain State Park line downstream to S.R. 1919 at Ivy Creek)
Linville River (portion within Linville Gorge Wilderness area and portion below Lake James powerhouse from upstream bridge on S.R. 1223 to Muddy Creek)
- (D) Special Regulation Trout Waters are as follows:
Catawba River (Muddy Creek to City of Morganton water intake dam)
- (E) Wild Trout Waters are as follows:
All waters located on South Mountains State Park, except those waters identified in parts A and B of this Subparagraph
- (6) Caldwell County
- (A) Delayed Harvest Trout Waters are as follows:
Wilson Creek (game land portion below Lost Cove Creek to Philips Branch)
- (B) Hatchery Supported Trout Waters are as follows:
Boone Fork Pond
Buffalo Creek (mouth of Joes Creek to McCloud Branch)
Joes Creek (first falls upstream of S.R. 1574 to confluence with Buffalo Creek)
Wilson Creek (Phillips Branch to Brown Mountain Beach Dam, except where posted against trespassing)
Yadkin River (Happy Valley Ruritan Community Park to S.R. 1515)
- (C) Wild Trout Waters are as follows:
Buffalo Creek (Watauga Co. line to Long Ridge Branch including game land tributaries)
Joes Creek (Watauga Co. line to first falls upstream of the end of S.R. 1574)
Rockhouse Creek
- (7) Cherokee County
- (A) Hatchery Supported Trout Waters are as follows:
- Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
Hyatt Creek (Big Dam Branch to Valley River)
Junaluska Creek (Ashturn Creek to Valley River)
Shuler Creek (Joe Brown Hwy [S.R. 1325] bridge to Tennessee state line)
Valley River (S.R. 1359 to U.S. 19 Business bridge in Murphy)
- (B) Wild Trout Waters/Natural Bait are as follows:
Bald Creek (game land portion)
Dockery Creek (game land portion)
North Shoal Creek (game land portion)
- (8) Clay County
- (A) Delayed Harvest Trout Waters are as follows:
Fires Creek (USFS Rd. 340A to the foot bridge in the USFS Fires Creek Picnic Area)
- (B) Hatchery Supported Trout Waters are as follows:
Buck Creek (game land portion downstream of U.S. 64 bridge)
Fires Creek (foot bridge in the USFS Fires Creek Picnic Area to S.R. 1300)
Tusquitee Creek (Compass Creek to lower S.R. 1300 bridge)
- (9) Graham County
- (A) Delayed Harvest Trout Waters are as follows:
(Big) Snowbird Creek (USFS footbridge at the old railroad junction to USFS Rd. 2579)
- (B) Hatchery Supported Trout Waters are as follows:
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana)
Santeelah Creek (Johns Branch to Lake Santeelah)
(Big) Snowbird Creek (USFS Road 2579 to S.R. 1127 bridge)
Stecoah Creek (upper game land boundary to Lake Fontana)
Tulula Creek (S.R. 1201 to lower bridge on S.R. 1275)
West Buffalo Creek
Yellow Creek (Lake Santeelah hydropower pipeline to Cheoah River)
- (C) Wild Trout Waters are as follows:
Little Buffalo Creek

- South Fork Squally Creek
Squally Creek
- (D) Wild Trout Waters/Natural Bait are as follows:
Deep Creek
Franks Creek
Long Creek (game land portion)
- (10) Haywood County
- (A) Delayed Harvest Trout Waters are as follows:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (B) Hatchery Supported Trout Waters are as follows:
Cold Springs Creek (Fall Branch to Pigeon River)
Jonathan Creek (upstream S.R. 1302 bridge to Pigeon River, except where posted against trespassing)
Pigeon River (Stamey Cove Branch to upstream U.S. 19-23 bridge)
Richland Creek (Russ Avenue [U.S. 276] bridge to U.S. 19 bridge)
West Fork Pigeon River (Tom Creek to Queen Creek, including portions on game lands, except Middle Prong)
- (C) Wild Trout Waters/Natural Bait are as follows:
Hemphill Creek
Hurricane Creek
- (11) Henderson County
- (A) Delayed Harvest Trout Waters are as follows:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (B) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (end of S.R. 1611 to Rutherford Co. line)
Cane Creek (railroad bridge upstream of S.R. 1551 bridge to U.S. 25 bridge)
Clear Creek (Laurel Fork to S.R. 1582)
Green River (Lake Summit powerhouse to game land boundary)
(Big) Hungry River
- (12) Jackson County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
Flat Creek
Tuckasegee River (upstream from the Clark property)
- (B) Delayed Harvest Trout Waters are as follows:
Tuckasegee River (downstream N.C. 107 bridge to the falls located 275 yards upstream of the U.S. 23-441 bridge [marked by a sign on each bank])
- (C) Hatchery Supported Trout Waters are as follows:
Balsam Lake
Bear Creek Lake
Cedar Cliff Lake
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Dark Ridge Creek (Jones Creek to Scott Creek)
Greens Creek (Greens Creek Baptist Church on S.R. 1730 to Savannah Creek)
Savannah Creek (downstream of S.R. 1300 bridge to Cagle Branch)
Scott Creek (Dark Ridge Creek to Tuckasegee River, except where posted against trespassing)
Tanasee Creek Lake
Tuckasegee River — upper (John Brown Branch to the downstream N.C. 107 bridge)
Tuckasegee River — lower (falls located 275 yards upstream of U.S. 23-441 bridge [marked by a sign on each bank] to S.R. 1534 bridge at Wilmot)
Wolf Creek Lake
- (D) Wild Trout Waters are as follows:
Gage Creek
North Fork Scott Creek
Tanasee Creek
Whitewater River (downstream from Silver Run Creek to South Carolina state line)
Wolf Creek (except Balsam Lake and Wolf Creek Lake)
- (E) Wild Trout Waters/Natural Bait are as follows:
Buff Creek
Chattooga River (S.R. 1100 bridge to the South Carolina state line)
Lower Fowler Creek (game land portion)
Scotsman Creek (game land portion)
- (13) Macon County
- (A) Delayed Harvest Trout Waters are as follows:
Nantahala River (Whiteoak Creek to Nantahala hydropower discharge canal)
- (B) Hatchery Supported Trout Waters are as follows:
Burningtown Creek (Left Prong to Little Tennessee River)

- Cartoogechaye Creek (downstream U.S. 64 bridge to Little Tennessee River)
Cliffside Lake
Cullasaja River (Sequoyah Dam to U.S. 64 bridge near junction of S.R. 1672)
Nantahala River — upper (Dicks Creek to Whiteoak Creek)
Nantahala River — lower (Nantahala hydropower discharge canal to Swain Co. line)
Queens Creek Lake
- (C) Wild Trout Waters/Natural Bait are as follows:
Chattooga River (S.R. 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
- (14) Madison County
- (A) Delayed Harvest Trout Waters are as follows:
Big Laurel Creek (N.C. 208 bridge to the U.S. 25-70 bridge)
Shelton Laurel Creek (N.C. 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (N.C. 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Ave.)
- (B) Hatchery Supported Trout Waters are as follows:
Big Laurel Creek (Mars Hill watershed boundary to the S.R. 1318 [Big Laurel Rd.] bridge downstream of Bearpen Branch)
Big Pine Creek (S.R. 1151 bridge to French Broad River)
Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
Max Patch Pond
Meadow Fork Creek (S.R. 1165 to Spring Creek)
Puncheon Fork (Hampton Creek to Big Laurel Creek)
Roaring Fork (Fall Branch to Meadow Fork)
Shelton Laurel Creek (confluence of Big Creek and Mill Creek to N.C. 208 bridge at Belva)
Shut-in Creek
Spillcorn Creek
- Spring Creek (junction of N.C. 209 and N.C. 63 to USFS Rd. 223)
West Fork Shut-in Creek (lower game land boundary to confluence with East Fork Shut-in Creek)
- (C) Wild Trout Waters/Natural Bait are as follows:
Big Creek (headwaters to the lower game land boundary)
- (15) McDowell County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
Newberry Creek (game land portion)
- (B) Delayed Harvest Trout Waters are as follows:
Catawba River (portion adjacent to Marion Greenway)
Curtis Creek (game land portion downstream of the USFS boundary at Deep Branch)
Mill Creek (U.S. 70 bridge to I-40 bridge)
- (C) Hatchery Supported Trout Waters are as follows:
Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
Catawba River (Catawba Falls Campground to Old Fort Recreation Park)
Little Buck Creek (game land portion)
Mill Creek (upper railroad bridge to U.S. 70 bridge, except where posted against trespassing)
North Fork Catawba River (headwaters to North Cove School at S.R. 1569 bridge)
- (16) Mitchell County
- (A) Delayed Harvest Trout Waters are as follows:
Cane Creek (N.C. 226 bridge to S.R. 1189 bridge)
North Toe River (U.S. 19E bridge to N.C. 226 bridge)
- (B) Hatchery Supported Trout Waters are as follows:
Big Rock Creek (headwaters to N.C. 226 bridge at S.R. 1307 intersection)
Cane Creek (S.R. 1219 to N.C. 226 bridge)
East Fork Grassy Creek
Grassy Creek (East Fork Grassy Creek to mouth)
Little Rock Creek (Green Creek bridge to Big Rock Creek, except where posted against trespassing)
North Toe River (Avery Co. line to S.R. 1121 bridge)
- (C) Wild Trout Waters are as follows:

- Green Creek (headwaters to Green Creek bridge, except where posted against trespassing)
Little Rock Creek (above Green Creek bridge, including all tributaries, except where posted against trespassing)
Wiles Creek (game land boundary to mouth)
- (17) Polk County
 (A) Delayed Harvest Trout Waters are as follows:
Green River (Fishtop Falls Access Area to the confluence with Cove Creek)
 (B) Hatchery Supported Trout Waters are as follows:
Green River (Mouth of Cove Creek to the natural gas pipeline crossing)
North Pacolet River (Joels Creek to N.C. 108 bridge)
- (18) Rutherford County
 (A) Hatchery Supported Trout Waters are as follows:
(Rocky) Broad River (Henderson Co. line to U.S. 64/74 bridge, except where posted against trespassing)
- (19) Stokes County
 (A) Hatchery Supported Trout Waters are as follows:
Dan River (Virginia state line downstream to a point 200 yards below the end of S.R. 1421)
- (20) Surry County
 (A) Delayed Harvest Trout Waters are as follows:
Ararat River (N.C. 103 bridge to U.S. 52 bridge)
Mitchell River (.6 mile upstream of the end of S.R. 1333 to the S.R. 1330 bridge below Karp's Mill Dam)
 (B) Hatchery Supported Trout Waters are as follows:
Ararat River (S.R. 1727 bridge downstream to the N.C. 103 bridge)
Big Elkin Creek (dam 440 yards upstream of N.C. 268 bridge to a point 265 yards downstream of N.C. 268 [marked by a sign on each bank])
Fisher River (Cooper Creek) (Virginia state line to I-77 bridge)
Little Fisher River (Virginia state line to N.C. 89 bridge)
Lovills Creek (U.S. 52 Business bridge to Ararat River)
Pauls Creek (Virginia state line to .3 miles below S.R. 1625 bridge)
- (21) Swain County
 (A) Hatchery Supported Trout Waters are as follows:
Alarka Creek (game land boundary to Fontana Reservoir)
Calderwood Reservoir (Cheoah Dam to Tennessee state line)
Cheoah Reservoir
Connelly Creek (Camp Branch to Tuckasegee River)
Deep Creek (Great Smoky Mountains National Park Boundary line to Tuckasegee River)
Nantahala River (Macon Co. line to existing Fontana Lake water level)
 (B) Delayed Harvest Waters Trout Waters are as follows:
Tuckasegee River (U.S. 19 bridge to Slope Street bridge)
- (22) Transylvania County
 (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
 (B) Delayed Harvest Waters Trout Waters are as follows:
East Fork French Broad River (Gladly Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
 (C) Hatchery Supported Trout Waters are as follows:
Davidson River (Avery Creek to lower USFS boundary)
French Broad River (confluence of North Fork French Broad River and West Fork) French Broad River to the Island Ford Rd. [S.R. 1110] Access Area
Middle Fork French Broad River (upstream U.S. 178 bridge to French Broad River)
West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
 (D) Wild Trout Waters are as follows:
All waters located on Gorges State Park
Whitewater River (downstream from Silver Run Creek to South Carolina state line)
 (E) Wild Trout Waters/Natural Bait are as follows:
North Fork French Broad River (game land portion downstream of S.R. 1326)

- Thompson River (S.R. 1152 to South Carolina state line, except where posted against trespassing)
- (23) Watauga County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
Dugger Creek (portions on Blue Ridge Mountain Club)
Laurel Creek (portions on Blue Ridge mountain Club and Powder Horn Mountain Development)
Pond Creek (headwaters to Locust Ridge Rd. bridge, excluding the pond adjacent to Coffee Lake)
- (B) Delayed Harvest Trout Waters are as follows:
Coffee Lake
Watauga River (adjacent to intersection of S.R. 1557 and S.R. 1558 to N.C. 105 bridge and S.R. 1114 bridge to N.C. 194 bridge at Valle Crucis)
- (C) Hatchery Supported Trout Waters are as follows:
Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of S.R. 1201 and S.R. 1203)
Beech Creek
Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
Buckeye Creek Reservoir
Cove Creek (S.R. 1233 bridge at Zionville to S.R. 1233 bridge at Amantha)
Dutch Creek (second bridge on S.R. 1134 to mouth)
Elk Creek (S.R. 1510 bridge at Triplett to Wilkes Co. line, except where posted against trespassing)
Laurel Creek (S.R. 1123 bridge at S.R. 1157 intersection to Watauga River)
Meat Camp Creek (S.R. 1340 bridge at S.R. 1384 intersection to N.C. 194)
Middle Fork New River (Lake Chetola dam to South Fork New River)
Norris Fork Creek
South Fork New River (canoe launch 70 yards upstream of U.S. 421 bridge to lower boundary of Brookshire Park)
Stony Fork (S.R. 1500 bridge at S.R. 1505 intersection to Wilkes Co. line)
- (D) Wild Trout Waters are as follows:
Dutch Creek (headwaters to second bridge on S.R. 1134)
- Howard Creek
Maine Branch (headwaters to North Fork New River)
North Fork New River (from confluence with Maine and Mine branches to Ashe Co. line)
Watauga River (Avery Co. line to S.R. 1580 bridge)
Winkler Creek (lower bridge on S.R. 1549 to confluence with South Fork New River)
- (24) Wilkes County
- (A) Catch and Release/Artificial Lures
Only Trout Waters are as follows:
Dugger Creek (portions on Blue Ridge Mountain club)
Harris Creek (portion on Stone Mountain State Park)
- (B) Delayed Harvest Trout Waters are as follows:
East Prong Roaring River (Bullhead Creek downstream to Stone Mountain State Park lower boundary)
Elk Creek — upper (Watauga Co. line to lower boundary of the Blue Ridge Mountain Club)
Elk Creek — lower (portion on Leatherwood Mountains development)
Reddies River (Town of North Wilkesboro water intake dam to confluence with the Yadkin River)
Stone Mountain Creek (from falls at Allegheny Co. line to confluence with East Prong Roaring River and Bullhead Creek)
- (C) Hatchery Supported Trout Waters are as follows:
Bell Branch Pond
Cub Creek (.5 mile upstream of S.R. 2460 bridge to S.R. 1001 bridge)
Darnell Creek (North Prong Reddies River) (downstream ford on S.R. 1569 to confluence with North Fork Reddies River)
Fall Creek (S.R. 1300 bridge to confluence with South Prong Lewis Fork, except where posted against trespassing)
Middle Fork Reddies River (Clear Prong) (headwaters to bridge on S.R. 1580)
Middle Prong Roaring River (headwaters to bridge on S.R. 1736)
North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on S.R. 1559)
Pike Creek
Pike Creek Pond

South Fork Reddies River (S.R. 1355 bridge to confluence with Middle Fork Reddies River)
South Prong Lewis Fork (Fall Creek to S.R. 1155 bridge)

- (D) Wild Trout Waters are as follows:
Big Sandy Creek (portion on Stone Mountain State Park)
Garden Creek (portion on Stone Mountain State Park)
Widow Creek (portion on Stone Mountain State Park)

(25) Yancey County

- (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
South Toe River (headwaters to Upper Creek)

- (B) Delayed Harvest Trout Waters are as follows:
Cane River (Blackberry Ridge Rd. to downstream boundary of Cane River County Park)

- (C) Hatchery Supported Trout Waters are as follows:
Bald Mountain Creek (except where posted against trespassing)
Cane River (Bee Branch [S.R. 1110] to Bowlens Creek)
Price Creek (junction of S.R. 1120 and S.R. 1121 to Indian Creek)
South Toe River (Clear Creek to lower boundary line of Yancey Co. recreation park, except where posted against trespassing)

- (D) Wild Trout Waters are as follows:
Cattail Creek (bridge at Mountain Farm Community Rd. to N.C. 187 bridge)
Lickskillet Creek
Middle Creek (game land boundary to mouth)

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

15A NCAC 10C .0206 TROTTLINES, JUG HOOKS AND SET HOOKS

(a) For purposes of this Rule, the following definitions apply:

- (1) "set hook" means ~~any~~ a fishing device consisting of a single hook and line having no more than three hooks that is attached at one end only to a stationary object or floating object and not under immediate control and attendance of the person using the device.
- (2) "jug hook" means a fishing device consisting of a single hook and line having no more than three hooks that is attached to a float.

(3) "trotline" means a fishing device consisting of a horizontal common line having multiple hooks attached.

~~(3) "untended" means no bait is present on the device.~~

(b) Except as otherwise prohibited in this Rule, trotlines, jug hooks ~~trotlines~~ and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used. Trotlines, jug hooks ~~Trotlines~~ and set-hooks may not be set in any of the impounded waters on the Sandhills Game Land. Trotlines, jug hooks ~~Trotlines~~ and set-hooks may not be set in any designated public mountain trout waters except impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Waccamaw, trotlines, jug hooks ~~trotlines~~ or set-hooks may be set only from October 1 through April 30.

(c) Each trotline, set hook, and jug hook shall bear legible and indelible identification of the user's name and address or the user's Wildlife Resources Commission customer number. Each trotline shall be conspicuously marked at each end and each set-hook conspicuously marked at one end with a flag, float, or other prominent object so that its location is readily discernible by boat operators and swimmers. Trotlines shall be set parallel to the nearest shore in all inland fishing waters unless otherwise prohibited. The number of jug-hooks that may be fished is limited to 70 per boat. All trotlines, ~~throwlines~~, set-hooks, and jug-hooks shall be fished at least once daily and all fish removed at that time. Trotlines, Untended trotlines, ~~set-hooks~~, and jug-hooks without bait or not labeled as described in this Paragraph may be removed from the water by wildlife enforcement ~~officers~~ officers when located in areas of multiple water use. It is unlawful to use metal cans or glass jugs as floats.

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

SECTION .0300 – GAME FISH

15A NCAC 10C .0306 CRAPPIE

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

(b) In Buckhorn Reservoir in Wilson and Nash counties the daily creel limit is 20 fish.

(c) In the following waters, the daily creel limit is 20 fish and the minimum size limit is 10 inches:

- (1) B. Everett Jordan Reservoir,
- (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam,
- (3) Cashie River and its tributaries,
- (4) Middle River and its tributaries, and
- (5) Eastmost River and its tributaries.

(d) In the following waters, the daily creel limit is 20 fish and the minimum size limit is eight inches:

- ~~(1) South Yadkin River downstream of Cooleemee Dam;~~
- ~~(2) Yadkin River downstream from Idols Dam;~~
- ~~(3)(1) Pee Dee River from Blewett Falls Dam to the South Carolina state line;~~

- ~~(4)~~ ~~High Rock Lake;~~
- ~~(5)~~ ~~Tuckertown Lake;~~
- ~~(6)~~(2) Badin Lake;
- ~~(7)~~(3) Falls Lake (Stanly and Montgomery counties);
- ~~(8)~~(4) Lake Tillery;
- ~~(9)~~(5) Blewett Falls Lake;
- ~~(10)~~(6) Lake Norman;
- ~~(11)~~(7) Lake Hyco;
- ~~(12)~~(8) Lake Ramseur;
- ~~(13)~~(9) Cane Creek Lake;
- ~~(14)~~(10) Tar River downstream of Tar River Reservoir Dam;
- ~~(15)~~(11) Neuse River downstream of Falls Lake Dam;
- ~~(16)~~(12) Haw River downstream of Jordan Lake Dam;
- ~~(17)~~(13) Deep River downstream of Lockville Dam;
- ~~(18)~~(14) Cape Fear River;
- ~~(19)~~(15) Waccamaw River downstream of Lake Waccamaw Dam;
- ~~(20)~~(16) Lumber River including Drowning Creek;
- ~~(21)~~(17) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and waters listed in Paragraph (c) of this Rule; and
- ~~(22)~~(18) all public waters west of Interstate 77.

For waters in Subparagraphs ~~(10)~~ ~~(14)~~ through ~~(18)~~, ~~(22)~~, the restrictions apply to all tributaries.

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

15A NCAC 10C .0314 STRIPED BASS

(a) The daily creel limit for Striped Bass and its hybrids is ~~four~~~~eight~~ fish in the aggregate, except in waters identified in Paragraphs (b), ~~(c)~~, ~~(d)~~, ~~(e)~~, (f), (g), (h), and (i) ~~(i)~~, ~~and (j)~~ of this Rule. ~~The~~~~There is no~~ minimum size limit for these fish ~~is 20 inches, fish, but only two of them may be less than 16 inches,~~ except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), and (i) ~~(i)~~, ~~and (j)~~ of this Rule. There is no closed season, except for waters identified in Paragraphs ~~(f)~~, (g), (h), (i), and (j) ~~(j)~~, ~~and (k)~~ of this Rule.

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

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

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

~~(d)~~~~(e)~~ In Lake Norman, Arrowhead Lake (Anson Co.), High Rock Pond (Caswell Co.), Moss Lake, Mountain Island Reservoir, Oak Hollow Lake, Lake Thom-A-Lex, Lake Townsend, and Salem Lake the daily creel limit on Striped Bass and its hybrids is ~~four~~ in the aggregate and the minimum size limit for Striped Bass and its hybrids ~~these fish~~ is 16 inches.

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

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

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

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

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

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

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

15A NCAC 10C .0316 TROUT

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

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

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

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

(e) The daily creel ~~limit~~ limits, size limits, and seasons for trout in Special Regulation Trout Waters ~~are as follows: is seven fish.~~ in the Catawba River (Burke County) from Muddy Creek to the City of Morganton water intake dam the daily creel limit is seven fish. There is no minimum size limit for these fish, but only one may be greater than 14 inches. There is no closed season.

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

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

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

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

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

SECTION .0400 – NONGAME FISH

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

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

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.

- (2) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback) that are greater than six inches in total length or possess such herring regardless of origin in:

- (A) Roanoke River downstream of Roanoke Rapids Dam;
- (B) Tar River downstream of Rocky Mount Mill Dam;
- (C) Neuse River downstream of Milburnie Dam;
- (D) Cape Fear River downstream of Buckhorn Dam;
- (E) Pee Dee River downstream of Blewett Falls Dam;
- (F) Lumber River including Drowning Creek;
- (G) all the tributaries to the rivers listed above; and
- (H) all other inland fishing waters east of I-95.

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

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

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

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

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

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

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

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may be taken only from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (*Corbicula fluminea*).

(e) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take channel, white, or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate. Waters where this creel limit applies shall be posted on-site with signs indicating the creel limit.

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

(g) The daily creel limit for American eels taken from or possessed, regardless of origin, while boating on or fishing in inland fishing waters is 25, and the minimum size limit is 9 inches.

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

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

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

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (4) a bow net for the seasons and waters in which the use of bow nets is authorized in 15A NCAC 10C .0407;
- ~~(5)~~(4) a gig (except in Public Mountain Trout Waters);
- ~~(6)~~(5) up to three traps for the seasons and waters in which the use of traps is authorized in 15A NCAC 10C .0407;
- ~~(7)~~(6) up to two eel pots;
- ~~(8)~~(7) a spear gun for the seasons and waters in which the use of a spear gun is authorized in 15A NCAC 10C .0407;
- ~~(9)~~(8) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and that are under the immediate control and attendance of the individual operating them;
- ~~(10)~~(9) a hand-held line with a single bait attached;
- ~~(11)~~(10) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device, with a limit of one line per person and no more than one line per vessel; or
- ~~(12)~~(11) a collapsible crab trap with the largest open dimension not greater than 18 inches and that by design is collapsed at all times when in the

water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

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

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

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

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

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

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

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

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

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

15A NCAC 10C .0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. The use of special fishing devices, including crab pots in impoundments located entirely on game lands is prohibited. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

- (1) Alamance:
 - (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
 - (b) July 1 to June 30 with gigs in all public waters;
- (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
- (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
- (4) Anson:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) March 1 to April 30 with bow nets in Pee Dee River below Blewett Falls Dam;
 - (c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;
- (6) Beaufort:
 - (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
 - (b) March 1 to April 30 with bow nets in all inland public waters;
- (7) Bertie:
 - (a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
 - (b) March 1 to April 30 with bow nets in all inland public waters, excluding

public lakes, ponds, and other impounded waters;

- (8) Bladen:
 - (a) March 1 to April 30 with bow nets in Black River;
 - (b) July 1 to March 1 with hand-crank electrofishers (local law) in Cape Fear River between Lock and Dam 1 and 3 and in Black River, except that hand-crank electrofishing is prohibited within 400 yards of Lock and Dam 1, 2, and 3 on Cape Fear River;
- (9) Brunswick: March 1 to April 30 with bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;
- (10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (11) Burke:
 - (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (12) Cabarrus:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
- (13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (14) Camden:
 - (a) July 1 to June 30 with traps in all inland public waters;
 - (b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (15) Carteret: March 1 to April 30 with bow nets in all inland public waters except South River and the tributaries of the White Oak River;
- (16) Caswell:
 - (a) July 1 to June 30 with gigs in all public waters;
 - (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
 - (c) July 1 to June 30 with traps in Hyco Reservoir;
- (17) Catawba:
 - (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;

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| <p>(b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;</p> <p>(18) Chatham:</p> <p>(a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);</p> <p>(b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;</p> <p>(c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;</p> <p>(19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(20) Chowan:</p> <p>(a) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(b) July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(22) Cleveland:</p> <p>(a) July 1 to August 31 with seines in all running public waters;</p> <p>(b) July 1 to June 30 with gigs, traps and spear guns in all public waters;</p> <p>(23) Columbus:</p> <p>(a) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;</p> <p>(b) March 1 to April 30 with bow nets in Livingston Creek;</p> <p>(c) July 1 to March 1 with hand-crank electrofishers (local law) in Waccamaw and Lumber rivers;</p> <p>(24) Craven:</p> <p>(a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;</p> <p>(b) March 1 to April 30 with bow nets in all inland public waters, except Pitch Kettle, Grindle, Slocum (downstream of the US 70 bridge), Spring and Hancock Creeks and their tributaries; and with seines in the Neuse River;</p> <p>(25) Currituck:</p> <p>(a) July 1 to June 30 with traps in Tulls Creek and Northwest River;</p> <p>(b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(26) Dare:</p> | <p>(a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;</p> <p>(b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(27) Davidson:</p> <p>(a) July 1 to August 31 with seines in all running public waters;</p> <p>(b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;</p> <p>(28) Davie:</p> <p>(a) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;</p> <p>(29) Duplin:</p> <p>(a) December 1 to June 5 with seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;</p> <p>(b) March 1 to April 30 with bow nets in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;</p> <p>(30) Durham:</p> <p>(a) July 1 to August 31 with seines in Neuse River;</p> <p>(b) July 1 to June 30 with gigs in all public waters;</p> <p>(31) Edgecombe: March 1 to April 30 with bow nets in all public waters;</p> <p>(32) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;</p> <p>(33) Franklin:</p> <p>(a) July 1 to August 31 with seines in Tar River;</p> <p>(b) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;</p> <p>(34) Gaston:</p> <p>(a) July 1 to August 31 with seines in all running public waters;</p> <p>(b) July 1 to June 30 with gigs, traps and spear guns in all public waters;</p> |
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| <p>(35) Gates: March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(36) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(37) Granville:</p> <ul style="list-style-type: none"> (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir; (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge; (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir; <p>(38) Greene: March 1 to April 30 with bow nets and reels in Contentnea Creek;</p> <p>(39) Guilford:</p> <ul style="list-style-type: none"> (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge; (b) July 1 to June 30 with gigs in all public waters; <p>(40) Halifax: March 1 to April 30 with bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;</p> <p>(41) Harnett:</p> <ul style="list-style-type: none"> (a) January 1 to May 31 with gigs in Cape Fear River and tributaries; (b) March 1 to April 30 with bow nets in Cape Fear River; <p>(42) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;</p> <p>(43) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(44) Hertford:</p> <ul style="list-style-type: none"> (a) July 1 to June 30 with traps in Wiccacon Creek; (b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; <p>(45) Hyde:</p> <ul style="list-style-type: none"> (a) July 1 to June 30 with traps in all inland waters; (b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; <p>(46) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;</p> | <p>(47) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(48) Johnston: March 1 to April 30 with bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River and Swift Creek;</p> <p>(49) Jones:</p> <ul style="list-style-type: none"> (a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge; (b) March 1 to April 30 with bow nets in all inland public waters, except the tributaries to the White Oak River; <p>(50) Lee:</p> <ul style="list-style-type: none"> (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River; (b) July 1 to August 31 with seines in Cape Fear River; (c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters; <p>(51) Lenoir:</p> <ul style="list-style-type: none"> (a) July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston; (b) March 1 to April 30 with bow nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River; <p>(52) Lincoln:</p> <ul style="list-style-type: none"> (a) July 1 to August 31 with seines in all running public waters; (b) July 1 to June 30 with traps, gigs and spear guns in all public waters; <p>(53) McDowell:</p> <ul style="list-style-type: none"> (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters; (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James; <p>(54) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(55) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(56) Martin: March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;</p> <p>(57) Mecklenburg:</p> <ul style="list-style-type: none"> (a) July 1 to August 31 with seines in all running public waters; (b) July 1 to June 30 with traps, gigs and spear guns in all public waters except |
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- Freedom Park Pond and Hornet's Nest Ponds;
- (58) Montgomery:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (59) Moore:
- (a) July 1 to August 31 with seines in all running public waters except in Deep River;
- (b) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;
- (60) Nash:
- (a) July 1 to June 30 with gigs in all public waters, except Tar River;
- (b) March 1 to April 30 with bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;
- (61) New Hanover: March 1 to April 30 with bow nets in all inland public waters, except Sutton (Catfish) Lake;
- (62) Northampton:
- (a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;
- (b) March 1 to April 30 with bow nets in Occoneechee Creek, Old River Landing Gut and Vaughans Creek below Watsons Mill;
- (63) Onslow:
- (a) July 1 to June 30 with traps in White Oak River below US 17 bridge;
- (b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;
- (c) March 1 to April 30 with bow nets in the main run of New River and in the main run of the White Oak River;
- (d) March 1 to April 30 with bow nets in Grant's Creek;
- (64) Orange:
- (a) July 1 to August 31 with seines in Haw River;
- (b) July 1 to June 30 with gigs in all public waters;
- (65) Pamlico: March 1 to April 30 with bow nets in all inland public waters, except Dawson Creek;
- (66) Pasquotank:
- (a) July 1 to June 30 with traps in all inland waters;
- (b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (67) Pender:
- (a) December 1 to June 5 with seines in the main run of Northeast Cape Fear River;
- (b) March 1 to April 30 with bow nets in the Northeast Cape Fear River, Long Creek, Moore's Creek approximately one mile upstream to New Moon Fishing Camp, and Black River;
- (c) July 1 to March 1 with hand-crank electrofishers (local law) in Black River;
- (68) Perquimans:
- (a) July 1 to June 30 with traps in all inland waters;
- (b) March 1 to April 30 with bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (69) Person:
- (a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;
- (b) July 1 to June 30 with gigs in all public waters.
- (70) Pitt:
- (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
- (b) March 1 to April 30 with bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;
- (c) December 1 to June 5 with seines in Tar River;
- (71) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (72) Randolph:
- (a) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
- (b) July 1 to June 30 with gigs in all public waters;
- (73) Richmond:
- (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;

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| <p>(b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;</p> <p>(c) March 1 to April 30 with bow nets in Pee Dee River below Blewett Falls Dam;</p> <p>(74) Robeson: December 1 to March 1 with gigs in all inland public waters.</p> <p>(75) Rockingham:</p> <p>(a) July 1 to August 31 with seines in Dan River and Haw River;</p> <p>(b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;</p> <p>(76) Rowan:</p> <p>(a) July 1 to August 31 with seines in all running public waters,</p> <p>(b) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(77) Rutherford:</p> <p>(a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;</p> <p>(b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;</p> <p>(78) Sampson:</p> <p>(a) March 1 to April 30 with bow nets in Big Coharie Creek, Black River and Six Runs Creek;</p> <p>(b) July 1 to March 1 with hand-crank electrofishers (local law) in Black River downstream of NC 1105 bridge;</p> <p>(79) Stanly:</p> <p>(a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;</p> <p>(b) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(80) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;</p> <p>(81) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;</p> <p>(82) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(83) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;</p> <p>(84) Tyrrell:</p> | <p>(a) July 1 to June 30 with traps in Scuppernong River and Alligator Creek;</p> <p>(b) March 1 to April 30 with bow nets in all inland public waters, excluding Lake Phelps, the drainage canals that connect Lake Phelps and Scuppernong River, public lakes, ponds and other impounded waters;</p> <p>(85) Union:</p> <p>(a) July 1 to August 31 with seines in all running public waters,</p> <p>(b) July 1 to June 30 with traps and gigs in all public waters;</p> <p>(86) Vance:</p> <p>(a) July 1 to August 31 with seines in the Tar River;</p> <p>(b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;</p> <p>(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;</p> <p>(87) Wake:</p> <p>(a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;</p> <p>(b) March 1 to April 30 with bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;</p> <p>(88) Warren:</p> <p>(a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;</p> <p>(b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;</p> <p>(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;</p> <p>(89) Washington: March 1 to April 30 with bow nets in all inland public waters, excluding Lake Phelps, the drainage canals that connect Lake Phelps and Scuppernong River, public lakes, ponds and other impoundments.</p> <p>(90) Wayne: March 1 to April 30 with bow nets in Little River, Mill Creek and Neuse River.</p> <p>(91) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;</p> <p>(92) Wilson:</p> <p>(a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed</p> |
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- tributaries between Flowers Mill and SR 1163 (Deans) bridge;
- (b) March 1 to April 30 with bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;
- (93) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.

Authority G.S. 113-134; 113-276; 113-292.

SUBCHAPTER 10D – GAMELANDS REGULATIONS

SECTION .0100 – GAMELANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) For purposes of this Subchapter, the following definitions apply:

- (1) "Permanent Hunting Blind" means any structure that is used for hunter concealment, constructed from manmade or natural materials, and that is not disassembled and removed at the end of each day's hunt.
- (2) "Target shooting" means the discharge of a firearm for purposes other than hunting, trapping or self-defense.
- (3) "Youth" are individuals under 16 years of age.

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

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for

establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.
- (7) Restricted Deer Hunting Zone. On portions of game lands posted as "Restricted Deer Hunting Zones" the use of dogs for taking deer is prohibited, except as allowed by permit.

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

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

~~(d)(e)~~ Use of weapons. No person shall discharge:

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

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun must adhere to the requirements set forth in G.S. 14-415.11, even if the state

issuing the concealed handgun permit is not North Carolina. On Buckhorn, Butner-Falls of Neuse, Chatham, Harris, Hyco, Jordan, Kerr Scott, Lee, Mayo, Sutton Lake, and Vance game lands and Pee Dee River Game Land north of U.S. 74, and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

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

(e)(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph ~~(4)(2)~~ of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, ~~or running dogs or training dogs using wildlife participating in dog training or field trial activities~~ shall have in his ~~or her~~ possession a game lands license in addition to the appropriate hunting or trapping license, ~~or a license that conveys the game land use privilege licenses. — A field trial participant is defined as a judge, handler, scout or owner.~~
- (2) For commission-sanctioned field trials, the following persons shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege: active participants (as defined in 15A NCAC 10B .0114) in a field trial using wildlife, except non-residents may substitute hunting licenses from their state(s) of residence.
- (3) For any other field trial using wildlife occurring on game lands, judges and active participants shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege
- (4)(2) Exceptions:
 - (A) a person under 16 years of age may hunt on game lands on the license of his parent or legal guardian;
 - ~~(B) the resident and nonresident sportsman's licenses include game lands use privileges;~~
 - ~~(C) judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license; or~~

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

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

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

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

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

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

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

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

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

~~(j)~~ **Swimming.** Swimming is prohibited in the lakes located on the Sandhills Game Land.

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

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;

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

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

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

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

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

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

~~(n)~~ **Disabled Access Program.** Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have

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

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

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

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

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

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

Authority G.S. 113-129; 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 143-318.10.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

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

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

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

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

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

On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to

obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

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

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

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

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

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan, and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and

deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.

- (C) On the Lick Creek Tract, deer and bear hunting is archery only.
- (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (4) Bachelor Bay Game Land in Bertie, Martin, and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used.
 - (D) On the Singletary Lake Tract the use of dogs for hunting deer and bear is prohibited.
 - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
 - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (7) Brinkleyville Game Land in Halifax County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six

- open days of the applicable Deer With Visible Antlers Season.
- (8) Brunswick County Game Land in Brunswick County
- (A) Hunting is by permit only.
- (B) The use of dogs for hunting deer is prohibited.
- (9) Buckhorn Game Land in Orange County
- (A) Hunting is by permit only.
- (B) Horseback riding is prohibited.
- (10) Buckridge Game Land in Tyrrell County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.
- (D) Target shooting is prohibited.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
- (A) Six Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the ~~Saturday~~Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers Season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays, Thursdays, and Saturdays of the applicable waterfowl seasons.
- On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding is prohibited.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
- (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
- (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.

- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
 - (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.
 - (E) Target shooting is prohibited.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is allowed only during June, July, and August, and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. ~~Participants must obtain a game lands license as set forth in 15A NCAC 10G prior to engaging in such activity. People age 16 or older horseback riding on this game land must possess a Game Lands license.~~
 - (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (G) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.
- (18) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) Horseback riding is allowed only during June, July, and August; and on Sundays during the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
- (20) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway

- 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (23) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (24) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl day in October through the end of the waterfowl season, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
- (E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (26) Currituck Banks Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.
- (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.
- (D) The boundary of the game land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- (27) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting is allowed on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dover Bay Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- (29) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
- (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- (30) Elk Knob Game Land in Watauga County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.
 - (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
 - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.
- (33) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (34) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (35) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
 - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (36) Harris Game Land in Chatham, Harnett, and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds shall be prohibited.
 - (E) Wild turkey hunting is by permit only.
 - (F) Target shooting is prohibited.
 - (G) Horseback riding is prohibited.
- (37) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;

- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (I) Target shooting is prohibited, except on the Holly Shelter Shooting Range.
- (38) Hyco Game land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (40) Johns River Game Land in Burke County
 - (A) Hunting is by permit only.
 - (B) During permitted deer hunts, deer of either sex may be taken by permit holders.
 - (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31, except by lawful waterfowl hunting permit holders and only on those days written on the permits.
- (D) The use or construction of permanent hunting blinds is prohibited.
- (41) Jordan Game Land in Chatham, Durham, Orange, and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on:
 - (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July, and August, and on Sundays the remainder of the year except during open turkey and deer seasons. People age 16 or older who ride horseback on trails occurring entirely within the game land boundaries must possess a Game Lands license.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
 - (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
 - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County

- (A) Six Days per Week Area
- (B) Use of centerfire rifles is prohibited.
- (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
- (D) Tree stands shall not be left overnight; and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (E) Deer of either sex may be taken on all open days of the applicable Deer With Visible Antlers season.
- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
 - (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;
 - (ii) Christmas and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) Target shooting is prohibited.
- (50) Mitchell River Game Land in Surry County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (52) Needmore Game Land in Macon and Swain counties.
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
 - (C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.
- (53) Neuse River Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) New Lake Game Land in Hyde and Tyrrell counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Nicholson Creek Game Land in Hoke County
 - (A) Three Days per Week Area

- (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
- (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) On Lake Upchurch, the following activities are prohibited:
 - (i) Operating any vessel or vehicle powered by an internal combustion engine; and
 - (ii) Swimming.
- (I) Target shooting is prohibited.
- (56) North River Game Land in Camden and Currituck counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - (D) Hunting on the posted waterfowl impoundment is by permit only.
- (57) Northwest River Marsh Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (58) Pee Dee River Game Land in Anson, Montgomery, Richmond, and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
- (D) Target shooting is prohibited.
- (E) Horseback riding is allowed only on roads opened to vehicular traffic and only during the following times:
 - (i) during June, July, and August; and
 - (ii) on Sundays during the other months or parts of months when deer and turkey seasons are closed.
- (59) Perkins Game Land in Davie County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited from November 1 through January 1.
- (60) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (61) Pond Mountain Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails from May 16 through August 31 and Sundays from September 1 through October 31. All and all-horseback riding is prohibited from November ~~September~~-1 through May 15.
 - (D) Deer and bear hunting is by permit only.
- (62) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Rhodes Pond Game Land in Cumberland and Harnett counties
 - (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- (64) Roanoke River Wetlands in Bertie, Halifax, Martin, and Northampton counties
 - (A) Hunting is by Permit only.

- (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
- (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (66) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (67) Rockfish Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
 - (H) Taking fox squirrels is prohibited.
 - (I) Target shooting is prohibited.
- (68) Rocky Run Game Land in Onslow County: Hunting is by permit only.
- (69) Sampson Game Land in Sampson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
 - (A) Three Days per Week Area
- (B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
 - (i) deer may be taken with archery equipment on all the open days of the bow-and-arrow season through the fourth Friday before Thanksgiving; with legal muzzleloading firearms and archery equipment all the open days of the muzzleloader season through the second Saturday before Thanksgiving; and with all legal weapons from the second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
 - (iii) opossum, raccoon, and squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;
 - (v) waterfowl may be taken on open days during any waterfowl season; and
 - (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt.
- (C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the J. Robert Gordon Field Trial Grounds.
- (D) The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment on all

- open hunting days during the bow and arrow season, the Deer with Visible antlers season, and the muzzleloader season as stated in this Subparagraph.
- (E) Muzzleloader season is all the open days from the fourth Saturday preceeding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with muzzle-loading firearms on all open hunting days during the muzzleloader season and the Deer With Visible Antlers season.
- (F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
- (G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- (H) Wild turkey hunting is by permit only.
- (I) The following areas are permit-only for all quail and woodcock hunting and dog training on birds:
- (i) In Richmond County: that part east of US 1;
 - (ii) In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
- (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (K) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (L) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays, and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (73) Second Creek Game Land in Rowan County-hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
- (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the ~~Saturday Monday~~ on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is

- prohibited from September 1 through May 15.
- (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
- (A) Six-Day per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
- (D) Swimming in all lakes is prohibited.
- (E) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (F) Target shooting is prohibited.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
- (A) Hunting and trapping is by Permit only.
- (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (C) Entry is prohibited on scheduled hunt or trapping days except for:
- (i) hunters or trappers holding special hunt or trapping permits; and
- (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a game lands license prior to horseback riding on this area. People age 16 or older horseback riding on this game land must possess a Game Lands license.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery, and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.

- (C) On the posted waterfowl impoundment, waterfowl may be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
- (85) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
- (i) access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
- (ii) hunting is by permit only; and
- (iii) the use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only.
- (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (i) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands;
- (2) Bertie County—Roanoke River National Wildlife Refuge;
- (3) Bladen County—Suggs Mill Pond Game Lands;
- (4) Burke County—John's River Waterfowl Refuge;
- (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting);
- (6) Dare County—Roanoke Sound Marshes Game Lands; and
- (7) Henderson and Transylvania counties—Dupont State Forest Game Lands.
- (k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission will be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (l) Feral swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons. Dogs may not be used to hunt feral swine except on game lands that allow the use of dogs for

hunting deer or bear and during the applicable deer or bear season.

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

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

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

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

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

15A NCAC 10D .0104 FISHING ON GAME LANDS

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

(b) Designated Public Mountain Trout Waters

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

~~downstream to the natural gas pipeline crossing.~~

~~(2)(1)~~ Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond, Cheoah River downstream of Santeetlah Reservoir, Little River from 100 yards downstream of Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake, North Fork Catawba River downstream of the mouth of Armstrong Creek, Green River downstream of the natural gas pipeline crossing, and Spring Creek below US Forest Service road 223.

Dupont State Forest Game Lands in Henderson and Transylvania counties.

Three Top Mountain Game Land in Ashe County.

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

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

Thurmond Chatham Game Land in Wilkes County.

Toxaway Game Land in Transylvania County.

South Mountains Game Land in Cleveland and Rutherford counties.

Cold Mountain Game Land in Haywood County.

Green River Game Land in Henderson and Polk counties.

Pond Mountain Game Land in Ashe County.

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

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10B .0114.

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

Proposed Effective Date: May 1, 2015

Public Hearing:

Date: January 6, 2015

Time: 7:00 p.m.

Location: Auditorium, Bladen Community College, 7418 NC Hwy 41W, Dublin, NC 28332

Public Hearing:

Date: January 7, 2015

Time: 7:00 p.m.

Location: Courthouse, 212 W. Elm St., Graham, NC 27253

Public Hearing:

Date: January 8, 2015

Time: 7:00 p.m.

Location: South Stanly High School, 40488 South Stanly School Road, Norwood, NC 28128

Public Hearing:

Date: January 13, 2015

Time: 7:00 p.m.

Location: Enloe Multi-purpose Room, Tri-County Community College, 21 Campus Circle, Murphy, NC 28906

Public Hearing:

Date: January 14, 2015

Time: 7:00 p.m.

Location: Morganton Municipal Auditorium, 401 S. College Street, Morganton, NC 28655

Public Hearing:

Date: January 15, 2015

Time: 7:00 p.m.

Location: Wilkes Community College, The Walker Center, 1328 S. Collegiate Drive, Wilkesboro, NC 28697

Public Hearing:

Date: January 20, 2015

Time: 7:00 p.m.

Location: Swain Auditorium, 200 E. Church St., Edenton, NC 27932

Public Hearing:

Date: January 21, 2015

Time: 7:00 p.m.

Location: Courthouse, 302 Broad St., New Bern, NC 28560

Public Hearing:

Date: January 22, 2015

Time: 7:00 p.m.

Location: Johnston Community College, 245 College Rd., Smithfield, NC 27577

Reason for Proposed Action: At the request of the regulated community, the Wildlife Resources Commission is proposing to amend 15A NCAC 10B .0114 to clarify which people using dogs and wildlife for training, running and field trials must have hunting licenses.

Comments may be submitted to: Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1701

Comment period ends: February 8, 2015

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 (\geq \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 10 – WILDLIFE RESOURCES AND WATER
SAFETY**

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0100 – GENERAL REGULATIONS

**15A NCAC 10B .0114 DOG TRAINING AND FIELD
TRIALS**

(a) For purposes of 15A NCAC 10B and 10D, the following definitions apply:

- (1) "Commission-sanctioned field trial" means a field trial that, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence by an authorized representative of the Wildlife Resources Commission.

(2) "Active participant" means a person participating in a field trial who handles dogs or uses a firearm.

~~(b)(a) Except as provided in Paragraphs (b) and (c) of this Rule, each person using wildlife to train or run engaged in training or running a dog or dogs and each active participant in a field trial shall have obtained shall possess a North Carolina hunting license. The term "active participant" as used herein includes each person who owns or handles dogs, carries a firearm, or is a member of an organized group engaged in the conduct of a field trial, but does not include a person who is observing a field trial incidentally or who has stopped to witness a part of it.~~

~~(c)(b) A person serving as judge of a commission-sanctioned field trial is exempted from any license requirements, and any nonresident participating therein may do so without having a North Carolina license, provided the nonresident has in his possession a valid hunting license issued by the state of his residence. A "commission sanctioned" field trial is one that, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence by an authorized representative of the Wildlife Resources Commission. Judges of non-sanctioned field trials using wildlife shall possess North Carolina hunting licenses.~~

(d) Except as exempted in Paragraph (e) of this Rule, the following applies to active participants in field trials:

- (1) North Carolina residents participating in any field trial that uses wildlife shall have North Carolina hunting licenses;
- (2) a non-resident participating in a commission-sanctioned field trial that uses wildlife shall possess a North Carolina hunting license or a hunting license from his or her state of residence; and
- (3) a non-resident participating in other types of field trials that use wildlife shall possess a North Carolina hunting license.

~~(e)(e) Persons without a license may participate in commission-sanctioned field trials for beagles conducted without firearms on private field trial areas that are fenced in accordance with G.S. 113-276(k).~~

~~(f)(d) Except as allowed by rules pertaining to authorized field trials, it is unlawful to carry axes, saws or climbing irons while training or running dogs during closed season on game animals.~~

~~(g)(e) On a commission-sanctioned field trial for retrievers or bird dogs, shotguns containing live ammunition or firearms using only blank ammunition may be used only when the application for and the authorization of the field trial so provide. No wild waterfowl, quail or pheasant shall be used in field trials when shotguns with live ammunition are permitted. All waterfowl, quail and pheasants so used shall be obtained from a licensed game bird propagator. Each specimen of waterfowl so obtained shall be marked by one of the methods provided by 50 C.F.R. 21.13. Each pheasant or quail so obtained shall be banded by the propagator prior to delivery with a leg band that is imprinted with the number of his or her propagation license. The purchaser of the birds shall obtain a copy of the receipt from the propagator showing the date and the number and species of birds purchased. The copy of the receipt shall be available for~~

inspection by any authorized agent of the Wildlife Resources Commission during the time and at the place where the trial is being held.

~~(h)(f) Applications for authorization of a field trial shall be submitted in writing to a Wildlife Enforcement Officer at least 30 days prior to the scheduled event.~~

~~(i)(e) Pursuant to G.S. 113-291.1(d), hunters may train dogs using shotguns with shot of number 4 size or smaller during the closed season using domestically raised waterfowl and domestically raised game birds. Only nontoxic shot shall be used when training dogs using domestically raised waterfowl. All domestically raised waterfowl shall be individually tagged on one leg with a seamless band stamped with the number of the propagation license for the facility from which the domestically raised waterfowl originated. All other domestically raised game birds shall be individually tagged on one leg with a band indicating the propagation license number for the facility from which the birds originated.~~

Authority G.S. 113-134; 113-273; 113-276; 113-291.1; 113-291.5; 50 C.F.R. 21.13.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10F .0340.

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

Proposed Effective Date: *May 1, 2015*

Public Hearing:

Date: *January 20, 2015*

Time: *7:00 p.m.*

Location: *Swain Auditorium, 200 E. Church Street, Edenton, NC 27932*

Reason for Proposed Action: *At the request of Currituck County, the Wildlife Resources Commission is proposing to establish a no-wake zone to apply to the canals of the Waterview Shores subdivision to ameliorate boating safety risks.*

Comments may be submitted to: *Kate Pipkin, 1701 Mail Service Center, Raleigh, NC 27699-1701*

Comment period ends: *February 8, 2015*

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)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4

CHAPTER 10 – WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F – MOTORBOATS AND WATER SAFETY

SECTION .0300 – LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0340 CURRITUCK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portion of waters described as follows:

- (1) Bell's Island. The waters contained in all the canals on Bell's Island.
- (2) Walnut Island Subdivision. The waters in all the canals in the Walnut Island subdivision in the Village of Grandy.
- (3) Waterview Shores Subdivision. The waters in all the canals in the Waterview Shores subdivision in the Village of Grandy. The regulated area begins at the entrances to the subdivision from Dowdy Bay (Poplar Branch Bay) at 36.25148N, 75.87061W; 36.24981N, 75.87042W; and 36.24872N, 75.87055W.
- ~~(3)~~(4) Neal's Creek Landing. Those waters of Currituck Sound within 50 yards of Neal's Creek Landing as delineated by appropriate markers.
- ~~(4)~~(5) Tull's Bay.
 - (A) Those waters of Tull's Creek within 50 yards upstream and 50 yards downstream of and within the canal leading to Tull's Bay Marina as delineated by appropriate markers.
 - (B) Those waters which constitute the canals of the Tull's Bay Colony subdivision and 50 yards north along the Mississippi Canal from its intersection with Elizabeth Canal.

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

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

Authority G.S. 75A-3; 75A-15.

TITLE 25 – STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to adopt the rules cited as 25 NCAC 01H .0641; 01J .0616-.0618, .1302-.1320; amend the rules cited as 25 NCAC 01B .0350, .0413; 01C .0311, .0402-.0404, .1004, .1007; 01D .0201, .2701; 01E .0204, .0901, .1601-.1603, .1605; 01H .0633, .0634, .0636, .0901, .0902, .0904, .0905, .1103; 01J .0603, .0610, .0615, .1101; and repeal the rules cited as 25 NCAC 01E .1606; 01J .1201-.1208, .1301, .1401-.1412.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.oshr.nc.gov/Guide/SPC/rulemaking.htm>

Proposed Effective Date: April 1, 2015

Public Hearing:

Date: December 16, 2014

Time: 2:00 p.m.

Location: Learning and Development Center, Coastal Room, 101 West Peace Street, Raleigh, NC 27603

Reason for Proposed Action:

25 NCAC 01C .0402, .0403, .0404; 01D .0201 - These rules are being amended to conform to requirements of House Bill 834 (S.L. 2013-382) regarding the change of the probationary period from the previous three to nine months to a consistent twenty-four months. The changes clarify employees' status to be probationary until career status is achieved after twenty-four months of continuous service. Prior to the ratification of HB 834, employees' status was unclear between the completion of the probationary period and the attainment of career status. The length of the probationary period had no impact on whether an employee could be terminated prior to serving 24 months. Many employees were confused about the meaning of the probationary period and whether they were career State employees and thus required to be terminated for just cause. The ending of the probationary period before the end of 24 months had no impact on an employee's rights. Thus, the statute was amended to make it clear that the probationary period was for the entire 24 month period. As a result of the change in the probationary law, clarification is needed in the rule for those employees who may have a trainee period less than 24 months to ensure those employees are not awarded permanent status until they have completed 24 months of continuous employment.

25 NCAC 01C .1004; 01D .2701; 01H .0901, .0902, .0904, .0905 - The rules are being amended to conform to House Bill 834 (S.L. 2013-382) resulting in changes to G.S. 126, the State

Human Resources Act. A portion of this legislation changed some of the conditions under which an employee with RIF Priority has the priority satisfied or terminated. HB 834 also changed the definition of probationary period from 3 to 9 months to 24 months which impacted employee's eligibility for Reduction in Force (RIF), RIF Priority and severance salary continuation.

25 NCAC 01C .1007 - This rule is being amended to make clarifying changes, update statutory references due to the provisions of H834 (Session Law 2013-382, effective August 21, 2013), clarify that separation due to unavailability can be used in situations where an employee is not available but it is not due to a medical condition (ex., employee is incarcerated or detained in a foreign country), and clarify the inconsistency in the statute concerning the type of benefits that must be exhausted prior to the separation. The process is being changed because if an employee is unavailable due to some other circumstance which does not necessarily involve a medical condition, then the agency is currently unable to use this rule, as written, to separate the employee and fill the position. The inability to fill the position results in agency inefficiency and a loss of productivity. The lack of clarity about the meaning of the rule also results in agency inefficiency and a loss of productivity.

25 NCAC 01E .0204 - The proposed amendment to rule 25 NCAC 01E .0204, Total State Service Defined, did not have any changes in content. Amendments are a result of needed corrections and clarification. The examples for other governmental units are no longer relevant as some of these are no longer State agencies. The name of the "Agricultural Extension Service" needs to be corrected to the "Cooperative Extension Service". Clarification is necessary for local Emergency Management Agencies to ensure credit is limited to those agencies that receive federal grant-in-aid funds as required by G.S. 126-5. This is not a new law definition; however, clarification was necessary in the rule.

25 NCAC 01E .0901 - The proposed amendment to rule 25 NCAC 01E .0901, Approved Holidays, is required to bring the rule in compliance with a statutory change. On August 21, 2013, as a result Session Law 2013-382 going into effect, G.S. 126-4(5) (Powers and duties of the State Human Resources Commission) was rewritten as it relates to the Commission's authority to establish paid holidays for State employees. The change in the law specifies three paid holidays for Christmas every calendar year. Prior to the change in the law, the policy only allowed for two paid holidays for Christmas except in the years in which Christmas Day falls on Tuesday, Wednesday, or Thursday which allowed for three paid holidays in those exception years. The rule amendment is necessary to specifically define which three days will be observed for Christmas.

25 NCAC 01E .1601, .1602, .1603, .1605, .1606 - The rule amendment is required to comply with Senate Bill 402, sec. 9.1 (Sessions Law 2013-360) which required the State Human Resources Commission to establish policies and rules governing a leave program that allows employees to volunteer in a literacy program in a public school for up to five hours each month. As a result, the Community Service Leave Purpose rule is being amended to include volunteering in a literacy program as a special provision to the Community Service Leave (CSL) policy.

25 NCAC 01H .0633, .0641 - These rules are simply being split apart into two separate rules to make it easier to search for the particular topic embodied by the each separate rule. This should increase efficiencies in the human resources administration process.

25 NCAC 01H .0634 - Currently agencies are required (rule 25 NCAC 01H .0634) to maintain an individual, Human Resources Commission approved, Merit Based Recruitment & Selection Plan ("MBRSP"). These plans outline basic internal process and workflow as it relates to recruitment. The agency is proposing this change because state HR employees spend precious time editing and rewriting plans which do not need to be individualized to agencies and the time spent on these revisions is time that could be spent on mission critical efforts. Additionally, when agencies update, modernize or change an internal process, the change needs to be approved by the Human Resources Commission and the review process results in months long delays in agencies' ability to implement any change in order to comply with the requirement to update their plan. MBRSPs are an inefficient use of resources and restrict entities ability/flexibility to work within the established State policies regarding employment. Internal processes regarding employment should be part of each entity's overall operating model and key workflows. Furthermore, MBRSPs are outdated, seldom used, and they no longer add value to OSHR's ability to monitor compliance with State policy. With the deployment of E Recruit (NEOGOV), OSHR can monitor recruitment and staffing compliance at each step of the process, in real time. The elimination of individual MBRSPs will not relieve any entity of compliance with State policies or rules on employment.

25 NCAC 01H .0636 - The proposed rule would instruct agencies to verify that all employees are eligible to work and that agencies should use the E-verify program to do so. The rule is being amended to reflect a state law change from 2011 [G.S. 64-24 and G.S. 126-7.1(i)]. While there was a subsequent Office of State Human Resources (OSHR) policy change at the time, no corresponding rule change was proposed and the current rule does not specify that the E-verify system must be used to comply with the state statute. The proposed rule change will eliminate the inconsistency between the policy and rule.

25 NCAC 01B .0350, .0413; 01C .0311; 01H .1103; 01J .0603, .0610, .0615, .0616, .0617, .0618, .1101, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1301, .1302, .1303, .1304, .1305, .1306, .1307, .1308, .1309, .1310, .1311, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409 - The proposed rules are the result of two law changes as follows:

- Session Law 2011-398 (SB 781), s. 44, which was effective as to contested cases filed on or after January 1, 2012, shifted the authority from the State Human Resources Commission (SHRC) to the Office of Administrative Hearings (OAH) to make final decision in contested cases arising under Chapter 126 of the General Statutes. Neither OSHR nor OAH adopted any rules subsequent to SL 2011-398, and OAH continued to apply the Commission's rules.
- Subsequently, the legislature passed House Bill 834 (S.L. 2013-382), resulting in changes to G.S. 126, the State Human Resources Act. Although it left the final

decision in contested cases to rest with OAH, it changed other significant portions of the process applicable to contested cases, including the process applicable to grievances before they could be filed as contested cases. Specifically, OSHR was given review and approval authority by the legislature over agency/university final agency decisions in contested cases and contested cases were not permitted to be filed until OSHR reviewed and approved the final agency decision. This change applied to all cases filed after August 21, 2013.

Comments may be submitted to: Shari Howard, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (919) 807-4881; email shari.g.howard@nc.gov

Comment period ends: December 1, 2014 through January 30, 2015

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
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- ☒ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

NCAC 01E .0204

CHAPTER 01 – OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01B – STATE HUMAN RESOURCES COMMISSION

SECTION .0300 - CONTESTED CASE HEARING PROCEDURE

25 NCAC 01B .0350 TIME FRAME FOR RAISING ALLEGATION OF DISCRIMINATION

For cases arising before January 1, 2012 August 21, 2013, ~~allegations~~ Allegations of discrimination based on NCGS 126-

16, 36, 36.1 must be raised within 30 days, either in a direct appeal to the ~~State Human Resources Commission Office of Administrative Hearings~~ or within the departmental grievance procedure, of the date of the action that is alleged to be discriminatory. Failure to raise such an allegation within 30 days shall be cause to have such allegation dismissed.

Authority G.S. 126-4; 126-34.01; 126-34.02; 126-38.

SECTION .0400 - APPEAL TO COMMISSION

25 NCAC 01B .0413 EXERCISE OF COMMISSION DISCRETION

For cases arising before January 1, 2012, ~~the State Human Resources Commission will~~ shall weigh all relevant factors and circumstances in employee contested cases, including factors of mitigation and justification, in making a decision in a contested case of whether disciplinary action was imposed for just cause.

Authority G.S. 126-4(9); 126-37.

SUBCHAPTER 01C - PERSONNEL ADMINISTRATION

SECTION .0300 – PERSONNEL RECORDS AND REPORTS

25 NCAC 01C .0311 EMPLOYEE OBJECTION TO MATERIAL IN FILE

~~(a) An employee, former employee, or applicant for employment who objects to material in the employee's file may place in his or her file a written statement relating to the material he or she considers to be inaccurate or misleading.~~

~~(b) An employee, former employee, or applicant for employment who objects to material in his or her personnel file must seek the removal on the basis that the information is inaccurate or misleading by filing a grievance through the agency grievance procedure.~~

~~(c) If the agency determines that the material in the employee's personnel file is inaccurate or misleading, the agency shall remove or amend the inaccurate material so that the material objected to is accurate.~~

~~(d) The employee does not have the right to appeal the contents of a performance appraisal or written warning.~~

~~(e) No appeal involving objection to material in the file shall be filed with the Office of Administrative Hearings. An employee, former employee, or applicant objecting to material in his or her personnel file may follow the internal agency grievance procedure in order to bring the existence of inaccurate or misleading information to the attention of the agency, so long as that information is not a written disciplinary action or a performance appraisal. If, during the agency grievance procedure, the agency agrees that the information should be removed or amended from the file, the agency shall remove or amend the information. However, the employee may not appeal the agency's decision to the Office of Administrative Hearings.~~

Authority G.S. 126-25.

SECTION .0400 - APPOINTMENT

25 NCAC 01C .0402 PERMANENT AND TIME-LIMITED APPOINTMENT

(a) ~~Permanent~~— A permanent appointment is a an permanent full-time appointment to a permanent ~~full-time~~ established position. A permanent appointment shall be given ~~when~~ when the following conditions have been met:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience ~~requirements, requirements and completed 24 months of continuous employment in a position subject to the State Human Resources Act, or~~
- (3) a time-limited appointment extends beyond three ~~years, years of continuous employment.~~

(b) ~~Time limited Permanent~~— A time-limited ~~permanent~~ appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited ~~permanent~~ position. If an employee is retained in a time-limited ~~permanent~~ position beyond three years, the employee shall be designated as having a permanent appointment.

~~(c) Employees with a permanent appointment earn leave, and receive total state service credit, retirement and health benefits, and when applicable, severance pay and priority reemployment consideration. (d) Employees with a time limited permanent appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay and priority reemployment.~~

Authority G.S. 126-4.

25 NCAC 01C .0403 TRAINEE APPOINTMENTS

(a) A trainee appointment may be made to a permanent position when:

- (1) the job specification includes provisions for a trainee progression leading to regular ~~appointment, appointment;~~
- (2) recruitment efforts fail to attract qualified ~~candidates, candidates;~~
- (3) operating need warrants a ~~trainee, trainee;~~ or
- (4) the recommended applicant fails to meet State education and experience requirements.

(b) Employees with a trainee appointment earn leave, and receive total state service credit, retirement benefits, and health benefits. ~~When applicable, trainees~~ Trainees not in time limited positions subject to a reduction in force who have completed ~~six~~ 24 months of service or who had a permanent appointment prior to entering a trainee appointment shall receive severance pay as provided in G.S. 126-8.5 and priority reemployment consideration.

(c) Employees with a trainee appointment shall work 24 continuous months to attain career status. An employee with a

trainee appointment shall achieve career status but remain in a trainee appointment if the length of the trainee progression is greater than 24 months.

Authority G.S. 126-1.1; 126-4.

25 NCAC 01C .0404 PROBATIONARY APPOINTMENTS

(a) ~~Individuals~~ Reinstatements that follow a break in service or new hires receiving ~~initial~~ appointments to permanent or time-limited ~~permanent~~ positions must serve a probationary period. The probationary ~~periods~~ period is an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance ~~will~~ does not meet acceptable standards. The ~~maximum~~ length of the probationary period shall be ~~not less than three nor more than nine~~ 24 months of either full-time or part-time employment from the actual date of employment. ~~Within 90 days of employment, prior to the granting of a permanent or time limited permanent appointment, credentials~~ Credentials and application information provided by the employee must be ~~verified, verified within 90 days of employment.~~ Agencies shall inform applicants in writing that credentials must be verified as a condition of continued employment, verified prior to the granting of a permanent or time limited permanent appointment.

(b) Employees with a probationary appointment may earn leave, and receive total state service credit, retirement benefits, and health ~~benefits, benefits if applicable.~~ They are not eligible for severance pay or priority reemployment consideration.

Authority G.S. 96-29; 126-1.1; 126-4.

SECTION .1000 - SEPARATION

25 NCAC 01C .1004 REDUCTION IN FORCE

(a) A State government agency may separate an employee whenever it is necessary due to shortage of funds or work, abolishment of a position or other material change in duties or organization. Retention of employees in classes affected shall be based on systematic consideration of all the following factors: type of appointment, relative efficiency, actual or potential adverse impact on the diversity of the workforce and length of service. However, neither temporary, probationary nor trainee employees in their initial ~~six~~ 24 months of training shall be retained where an employee with a permanent appointment must be separated in the same or related class.

(b) Agency Responsibilities:

- (1) Each agency shall develop a written ~~policy~~ policy guidelines for reduction in force which meets its particular needs and provides assurance to employees that potential reductions shall be considered on a fair and systematic basis in accordance with factors defined in the reduction-in-force policy. The ~~policy~~ policy guidelines of each agency shall be filed with the Office of State Personnel as a public record; and
- (2) ~~Each agency shall inform the employee of separation as soon as possible and inform the~~

~~employee of the priority reemployment consideration available. The agency shall provide employees with a minimum of 30 calendar days written notification of separation prior to the effective date of the reduction in force. The employing agency shall notify the employee in writing of separation as soon as possible and in any case not less than 30 calendar days prior to the effective date of separation. The written notification shall include the reasons for the reduction in force, expected date of separation, the employee's eligibility for priority reemployment consideration, applicable appeal rights, and other benefits available.~~

(c) Appeals: An employee may appeal the separation if it is alleged that the separation is in retaliation for the employee's opposition to alleged discrimination against the employee on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or disabling condition as defined by Chapter 168A of the General Statutes. An employee may appeal the separation if it is alleged that the separation is a denial of the veterans' preference granted in connection with a reduction in force for an eligible veteran as provided in Chapter 126, Article 13. The appeal may be made either through the agency internal grievance procedure or may be filed directly with the Office of Administrative Hearings, at the choice of the employee. reduction in force separation only on the grounds listed in the State Employee Grievance Policy.

(d) The agency must analyze any application of its reduction-in-force policy to determine its impact on equal employment opportunity in accordance with the Equal Employment Opportunities Commission's Uniform Guidelines on Employee Selection Procedures.

(e) Severance Salary Continuation: Severance salary continuation shall be administered in accordance with the rules contained in 25 NCAC 01D .2700. Pursuant to G.S. 126-8.5, the Office of State Budget and Management is responsible for determining whether severance continuation is applicable. Prior approval shall be received from the Office of State Budget and Management before severance salary continuation is paid.

Authority G.S. 126-4(2).

25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED

(a) An employee may be separated on the basis of unavailability when the employee ~~becomes or~~ remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant a leave without pay.

(b) Prior to separation, the employing agency shall notify the employee, in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful.

(c) The employing agency also must give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. ~~Such a separation is an involuntary separation, and not a disciplinary dismissal as~~

~~described in G.S. 126-34.02 or G.S. 126-35, and may be grieved or appealed. Such a separation is not a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed.~~ The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable, that reasonable efforts were undertaken to avoid separation, and the reason the efforts were unsuccessful.

(d) Definitions:

(1) Unavailability is defined as: as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; and

(A) the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition; or

(B) the employee's inability to return to all of the position's essential duties and work schedule due other extenuating circumstances, and the employee and the agency cannot reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation.

(2) Applicable leave credits and benefits is defined as the sick, ~~vacation and~~ vacation, ~~bonus~~ bonus, family medical, and compensatory leave the employee chose to exhaust prior to going on leave without ~~pay~~-pay, but does not include short-term or long-term disability.

Authority G.S. 126-4(7a); 126-35.

SUBCHAPTER 01D – COMPENSATION

SECTION .0200 – NEW APPOINTMENTS

25 NCAC 01D .0201 INITIAL EMPLOYMENT

(a) A new appointment is the initial employment of an individual to a position ~~or the re-employment of individuals who are either not eligible for reinstatement or, at the agency's option, are not offered reinstatement.~~ in State government.

(b) An employee entering into state service in a permanent or time-limited ~~permanent~~ position shall be given a probationary or

trainee appointment appointment, unless the employee is eligible for and the agency chooses to make reinstatement with a permanent appointment. The probationary and trainee appointment periods are intended to serve as an extension of the selection process and are used to determine whether the person meets acceptable performance standards for the work for which employed. The employee shall earn all the benefits of an employee with a permanent appointment during this time.

(c) The duration of a probationary appointment shall be ~~not less than three nor more than nine~~ 24 months of either full-time or part-time employment. ~~The determination of the appropriate length shall depend on the complexity of the position and the rate of progress of the employee.~~ (This probationary period is not the same as the probationary period prescribed for criminal justice officers in 12 NCAC 05 .0401.) The duration of the trainee appointment is established for each regular classification to which a trainee appointment is made.

(d) The conditions of the probationary and trainee appointments shall be ~~clearly~~ conveyed to the applicant prior to appointment. During the probationary or trainee period, the supervisor shall work ~~closely~~ with the employee in counseling and assisting the employee to achieve a satisfactory performance level; progress of the employee shall be reviewed during discussions between the employee and the supervisor. Following the probationary period when the supervisor in consultation with other appropriate administrators determines that the employee's performance indicated capability to become a satisfactory performer and merits retention in the position, the employee shall be given a permanent appointment to the class. If the determination is that the employee's performance indicates that the employee is not suited for the position and ~~cannot be expected to~~ does not meet acceptable performance standards, the employee shall be separated from that position. Employees may ~~also~~ be separated during a probationary appointment for causes related to performance of duties or unacceptable personal conduct. Employees in ~~or~~ trainee appointment appointments who are not career State employees may also be separated for causes related to performance of duties or unacceptable personal conduct. Except in cases of alleged discrimination, harassment, or retaliation, a dismissal separation under these conditions of an employee in a trainee appointment who is not a career State employee is not subject to the right of appeal to the State Personnel Commission. may not be appealed through the agency grievance procedure and then on to the Office of Administrative Hearings.

Authority G.S. 126-1.1; 126-4; 126-34.01; 126-34.02.

SECTION .2700 – SEVERANCE SALARY CONTINUATION

25 NCAC 01D .2701 SEVERANCE SALARY CONTINUATION

~~G.S. 143-27.2~~ G.S. 126-8.5 provides for severance salary continuation or a discontinued service retirement allowance when the Director of the Budget determines that the closing of a State institution or a reduction-in-force will accomplish economies in the State Budget, provided reemployment is not available. "Economies in the State Budget" means economies

resulting from elimination of a job and its responsibilities or from a lack of funds to support the job. The provisions outlined below provide for uniform application of severance salary continuation for eligible employees:

(1) Eligible Employees:

- (a) A full-time or part-time (20 hours or over) employee with a permanent appointment who does not obtain another permanent or time-limited ~~permanent job position~~ permanent job position in State government or any other permanent position that is funded in part or in whole by the State by the effective date of the separation shall be eligible for severance salary continuation. Also eligible are employees with trainee appointments who have completed ~~six~~ 24 months of service, and employees who had a permanent appointment without a break in service prior to entering a trainee appointment;
- (b) An employee with a ~~probationary, probationary or temporary or intermittent~~ probationary appointment is not eligible for severance salary continuation;
- (c) An employee separated from a time-limited ~~permanent~~ permanent appointment is not eligible for severance salary continuation. If the time-limited appointment extends beyond three years, the appointment is made permanent and the employee becomes eligible for severance salary continuation;
- (d) An employee who is separated or ~~scheduled~~ received written notification to be separated due to reduction in force and who applies for or begins receiving retirement benefits based on early retirement, service retirement, long term disability or a discontinued service retirement as provided by G.S. 143-27.2 shall not be eligible for severance salary continuation. An employee who is eligible for early or service retirement may elect to delay retirement and receive severance salary continuation;
- (e) An employee who is reemployed from any retired status with the State and who is subsequently terminated as a result of reduction in force shall be eligible for severance salary continuation;
- (f) An employee who is receiving workers' compensation or short-term

- disability payments is eligible for severance salary continuation;
- (g) ~~An A permanent~~ employee on leave with pay or leave without pay shall be separated on the effective date of the reduction-in-force, the same as other employees, and shall be eligible to receive severance salary continuation;
- (h) An employee with a permanent appointment separated by reduction-in-force, may not accept a temporary State position and remain eligible to receive severance salary continuation in accordance with this Section;
- (i) An employee may continue to receive severance salary continuation if reemployed under a contractual arrangement in a State university or community college in accordance with ~~G.S. 143-27.2~~. G.S. 126-8.5. However, an employee receiving salary continuation may not be reemployed in any other State agency until 12 months have elapsed since the separation; and
- (j) An eligible employee who applies for a permanent or time-limited with a permanent appointment scheduled to be separated through reduction in force may decline a lower level position with regard to salary grade (or salary grade equivalency), salary rate or appointment type and is offered a lower salary rate than that held at the time of notification may decline the employment offer and retain eligibility for severance salary continuation. For an employee separated from a career banded position and applying for another career banded position, lower level is defined as a lower competency level in the same banded classification or if applying to a different banded classification, lower level is defined as a banded position with a lower journey market rate than held at the time of notification.
- (k) An eligible employee who is offered and declines to accept, either prior to or following separation, a permanent or time-limited position at the same or higher salary grade (or salary grade equivalency) or at the same of higher salary rate than that held at the time of notification is no longer eligible to receive or to continue to receive severance salary continuation. For an employee separated from a career
- banded position and offered another career banded position, same or higher level is defined as the same or higher competency level in the same banded classification or if offered a different banded classification, same or higher level is defined as a banded position with the same or higher journey market rate than held at the time of notification.
- (2) Amount and Method of Payment:
- (a) Severance salary continuation shall be based on total State service and supplemented by an age adjustment factor as follows:
- (i) Amount of Salary Continuation:
- | <u>Years of Service Payment</u> | |
|---------------------------------|----------|
| Less than 1 year | 2 weeks |
| 1 but less than 5 years | 1 month |
| 5 but less than 10 years | 2 months |
| 10 but less than 20 years | 3 months |
| 20 or more years | 4 months |
- (ii) Age Adjustment Factor:
An employee qualifies for the age adjustment factor at 40 years of age. To compute the amount of the adjustment, 2.5 percent of the annual base salary shall be added for each full year over 39 years of age; however, the total age adjustment factor payment shall be limited by the service payment and cannot exceed the total service payments;
- (b) When calculating severance, the employee's annual salary at the time of separation shall be used except when the employee has received a promotion to a higher salary grade (or salary grade equivalency) and salary rate within the previous 12 months. If an employee has been promoted within the last 12 months, the salary used to calculate severance is the employee's salary rate prior to the promotion, including any across-the-board legislative salary increases since the promotion;
- (c) Severance salary continuation shall be paid on a pay period basis and is not subject to employee or employer retirement contributions, and as a result, shall not be included in

- computing average final compensation for retirement purposes;
- (d) Any period covered by severance salary continuation shall not be credited as a period of state service;
 - (e) An employee who is reemployed in any permanent or time-limited position with the State or any other permanent position that is paid in part or in whole by the State while receiving severance salary continuation will no longer be eligible for such pay effective on the date of reemployment;
 - (f) If an employee dies while receiving severance salary continuation, the balance of such payment shall be made to the deceased employee's death benefit beneficiary as designated with the Teachers' and State Employees' Retirement System in a lump sum payment; and
 - (g) Funds for severance salary continuation shall be provided as directed by the Office of State Budget and Management.
- ~~(3) For each employee who receives severance salary continuation, agencies shall show on the separate form, Form PD-105, the calculation and amount of such payment.~~

Authority G.S. 126-4(10); 143-27.2.

SUBCHAPTER 01E – EMPLOYEE BENEFITS

SECTION .0200 – VACATION LEAVE

25 NCAC 01E .0204 TOTAL STATE SERVICE DEFINED

- (a) Total state service is the time of full-time or part-time (half-time or over) employment of an employee with a permanent, trainee, probationary or time-limited appointment, whether subject to or exempt from the State Human Resources Act. If an employee so appointed is in pay status or is on authorized military leave for one-half of the regularly scheduled workdays and holidays in a pay period, credit shall be given for the entire pay period. The employee shall receive full credit for each pay period the employee is in pay status for one-half of the employee's scheduled workdays and holidays.
- (b) Credit toward total state service shall also be given for:
 - (1) employment with other governmental units which are now state agencies; ~~agencies (for example: county highway maintenance forces, War Manpower Commission, the judicial system);~~
 - (2) authorized military leave from any of the governmental units for which service credit is granted, provided the employee returns within

- (3) the time limits outlined in the state military leave policies (see 25 NCAC 01E, Section .0800, Rules .0801 - .0819);
- (3) employment with the county ~~agricultural cooperative~~ extension service, community college system and the public school system of North Carolina, with the provision that a school year is equivalent to one full year;
- (4) employment with a local mental health, public health, or social services department if such employment is subject to the provisions of the State Human Resources Act; ~~services or emergency management agency in North Carolina;~~
- (5) employment with a local emergency management agency in North Carolina that receives federal grant-in-aid funds.
- ~~(5)(6)~~ employment with the General Assembly (except for legislators, participants in the Legislative Intern Program and pages).

Authority G.S. 126-4; 126-8.

SECTION .0900 – HOLIDAYS

25 NCAC 01E .0901 APPROVED HOLIDAYS

~~G.S. 126-4(5) specifies the number of holidays to be observed and mandates the observance of Martin Luther King, Jr.'s Birthday and Veterans' Day. The State Personnel Commission shall designate the remaining holidays to be observed. The following additional holidays are adopted by the State Personnel Commission and approved by the Governor: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving (2 days), and Christmas (2 or 3 days). In addition to Martin Luther King, Jr.'s Birthday and Veteran's Day, the following are designated as holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, and December 25 (Christmas) and the last business day before Christmas and the first business day after Christmas.~~

Authority G.S. 126-4(5).

SECTION .1600 – COMMUNITY SERVICES LEAVE

25 NCAC 01E .1601 PURPOSE

(a) A supervisor may approve Community Service Leave for employees as follows:

- (1) for parents for ~~child~~ involvement with their child in the schools as defined in ~~21 NCAC 01E .1602; in Rule .1602 of this Section.~~
- (2) for any employee to volunteer in the schools or in a Community Service Organization as defined in ~~21 NCAC 01E .1602; in Rule .1602 of this Section;~~
- ~~(3) for any employee to tutor or mentor in the schools as defined in 21 NCAC 01E .1602; or~~
- ~~(4)(3)~~ for any employee to volunteer in a Public University, Community College or State

agency as defined in ~~21 NCAC 01E .1602~~ Rule .1602 of this Section provided that the service is outside of the employee's normal scope of duties and responsibilities and that the employee is not receiving any form of compensation for the services rendered.

(b) A supervisor may approve special provisions for volunteer work as follows:

- (1) tutoring and mentoring in public or non-public school as defined in Rule .1602 in this Section;
or
- (2) volunteering in a literacy program in a public school as defined in Rule .1602 in this Section.

Authority G.S. 126-4.

25 NCAC 01E .1602 DEFINITIONS

When used in this Section, these terms have the following meaning:

- (1) School - An elementary school, a middle school, a high school, or a child care program that is authorized to operate under the laws of the State of North Carolina.
- (2) Public University - A constituent institution of the University of North Carolina.
- (3) Community College - An educational institution that is a member of the North Carolina Community College System.
- (4) State Agency - A State government agency that is authorized to operate under the laws of the State of North Carolina.
- (5) Child - A son or daughter who is a biological child, an adopted child, a foster child, a step-child, a legal ward, or a child of an employee standing in loco parentis.
- (6) Community Service Organization - A non-profit, non-partisan community organization which is designated as an IRS Code 501(c)(3) agency, or a human service organization licensed or accredited by the State of North Carolina to serve citizens with special needs including children, youth, and the elderly.
- (7) Community Service – The act of supporting citizens of North Carolina through volunteer service.
- (8) Volunteer – A person who willingly chooses to perform hours of service for civic, charitable or humanitarian reasons without promise or expectation of compensation for services provided.

Authority G.S. 126-4.

25 NCAC 01E .1603 COVERED EMPLOYEES AND LEAVE CREDITS

~~(a) A full-time employee with a permanent, probationary, trainee or time-limited appointment (prorated for part time employees) whose service is satisfactory may be granted 24 hours of community service leave each calendar year.~~

or in lieu of the 24 hours award, with the approval of the supervisor, an employee may be eligible to choose one of the following leave options:

- (1) 24 hours of community service leave each year, or Tutoring and Mentoring - up to one hour per week, not to exceed 36 hours in a calendar year; or
- (2) In lieu of the 24 hour award as noted above, an employee may elect to receive one hour of community service leave for each week that schools are in session as documented by the elected board of the local education agency or the governing authority of any non public school. This leave award shall be used exclusively for tutoring or mentoring a student in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the employee's agency or university and the school. Literacy Program – up to five hours per month, not to exceed 45 hours a calendar year.

(b) The 24 hours of paid-leave shall be credited to employees on January 1 of each year, unless they choose the tutoring/mentoring option. New employees shall be credited with leave immediately upon their employment, prorated at two hours per month for the remainder of the calendar year. Separated employees who are reemployed within the same calendar year shall be credited leave the same as a newly hired employee; however, the combination of reemployment credit and total hours used prior to separation in the same calendar year shall not exceed the annual 24 hour maximum leave benefit.

(c) Part-time (half time or more) employees with a permanent, probationary, trainee or time-limited appointment may be granted leave prorated proportionately to the percentage awarded to full-time employees.

(d) If an employee chooses to change leave options from regular Community Service Leave to the special leave provisions for volunteering for the tutoring or mentoring program or the literacy program or vice versa, during the calendar year, the maximum hours that may be granted is the maximum allowed under the new option chosen minus the amount already used.

Authority G.S. 126-4.

25 NCAC 01E .1605 COMMUNITY SERVICE LEAVE ADMINISTRATION

~~Each agency shall set forth a policy and procedure that shall be administered consistently and shall include:~~ shall administer the leave program as follows:

- (1) Employees must receive approval from their supervisor to use this leave. The agency may require that the leave be taken at a time other than the one requested, based on the needs of the agency. The agency may require proof to the supervisor that leave taken is being utilized within the purpose of this policy. Subchapter.
- (2) Leave shall only be requested and approved for community service that occurs during the

employee's regularly scheduled hours of work. Agencies with shift employees regularly scheduled to work evening or night shift with a shift schedule in excess of eight hours may allow the use of community service leave in situations where the employee's participation in community service outside of the normal work schedule significantly impacts the employee's normal sleep period.

- (3) Reasonable travel time may be included in approved time for community service, but only for the time that intersects the employee's regular work schedule.
- (2)(4) If an employee transfers to another State agency, any balance of the community service leave not used shall be transferred to the new agency. Under the tutoring/mentoring or literacy leave option, the employee should secure approval from the new supervisor to continue with that option prior to the transfer.
- (3)(5) Leave not taken in a calendar year is forfeited; it shall not be carried over into the next calendar year.
- (4)(6) Employees shall not be paid for this leave upon separation from State government.
- (5)(7) Supervisors who approve community service leave shall maintain records indicating the number of employees involved and the number of hours used. The use of community service leave shall be reported separately from all other paid leave. Employees and supervisors are responsible for the timely and accurate reporting of the use of community service leave on the employee's time record.

Authority G.S. 126-4.

25 NCAC 01E .1606 ADDITIONAL TIME FOR COMMUNITY SERVICE ACTIVITIES

~~The agency may allow an employee additional time away from regular duties above the 24 hours of paid leave to perform community service activities with provisions for the employee to make up the time.~~

Authority G.S. 126-4.

SUBCHAPTER 01H – RECRUITMENT AND SELECTION

SECTION .0600 – GENERAL PROVISIONS

25 NCAC 01H .0633 SPECIAL APPLICANT CONSIDERATIONS RELATED TO PRIORITY

~~(a)~~ Priority consideration shall be given to:

- (1) Employees with career status who have received written notification of imminent separation due to reduction in force;
- (2) Eligible employees who have been removed from exempt positions, for reasons other than cause;

- (3) Eligible employees who have been removed from an exempt managerial position for a violation of G.S. 126-14.2;
- (4) Employees returning from workers' compensation leave;
- (5) Career State employees seeking promotions; and
- (6) Eligible veterans.

~~(b) Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. This includes employment on a permanent, temporary or contractual basis. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step, half and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.~~

Authority G.S. 126-4(4); 128-15.

25 NCAC 01H .0634 SELECTION OF APPLICANTS

(a) All agencies shall select from the pool of the most qualified persons to fill vacant positions. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence. For purposes of this rule, "political influence" occurs when political affiliation impacts the decision to hire or not to hire and the selection decision was not based on fair and valid selection criteria.

~~(b) Each agency shall develop and maintain a written Recruitment and Selection Plan according to guidelines provided by the Office of State Human Resources. The Recruitment and Selection Plan shall provide assurances to employees and applicants that the recruitment and selection process shall be based on fair and valid selection criteria. Agency plans shall be reviewed by the Office of State Human Resources and approved by the State Human Resources Commission consistent with G.S. 126-14.3 and the rules in this Section. Any changes to agency plans shall also be submitted to the Office of State Human Resources for review and approval according to these Rules.~~

~~(c)~~(b) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications as defined in Rule .0635 of this Section including selective criteria. Selective criteria are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of the most qualified candidates shall be identified. The pool of most qualified candidates shall be those individuals determined to be substantially more qualified than other applicants. The individual selected for the position shall be from among the most qualified applicants.

~~(d)(c)~~ Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.
~~(e)(d)~~ The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the most qualified pool.

Authority G.S. 126-4(4); 126-14.3.

25 NCAC 01H .0636 EMPLOYMENT: E-VERIFY

(a) The Immigration Reform and Control Act (IRCA) of 1986 requires that all U.S. employees be either United States citizens or aliens with proper work authorization from the Bureau of U.S. Citizenship and Immigration Services.

(b) All State agencies shall, no later than the third working day after the hire, verify the employment eligibility of all employees hired after November 6, 1986. Verification must establish both identity and employment authorization and shall follow the requirements of the ~~IRCA~~. IRCA, using the E-verify program (Title IV, Subtitle A, of the Illegal Immigration Reform and Control Action of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009).

Authority G.S. 126-4(4); P.L. 101-649; 8 C.F.R. Parts 109 and 274a, 1987.

25 NCAC 01H .0641 EMPLOYMENT OF RELATIVES

Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of the employee's immediate family, or if one member will occupy a position which has influence over another member's employment, promotion, salary administration or other related management or personnel considerations. This includes employment on a permanent, temporary or contractual basis. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included is the step-, half- and in-law relationships based on the listing in this Paragraph. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration or other related management or personnel considerations.

Authority G.S. 126-4(4).

SECTION .0900 – REDUCTION-IN-FORCE - PRIORITY REEMPLOYMENT

25 NCAC 01H .0901 REDUCTION IN FORCE APPLICATION AND APPEAL

(a) The rules in this Section apply to employees notified of or separated due to a reduction in force.

(b) Priority consideration shall be provided to career State employees who have received written notification of imminent separation due to reduction in force. An employee who is separated from a time-limited appointment is not eligible for priority consideration unless the appointment extends beyond three years.

(c) A career State employee, as defined in G.S. 126-1.1, with priority consideration who has reason to believe priority consideration was denied in violation of law in a selection ~~decision~~ decision, and who chooses to appeal may shall appeal ~~directly to the State Human Resources Commission~~ through the ~~established contested hearing process in accordance with G.S. 126-34.1(a)(5).~~ agency grievance procedure in accordance with G.S. 126-34.02 on the grounds permitted by law.

Authority G.S. 126-1A; 126-5(c)(2); 126-5(d)(1); 126-7.1.

25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY CONSIDERATION

Upon written notification of imminent separation through reduction in force (RIF), ~~an employee~~ a career state employee shall receive priority consideration for positions at an equal or lower salary grade (or salary grade equivalency) for a period of 12 months pursuant to ~~G.S. 126-7.1(c1).~~ G.S. 126-7.1, unless the priority has been satisfied in accordance with this Section. The following conditions apply:

~~(1) If the applicants for reemployment for a position include State employees currently possessing priority consideration as a result of RIF, a RIF employee with more than 10 years of service shall receive priority consideration over a RIF employee having less than 10 years of service in the same or related position classification;~~

~~(2)(1)~~ For employees receiving notification of imminent separation from trainee or flat rate positions, the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade shall be the grade which has as its maximum a rate nearest to the flat rate salary of the eligible employee. For eligible employees in trainee status, the salary grade shall be the salary grade of the full class;

~~(3)(2)~~ An employee notified For employees receiving notification of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority consideration period shall then ~~be afforded~~ begin at the salary grade (or salary grade equivalency), ~~salary rate and appointment status~~ of the position held at the most recent notification of ~~separation;~~ separation and shall expire 12 months from the most recent notification date;

~~(4)(3)~~ An employee who, If after receiving formal notice of impending imminent reduction in force, an employee ~~retires,~~ retires or applies for retirement or leaves state government employment prior to the separation date ~~waives the~~ an employee has no right to priority consideration. ~~consideration; An employee who applies for retirement after~~

- ~~being separated through reduction in force may exercise priority consideration;~~
- (5)(4) ~~Priority consideration is intended to provide employment at an equal or appointment status to that held at the time of notification. Acceptance of a position at a lower appointment status shall not affect priority. Employees notified of separation from permanent full-time positions shall have priority consideration to for permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority consideration to for permanent part-time positions only;~~
- (6)(5) Employees who have priority status at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as priority applicants until the selection process is complete;
- (7)(6) ~~An If an employee with priority status may not decline applies for a position but declines an interview or offer of the position, interviews or offers for positions within 35 miles of the employee's original work station without losing the employee loses priority and any remaining severance salary continuation, if the position is at an appointment status, a salary grade (or salary grade equivalency), and or salary rate equal to or greater than that held at the time of notification;~~
- (7) If an employee with priority status is placed in a position within 35 miles of the employee's original work station prior to the separation due to reduction in force, the employee does not lose priority if the position is at a lower salary grade (or salary grade equivalency) or salary rate less than that held at the time of notification and if the position is at the same appointment status;
- (8) An employee with priority status may accept a temporary position at any level and retain priority ~~consideration, consideration and severance salary continuation.~~ An employee receiving severance salary continuation shall not be employed under a contractual arrangement in any State agency, other than State universities and community colleges, until 12 months have elapsed since the separation as provided by G.S. 143-27.2; G.S. 126-8.5;
- (9) When priority has been granted for a lower salary grade (or salary grade equivalency) ~~or~~ and salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) ~~and salary rate~~ up to and including that held at the time of the notification of separation;
- (10) An employee with priority consideration may accept employment outside State government or in a State position not subject to the State Human Resources Act and retain such consideration through the 12-month priority period;
- (11) Priority consideration for an eligible employee is terminated ~~when an eligible employee:~~ when:
- (a) an employee accepts a position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation; or refuses an interview or offer for a position within 35 miles of the employee's original workstation if the position is at an appointment status and the same salary grade (or salary grade equivalency) salary grade (or salary grade equivalency) and salary rate equal to or greater than that held at the time of notification;
- (b) an employee accepts a permanent or time-limited position with the State equal to or greater than the salary employee's salary grade (or salary grade equivalency) grade (or salary grade equivalency), salary rate and appointment status of the full-time or part-time position held at the time of notification; notification, in accord with Item (4) of this Rule; or
- (c) an employee accepts a career banded position at the same or higher competency level in the same banded classification as held at the time of notification; or
- (d) an employee accepts a career banded position in a different banded classification with the same or higher journey market rate than that held at the time of notification; or
- (e)(e) an employee has received 12 months priority consideration;
- (f) an employee applies for retirement or retires from State employment.
- (12) Priority consideration for employees notified of or separated through reduction in force does not include priority to any exempt positions;
- (13) When an employee with priority status accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) grade (or salary grade equivalency) or salary rate and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and

- (14) An employee with priority status ~~may be [is] required to~~ shall serve a new probationary period ~~only when: when there is a break in service, as defined in 25 NCAC 01D .0114.~~

- (a) ~~the essential duties and responsibilities of the position into which the employee is being reemployed are significantly different from those of the position held at the time of reduction in force notification;~~
- (b) ~~the prior, documented performance history of the employee indicates performance failings; or~~
- (c) ~~the prior, documented unacceptable personal conduct of the employee would make a probationary period a prudent protection of agency interests.~~

A decision by an agency to require a new probationary period shall not, however, nullify the employee's right to a future period of priority reemployment status should that employee receive reduction in force notification again while serving in probationary status.

Authority G.S. 126-4(6),(10); 126-7.1.

25 NCAC 01H .0904 AGENCY AND EMPLOYEE RESPONSIBILITIES

(a) The employing agency shall notify the employee of ~~impending imminent~~ separation in accordance with ~~G.S. 126-7.1(a1), G.S. 126-7.1(b)~~ and inform the employee of the priority consideration to be afforded.

(b) The agency shall notify the Office of State Human Resources when:

- (1) an employee is officially notified of reduction in force;
- (2) an eligible employee accepts a position that satisfies the priority consideration;
- (3) ~~an employee with priority status due to reduction in force is offered a lateral transfer or promotion and refuses, unless the position offered is more than 35 miles from the employee's original workstation; or an eligible employee refuses an interview or an offer that would satisfy the priority consideration; or~~
- (4) other conditions that would satisfy or terminate an eligible employee's priority consideration are discovered.

Authority G.S. 126-4(6),(10); 126-7.1.

25 NCAC 01H .0905 OFFICE OF STATE HUMAN RESOURCES RESPONSIBILITIES

(a) The Office of State Human Resources shall maintain a list of employees notified of reduction in force that will serve as a

reference for agencies in applying priority consideration reemployment.

~~(b) The Office of State Human Resources shall also provide outplacement assistance to separated employees who wish to seek employment in the private sector. Such assistance includes resumé preparation, personal marketing, and interview skills, along with Employment Security Commission coordination for placement referral.~~

Authority G.S. 126-4(6),(10).

SECTION .1100 – VETERANS' PREFERENCE

25 NCAC 01H .1103 DENIAL OF VETERANS' PREFERENCE

Any claim or allegation that veterans' preference has not been accorded to an eligible veteran shall ~~be filed with the State Human Resources Commission through the contested case procedures of the Office of Administrative Hearings.~~ Such claims shall be filed in a manner consistent with the requirements of G.S. 150B-23 and G.S. 126-38. Such claims shall be heard as contested cases pursuant to G.S. 150B, Article 3. ~~The State Human Resources Commission may, upon a finding that veterans' preference was denied in violation of these Rules, order the employment, subsequent employment, promotion, reassignment or horizontal transfer of any affected person, as well as any other remedy necessary to correct the violation. first follow the agency grievance procedure.~~

Authority G.S. 126-4(10); 126-4(11); 128-15; 150B, Article 3; S.L. 2013-382, s. 6.1.

SUBCHAPTER 01J – EMPLOYEE RELATIONS

SECTION .0600 – DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL

25 NCAC 01J .0603 APPEALS

(a) A career employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his or her receipt of written notice of such action to file an appeal with his department/university grievance procedure. If an employee does not appeal his or her dismissal through the agency grievance procedure within 15 days, ~~the initial letter of dismissal setting forth the specific acts or omissions that are the basis of the dismissal shall become the agency's final agency decision. then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-34.02.~~

(b) If an employee appeals his or her dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure. ~~Grievances which do not allege discrimination, a violation of G.S. 126-7.1(a) or (c), a violation of G.S. 126-82, or that do not allege a denial of employment or promotion in violation of G.S. 126-14.2 must follow the department or university grievance procedure. An appeal to the State Human Resources Commission of a final departmental or university decision must~~

be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 within 30 calendar days of receipt of the final agency decision. Grievances which allege unlawful workplace harassment must be submitted in writing to the agency or department, within 30 calendar days of the alleged harassing action, and the agency or department must be given 60 calendar days in which to take remedial action, if any, unless the department or agency has waived the 60-day period, and the employee has acknowledged such waiver. The acknowledgement and waiver shall be in writing. An appeal to the State Human Resources Commission of unlawful workplace harassment must be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and within 30 calendar days of notification of the remedial action, if any, taken by the agency.

(b)(c) Grievances which that allege discrimination not including unlawful workplace harassment may, at the election of the employee, proceed through the department or university procedure or proceed directly to the State Human Resources Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a decision by that agency to the SPC) alleging discrimination not including unlawful workplace harassment must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act discrimination, harassment, or retaliation must also follow the agency grievance process. Employees with grievances alleging discrimination, harassment, or retaliation who do not follow the agency grievance process shall have no right to file a contested case with the Office of Administrative Hearings.

(e) Grievances which allege a violation of G.S. 126-14.2 must be filed with the Civil Rights Division of the OAH within 30 calendar days after the employee or applicant receives written notice that the position in question has been filled. The employee or applicant must file a petition for a contested case hearing pursuant to G.S. 126-34.1 and Article 3 of Chapter 150B within 15 days of the initial determination by the OAH Civil Rights Division that there has been a violation of G.S. 126-14.2.

(d) Grievances filed on an untimely basis (see G.S. 126-14.4; 126-35; 126-36 and 126-38) must be dismissed. Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act must be dismissed. Grievances alleging unlawful workplace harassment raised more than 30 calendar days after notification of the remedial action, if any, taken by the agency must be dismissed.

(d) The following grievances must also follow the agency grievance procedure before being filed in the Office of Administrative Hearings: denial of veteran's preference provided for in Chapter 128 of the General Statutes; denial of hiring or promotion because of an unlawful failure to post a position; denial of hiring or promotion due to failure to receive career State employee priority consideration; denial of hiring or promotion due to failure to receive reduction in force priority consideration; and a whistleblower grievance as provided in Article 14 of Chapter 126.

Authority G.S. 126-1A; 126-35; 126-34.01; 126-34.02; 150B, Article 3; 150B-23.

25 NCAC 01J .0610 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and assure that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may constitute unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related ~~and~~ or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee must receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning must:

- (1) ~~Inform~~ inform the employee that this is a written warning, and not some other non-disciplinary process such as counseling;
- (2) ~~Inform~~ inform the employee of the specific issues that are the basis for the warning;
- (3) ~~Tell~~ tell the employee what specific ~~improvements if applicable~~ improvements, if applicable, must be made to address these specific issues;
- (4) ~~Tell~~ tell the employee the time frame allowed for making the required improvements/corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
- (5) ~~Tell~~ tell the employee the consequences of failing to make the required improvements/corrections;

(b) A written warning must be issued in accordance with the procedural requirements of this ~~Section. Section, and include any applicable appeal rights.~~

Authority G.S. 126-4; 126-34.02.

25 NCAC 01J .0615 INVESTIGATORY LEAVE

(a) ~~PLACEMENT ON INVESTIGATION~~ Investigation status Investigatory leave with pay is used to temporarily remove an employee from work status. Placement on ~~investigation~~ investigatory leave with pay does not constitute a disciplinary action as defined in this ~~Section~~ Section, G.S. 126-34.02, or in G.S. 126-35. Management must notify an employee in writing of the reasons for ~~investigatory~~ placement on investigatory leave not later than the second scheduled work day after the beginning of the placement. ~~An investigatory placement~~ Investigatory leave with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Human Resources Director. The State Human Resources Director shall approve an extension of the period of investigatory ~~status~~ leave with pay, for no more than an

additional 30 calendar days, for one or more of the following reasons:

- (1) The matter is being investigated by law enforcement personnel, ~~and the investigation is not complete;~~ complete, and the agency is unable to complete its own independent investigation without facts contained in the law enforcement investigation, and the agency is unable to conduct its own investigation; or
- (2) A management individual who is necessary for resolution of the matter is temporarily unavailable; or
- (3) A person or persons whose information is necessary for resolution of the matter is/are temporarily unavailable.

(b) When an extension beyond the 30-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings ~~upon~~ made during the investigation or return the employee to active work status. It is not permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

(c) It is permissible to place an employee ~~in investigation status with pay on investigatory leave~~ only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place and to protect the safety of persons or ~~property.~~ property; or
- (4) To facilitate a management directed referral or fitness for duty/risk evaluation to ensure the employee's safety and the safety of others and/or to obtain medical information regarding the employee's fitness to perform his or her essential job functions; or
- (5) For other good cause shown, only as approved by the State Human Resources Director.

~~(d) CREDENTIALS - Some duties assigned to positions in the state service may be performed only by persons who are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions shall be specified in the statement of essential qualifications or recruitment standards for classifications established by the State Human Resources Commission. Employees in such classifications shall obtain and maintain current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to~~

~~obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance. Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:~~

- ~~(1) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 01J .0608.~~
- ~~(2) In all other cases of post hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.~~
- ~~(3) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.~~

~~(e) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.~~

~~(f) Warnings and placement on investigation with pay are not grievable unless an agency specifically provides for such a grievance in its agency grievance procedure. Absent an allegation of a violation of G.S. 126-25, warnings shall not be appealable to the State Human Resources Commission.~~

~~(g) An agency shall furnish to an employee as an attachment to the written documentation of any grievable disciplinary action, a copy of the agency grievance procedure.~~

~~(h) Each state agency shall adopt and submit to the State Human Resources Commission an internal grievance procedure that includes as an attachment an agency employee relations policy which:~~

- ~~(1) Sets out the manner and mechanism with which employees are notified of changes in agency policy and State Human Resources Commission rules;~~
- ~~(2) Sets out the policy on the use of disciplinary suspension and the procedure for the issuance of warnings;~~
- ~~(3) Sets out the policy on the retention of warnings and other disciplinary actions in employee personnel files; and~~
- ~~(4) Sets out the policy on how an employee may access the employee's personnel file.~~

~~(i) Each state agency shall maintain records and provide the OSP information and statistics on the discipline and dismissal process commencing in January 1996 and every year thereafter.~~

~~(j) Each state agency shall insure that designated personnel are trained in the administration of this Section.~~

Authority G.S. 126-4; 126-35; S.L. 2013-382.

25 NCAC 01J .0616 CREDENTIALS

(a) Some duties assigned to positions in the state service may be performed only by persons who are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions shall be specified in the statement of essential qualifications or recruitment standards for classifications approved by the State Human Resources Commission. Employees in such classifications shall obtain and maintain current, valid credentials as required by law.

(b) Failure to obtain or maintain the legally required credentials constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance.

(c) Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:

- (1) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with Rule .0608 of this Section.
- (2) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
- (3) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.

Authority G.S. 126-4; 126-35; S.L. 2013-382.

25 NCAC 01J .0617 DISCRIMINATION AND RETALIATION

Neither race, religion, color, national origin, sex, age, political affiliation, disability or genetic information shall be considered in making any decisions about any term or condition of employment for any employees or applicants. Nor shall the fact that an employee or applicant has complained about discrimination or participated in a hearing, proceeding, or investigation of discrimination be considered when making any decisions about any term or condition of employment.

Authority S.L. 2013-382, s. 7.1.

25 NCAC 01J .0618 APPEAL OF DENIAL OF VETERAN'S PREFERENCE

An appeal by an applicant, employee, or former employee that he or she was denied a veteran's preference in initial

employment, subsequent hiring, promotion, reassignment, horizontal transfer, or other employment event in violation of the law shall first be made through the agency grievance procedure.

Authority S.L. 2013-382, s. 6.1.

SECTION .1100 – UNLAWFUL WORKPLACE HARASSMENT

25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARASSMENT AND RETALIATION

(a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful workplace ~~harassment~~ harassment, including sexual harassment or retaliation based on opposition to unlawful workplace harassment of state employees or ~~applicants and applicants.~~ ~~to require that every~~ Every agency and university with employees subject to the State Human Resources Act ~~shall establish policies and programs~~ develop strategies to ensure that work sites are free of unlawful workplace harassment, sexual harassment, discrimination and retaliation.

(b) As used in this Rule:

- (1) ~~Unlawful workplace harassment~~ "unlawful workplace harassment" ~~is defined as means~~ unsolicited and unwelcome speech or conduct based upon race, sex, ~~creed,~~ religion, national origin, age, color, ~~or disabling conditions as defined by G.S. 168A.3~~ disability, or genetic information that creates a hostile work environment or under circumstances involving quid pro quo.
- (2) ~~Hostile Work Environment is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.~~
- (3) ~~Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:~~
 - (A) ~~submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or~~
 - (B) ~~submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.~~
- (3)(2) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:

- (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- (C) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(4)(3) Retaliation "retaliation" is defined as means adverse action taken against an individual for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, disability or genetic information or because of opposition to employment practices in violation of the unlawful workplace harassment. harassment policy.

(c) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace harassment, sexual harassment or retaliation as defined in Paragraph (b) of this Rule, retaliation, and no personnel employment decisions shall be made on the basis of race, sex, ~~ereed~~, religion, national origin, age, color, or ~~disabling condition~~ as defined by G.S. 168A.3. disability, or genetic information.

(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation.

(e) Coverage of the Rule includes:

- (1) applicants,
- (2) former employees, and
- (3) full-time and part-time employees with either a permanent, probationary, trainee, time-limited or temporary appointment.

(e) Grievances. Any current or former state employee who feels he or she has been the victim of unlawful workplace harassment or retaliation in violation of this Rule shall file a grievance through the departmental grievance procedure. Filing such a written complaint is a prerequisite to any further appeal to the Office of Administrative Hearings regarding unlawful workplace harassment or retaliation. After the employee's written complaint is submitted to the agency or university, the department, agency or university shall have 60 days within which to consider the complaint and take any remedial action, unless the department, agency or university has waived the 60-day period, and the employee has acknowledged such waiver. The waiver and acknowledgement shall be in writing. Any current or former state employee who feels that he or she has been subjected to unlawful workplace harassment or retaliation may appeal directly to the Office of Administrative Hearings (such appeal consisting of a contested case hearing under G.S. 150B and a decision by the Office of Administrative Hearings)

~~only after submitting a written complaint through the agency grievance and waiting 60 days or receiving notification of remedial action, if any, by the department, agency or university whichever shall occur first.~~

(f) ~~Agency or University Plans.~~ Prevention Strategies. Each agency head or university chancellor shall develop strategies to prevent unlawful workplace harassment. These strategies at the minimum should include:

- (1) a commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment or retaliation;
- (2) training and other methods to prevent harassing actions; and
- (3) a process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees.

Workplace harassment prevention strategies shall be included as part of the agency Equal Employment Opportunity (EEO) plan. include as a supplement to the Affirmative Action Plan or Equal Employment Opportunity Plan a plan setting forth the steps to be taken to prevent and correct unlawful workplace harassment and retaliation. Each department, agency or university shall submit such a plan to the Office of State Human Resources for review, technical assistance, and approval by the Director of the Office of State Human Resources. Each plan on unlawful workplace harassment and retaliation shall include:

- (1) ~~publication and dissemination of a policy statement establishing that unlawful workplace harassment and retaliation of employees and applicants is prohibited;~~
- (2) ~~establishment of internal procedure to handle complaints of unlawful workplace harassment and retaliation. This procedure shall provide investigation and resolution of complaints within the department or university and shall offer the employee recourse other than through the immediate supervisor;~~
- (3) ~~utilization of training and other methods to prevent unlawful workplace harassment and retaliation;~~
- (4) ~~statement that the department will, in allegations of unlawful workplace harassment or retaliation, review the entire record and the totality of the circumstances, to determine whether the alleged conduct constitutes unlawful workplace harassment or retaliation;~~
- (5) ~~development of disciplinary actions for conduct determined to constitute unlawful workplace harassment or retaliation, to be implemented on a case by case basis on the facts of each complaint;~~
- (6) ~~prohibition of internal interference, coercion, restraint or reprisal against any person complaining of alleged unlawful workplace harassment or retaliation; and~~
- (7) ~~notification to all employees that a complaint or allegation of unlawful workplace harassment or retaliation must be filed within the department, agency or university and that~~

~~the department, agency or university has 60 days (or fewer, if waived by the department, agency or university and acknowledged by employee) to take action, if any, in response to the complaint prior to the filing of a complaint of unlawful workplace harassment or retaliation with the Office of Administrative Hearings.~~

Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36; 126-36.1.

SECTION .1200 – EMPLOYEE GRIEVANCES

25 NCAC 01J .1201 GENERAL PROVISIONS

~~(a) This Section contains general provisions for two grievance procedure options: the Employee Appeals and Grievance Process, 25 NCAC 01J .1301 and the Employee Mediation and Grievance Process, 25 NCAC 01J .1400.~~

~~(b) Agencies may choose to adopt the Employee Appeals and Grievance Process, which does not offer mediation, or choose to adopt the Employee Mediation and Grievance Process. The provisions of 25 NCAC 01J .1201 through .1208 apply to both processes.~~

~~(c) An employee who has access to the agency grievance procedure shall initiate the grievance proceeding no later than 15 calendar days after the last act that constitutes the basis of the grievance.~~

~~(d) For the purpose of this Section, except for appeals brought under G.S. 126-25, the term "career state employee" as used in this Section shall have the meaning assigned to it by the State Personnel Act. The employee must have attained career status at the time the act, grievance or employment practice that is the basis of the grievance occurs.~~

~~(e) Neither the agency nor the employee shall be represented by any outside parties during any internal grievance or mediation proceedings.~~

Authority G.S. 126-1.1; 126-4(17); 126-25; 126-34; 126-35; 126-39.

25 NCAC 01J .1202 AGENCY RESPONSIBILITIES

~~(a) The agency grievance procedure shall be implemented and continuously evaluated by the agency. Each agency shall, on or before January 1 of each even numbered year, submit to the Office of State Personnel either:~~

- ~~(1) the current agency grievance procedure for approval; or~~
- ~~(2) a statement that its grievance procedure has not changed since January 1 of the last prior even numbered year, including a certification that the current agency procedure is in compliance with current state law and rules and the effective date of the last change to the agency procedure.~~

~~(b) The Office of State Personnel shall review the reports of each agency as required by Rule .1203 of this Section and the grievance procedures of each agency for compliance with applicable law, rules and good employee relations practices.~~

~~After such review and following resolution of any areas of disagreement, the Office of State Personnel shall forward the grievance procedure to the State Personnel Commission for reaffirmation of an unchanged agency grievance procedure previously approved or for approval of a new or modified agency grievance procedure. No agency grievance procedure is applicable to any employee until it has been approved by the State Personnel Commission.~~

Authority G.S. 126-4(9).

25 NCAC 01J .1203 AGENCY GRIEVANCE REPORTS

~~(a) Every agency shall, semi-annually and as otherwise requested by the Office of State Personnel, compile information on employee grievances. These reports shall be due to the Office of State Personnel on the first business day of each of the following months: January and July.~~

~~(b) The Office of State Personnel shall make reports to the full State Personnel Commission at its February and August meetings based upon the information supplied in these semi-annual agency reports.~~

Authority G.S. 126-4(9).

25 NCAC 01J .1204 DISCRIMINATION AND RETALIATION / SPECIAL PROVISIONS

~~Employees alleging illegal discrimination or retaliation may choose to follow the agency grievance procedure, including mediation, or choose to appeal directly to the State Personnel Commission. The 30 day timeframe to file a grievance alleging discrimination must be adhered to whether the employees choose to follow the agency grievance procedure, including mediation, or whether they choose to appeal directly to the State Personnel Commission by filing a petition for a contested case hearing with the Office of Administrative Hearings. The 30 day timeframe is not applicable to discrimination complaints filed with the Equal Employment Opportunity Commission.~~

Authority G.S. 126-4(9); 126-16; 126-17; 126-34.1(a); 126-36(a).

25 NCAC 01J .1205 UNLAWFUL WORKPLACE HARASSMENT

~~Employees alleging unlawful workplace harassment or retaliation concerning unlawful workplace harassment shall follow the procedure established in the agency Unlawful Workplace Harassment Policy, as required by 25 NCAC 01J .1101(f), in order to bring a subsequent appeal to the State Personnel Commission. Employees may bypass any step in the agency's grievance procedure involving discussions with or review by the alleged harasser. The agency shall complete processing of an allegation of unlawful workplace harassment or retaliation within 60 days. Nothing in this Rule extends the amount of time an agency has in which to complete a review of such an allegation, even if the employee chooses mediation as an option in the agency's Unlawful Workplace Harassment Policy.~~

Authority G.S. 126-4(9); 126-4(11); 126-34.1(a); 126-36(b)(1), (2).

25 NCAC 01J .1206 TIME LIMITS

(a) ~~A final agency decision (FAD) must be issued within a reasonable period of time from the date the grievance is filed or the employee may, if eligible, appeal to the State Personnel Commission without receiving a FAD.~~

(b) ~~For cases involving discharge or demotion of a career State employee for disciplinary reasons, the reasonable period of time is 90 days from the filing of the grievance to the issuance of the FAD. For all issues except demotion or dismissal, a reasonable period of time for an employee to receive a FAD is 120 days from the time the grievance was filed. The employee and the agency may mutually agree to extend the time in either case.~~

(c) ~~If the employee cannot obtain the FAD within a reasonable period of time, the employee's right of appeal shall be governed by G.S. 126-34.1 and G.S. 150B-23(f).~~

Authority G.S. 126-4(9); 126-34.1.

25 NCAC 01J .1207 FINAL AGENCY ACTION

~~In every employee grievance in which the grievant has the right of appeal to the State Personnel Commission (SPC), the final decision of the agency head must inform the grievant in writing that any appeal from the final agency decision must be made to the SPC within 30 days after receipt of notice of the decision or action which triggers the right of appeal. Further, the agency shall inform the grievant in writing that an appeal to the SPC shall be made by filing a petition for contested case hearing with the Office of Administrative Hearings, 424 North Blount Street, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.~~

Authority G.S. 126-4(9); 126-7.2; 126-35; 126-37; 126-38; 150B-23(a).

25 NCAC 01J .1208 LEAVE IN CONNECTION WITH GRIEVANCES

(a) ~~An employee shall be allowed time off from regular duties as may be necessary and reasonable up to a maximum of eight hours for the preparation of an internal grievance under the procedures adopted within the agency without loss of pay, vacation leave or other time credits.~~

(b) ~~Necessary and reasonable time for participation in contested case hearings and other administrative proceedings outside the agency in connection with employment, as a party, shall be granted upon request to the employee's supervisor or personnel officer without loss of pay, vacation leave or other time credits. Management may require prior official notice of the scheduling of and documentation by the presiding official or designee of the time the employee spent in attendance at these administrative proceedings.~~

Authority G.S. 126-4(9).

SECTION .1300 – EMPLOYEE APPEALS AND GRIEVANCE PROCESS

25 NCAC 01J .1301 MINIMUM PROCEDURAL REQUIREMENTS

~~The following provisions are the requirements of an agency employee appeals and grievance process for approval by the State Personnel Commission.~~

- (1) ~~An employee with a grievance that does not allege unlawful discrimination as defined by G.S. 126-16 or G.S. 126-36, that does not allege a violation of G.S. 126-7.1(a) or (c), that does not allege a violation of G.S. 126-82, or that does not allege a denial of employment or promotion in violation of G.S. 126-14.2 shall be required to first discuss the problem with the immediate supervisor. Where the grievance does not fall within the administrative or decision making authority of the immediate supervisor, the immediate supervisor, shall within 48 hours of receipt of the grievance, refer the grievance to the lowest level supervisor with administrative or decision making authority over the subject matter of the grievance and notify the employee of the fact of and the basis for the referral. The agency grievance procedure shall outline those issues in addition to contested case issues under G.S. 126-34.1, if any, that are grievable under each agency's internal grievance procedure and whether and to what extent persons who have not attained career status under G.S. 126-1.1 may utilize the agency grievance procedure.~~
- (2) ~~The employee shall have the right to have the decision of the immediate supervisor reviewed. The step or steps after the immediate supervisor's step shall include a step at which the employee has the right to orally present the grievance and where the reviewer is outside the employee's chain of command.~~
- (3) ~~Any decision rendered after the step of the supervisor's decision shall be issued in writing and the final agency decision shall be issued within a reasonable period of time as defined in 25 NCAC 01J .1206(b).~~
- (4) ~~At the step involving the reviewer (person or body) outside the employee's chain of command, the employee shall have the right to challenge whether the reviewer can render an unbiased decision. The agency grievance procedure shall establish a process for challenging the reviewer's impartiality and the process for the selection of a replacement when necessary.~~
- (5) ~~For matters that are contested case issues under G.S. 126-34.1, if the employee is not satisfied by the final decision of the agency head, the employee shall have the right to appeal to the State Personnel Commission within 30 days of receipt of the final agency~~

~~decision. If the employee is unable within a reasonable period of time to obtain a final agency decision, the employee's right of appeal is governed by G.S. 150B-23(f).~~

- ~~(6) The agency shall state the methods of notifying current employees and newly appointed employees of any change to the agency grievance procedure no later than 30 days prior to the effective date of the change.~~
- ~~(7) The agency shall establish the time limit for the agency and employee to respond at each step in the grievance procedure. No time limit for an agency to respond or to act shall be more than twice the time limit for the employee.~~
- ~~(8) The grievance procedure shall include the effective date of the procedure and of any changes to the procedure.~~
- ~~(9) The grievance procedure shall comply with the requirements of 25 NCAC 01J .0615.~~

Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-7.2; 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382.

25 NCAC 01J .1302 GENERAL AGENCY GRIEVANCE PROCEDURE REQUIREMENTS

(a) All agencies and universities shall adopt the Employee Grievance Policy, which shall be approved by the State Human Resources Commission, based on the standards in Paragraph (d) of this Rule.

(b) Grievances filed on an untimely basis must be dismissed.

(c) A grievant who has an unexcused failure to attend the Step 1 - Mediation or Step 2 - Hearing as scheduled forfeits the right to proceed with the grievance process.

(d) An agency or university grievance process shall include the following:

- (1) A list of who may file a grievance;
- (2) A list of grounds for filing a grievance under the internal grievance process;
- (3) A list of grounds for which contested cases may be brought to the Office of Administrative Hearings after the conclusion of the grievance process;
- (4) An informal process for attempting to resolve a grievable issue prior to the employee's filing a formal grievance;
- (5) The timeframes in which grievable issues must be raised in both the informal and formal grievance process;
- (6) The timeframes in which the agency or university must complete the informal process and each step of the formal grievance process;
- (7) Mediation shall serve as Step 1 of the formal grievance process. A description of the mediation process and timeframe to be followed in Step 1 shall be provided to include that a mediation agreement is legally binding and that if impasse occurs, the agency shall

inform the grievant of the Step 2 grievance process and timeframe for filing;

- (8) A Hearing shall serve as Step 2 of the formal grievance process. A description of the hearing process and timeframe to be followed in Step 2 shall be provided, including that a grievant has the opportunity to present the grievance orally to a reviewer(s) outside the grievant's chain of command, e.g. hearing officer or hearing panel. The hearing officer or hearing chair shall draft a proposed recommendation with findings of fact for a final agency decision;
- (9) The process and timeframe for the proposed recommendation to be submitted to the Office of State Human Resources for review and approval;
- (10) The process and timeframe for issuance of a Final Agency Decision shall not exceed 90 calendar days of the initial filing of the grievance in the formal grievance process;
- (11) Information about any applicable appeal rights to the Office of Administrative Hearings shall be included in the Final Agency Decision;
- (12) The responsibilities of all parties involved in the grievance process to include: grievant, respondent, hearing officer, hearing panel and chair, agency and university Human Resource Office, Equal Employment Officer, Affirmative Action Officer, Agency Head and designee, and the Director of the Office of State Human Resources and designees; and
- (13) The manner in which changes in the grievance policies will be communicated to employees.

Authority G.S. 126-34.01; 126-34.02.

25 NCAC 01J .1303 AGENCY AND UNIVERSITY GRIEVANCE REPORTS AND DATA ENTRY

(a) Every agency and university shall, as requested by the Office of State Human Resources, compile information on employee grievances.

(b) The Office of State Human Resources shall make reports to the State Human Resources Commission as necessary based upon the information supplied in agency reports.

(c) Every agency and university shall maintain all grievance data and enter grievance data by the last business day of the month in the State's HR/Payroll system or other applicable human resources information system.

Authority G.S. 126-4(6),(9).

25 NCAC 01J .1304 SETTLEMENTS/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES

(a) Any mediation agreement, settlement agreement, or consent agreement in a grievance or contested case that requires the entering of data into human resources and payroll information system used by agencies with employees subject to Chapter 126, must be approved by the Office of State Human Resources for compliance with all rules contained in Subchapters 01C

(Personnel Administration), 01D (Compensation), 01E (Employee Benefits), 01H (Recruitment and Selection), and 01J (Employee Relations) in Title 25 of the North Carolina Administrative Code before the agency enters the data.

(b) Data is required to be entered into the human resources and payroll information system by an agency when it determines that an action must be taken that affects classification, salary, leave, demotion, reassignment, transfer, or for any other human resources action, except where the only personnel action taken as a result of the settlement is the substitution of a resignation for a dismissal.

(c) Approval by the Office of State Human Resources shall be indicated by the signature of the State Human Resources Director or his or her designee in an appropriate place on the settlement or consent agreement or by other means acceptable to the Office of State Human Resources Director. This provision shall not be construed to require Office of State Human Resources' approval of a settlement in which the only portion requiring approval is the awarding of attorney's fees to the employee's attorney by the Office of Administrative Hearings.

(d) This provision shall also not be construed to require approval of any settlement the terms of which allow an employee to substitute a resignation for a dismissal and to withdraw a grievance or a contested case action.

(e) The provisions of Rule 25 NCAC 01A .0104 (EXCEPTIONS AND VARIANCES) must be complied with when any provision of a settlement or consent agreement in a grievance or contested case requires an exception to or variance from the rules in this Chapter contained in Subchapters 01C (Personnel Administration), 01D (Compensation), 01E (Employee Benefits), 01H (Recruitment and Selection), and 01J (Employee Relations). This compliance shall be in addition to the requirements of this Rule. Any settlement or consent agreement that contains a provision that requires an exception to or variance from existing human resources policy must be reviewed and approved by the Office of State Human Resources Director prior to the processing of any human resources action forms by the Office of State Human Resources or the university human resources and payroll system.

(f) Requests to enter data into the State's human resources and payroll system that are required by the provisions of any settlement or consent agreement that has not been approved by the Office of State Human Resources as required by this Rule shall not be processed by the human resources and payroll information system used by agencies with employees subject to Chapter 126, and shall be returned to the agency without action.

(g) Any mediation agreement, settlement agreement, consent agreement or order issued under Chapter 126 of the General Statutes shall comply with the rules in this Subchapter. However, no rules in this Subchapter shall constrain the authority of any agency to request an exception from these rules; nor shall any provision of these rules restrict the discretion and authority of any decision maker applying these rules to apply the rules consistent with the decision maker's discretion and authority.

Authority 126-4; 126-34.01.

25 NCAC 01J .1305 OFFICE OF STATE HUMAN RESOURCES REVIEW AND APPROVAL OF FINAL AGENCY DECISION (FAD)

The Director of the Office of State Human Resources or his or her designee:

- (1) Shall review every agency/university final agency decision (FAD).
- (2) Shall establish criteria and standards for the content of a FAD.
- (3) May approve as written or make recommendations for modifications or reversal to the agency so that the FAD complies with criteria established by the Office of State Human Resources.

Authority G.S. 126-34.01; 126-34.02.

25 NCAC 01J .1306 BACK PAY

In grievances filed on or after August 21, 2013:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay is not dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any interim earnings, except that interim earnings from employment which was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due if unemployment insurance benefits were not taxed when received by the employee.
- (4) All applicable state and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift premium pay shall be a part of a back pay award if the grievant would have been entitled to such pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment (for example, merit increments, holiday premium pay).

- (9) Back pay shall include any across the board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," across the board legislative increments or across the board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay must be applied for on the appropriate Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov.
- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available, suitable employment following separation from state government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

Authority G.S. 126-4(9); 126-34.01; 126-34.02.

25 NCAC 01J .1307 FRONT PAY

In grievances filed on or after August 21, 2013:

- (1) Front pay may be awarded in all cases in which front pay is warranted by law.
- (2) "Front pay" is the payment to an employee above his or her regular salary, such excess amount representing the difference between the employee's salary in his or her current position and a higher salary determined to be appropriate due to a finding of discrimination.
- (3) Front pay may also result from an order of reinstatement to a position of a particular level that the agency is unable to accommodate immediately. Front pay shall be paid for such period as the agency is unable to hire, promote, or reinstate the employee to a position at the appropriate level and as warranted by law.
- (4) Front pay shall terminate upon acceptance or rejection of a position to which the employee has been determined to be entitled.

- (5) Front pay shall be available as a remedy in cases involving hiring, promotion, demotion, or dismissal.
- (6) Front pay shall be payable under the same conditions as back pay except that the only deductions from front pay shall be for usual and regular deductions for state and federal withholding taxes and the employee's retirement contribution. There may also be a deduction for other employment earnings, whether paid by the state or another employer, so as to avoid unjust enrichment of the grievant.
- (7) Shift premium pay and holiday premium pay shall not be available on front pay.

Authority G.S. 126-4(9); 126-34.02.

25 NCAC 01J .1308 LEAVE

- (a) An employee shall be credited on reinstatement with all vacation leave which would have been earned except for the interruption in employment.
- (b) An employee shall be credited on reinstatement with all sick leave which would have been earned except for the interruption in employment.
- (c) The decision as to whether or not to allow the reinstated employee to purchase back the vacation leave paid out in a lump sum at dismissal is within the discretion of the agency. A failure to allow such repurchase is not grievable.
- (d) Employees reinstated from dismissal shall have their former balance of sick leave at dismissal reinstated, in addition to the credit for sick leave which would have been earned except for the dismissal.

Authority S.L. 2013-382, s. 6.1.

25 NCAC 01J .1309 HEALTH INSURANCE

Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two choices, provided that if the employee elects reimbursement the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement, but the employee may choose to purchase that retroactive coverage. It is the responsibility of the employee to provide proof of insurance or insured expenses incurred during the period of unemployment.

Authority S.L. 2013-382, s. 6.1.

25 NCAC 01J .1310 INTEREST

The state shall not pay interest on any back pay award.

Authority 126-4(9).

25 NCAC 01J .1311 REINSTATEMENT

When an employee who was dismissed or demoted is reinstated, the employee shall return to employment in the same position, or a similar position at management's option, at the same salary grade or salary grade equivalency which the employee enjoyed prior to dismissal. The agency may reinstate an employee to a similar position assigned to a duty station that is in a different location than the prior assigned duty station. If the new duty station is 50 miles or more from the prior assigned duty station, then the agency may choose to pay moving and relocation expenses in accordance with the policies of the Office of State Budget and Management.

Authority G.S. 126-4(9); 126-34.02.

25 NCAC 01J .1312 CAUSES FOR REINSTATEMENT

For grievances filed on or after August 21, 2013, reinstatement from dismissal, suspension, or demotion may be ordered only upon a finding of lack of substantive just cause (25 NCAC 01J .0604) or discrimination, harassment, or retaliation prohibited by G.S. 126-16 and 126-34.02 or that an employee was dismissed, suspended, or demoted in violation of G.S. 126-34.02 because he or she was a whistleblower. For the purpose of this Rule, and in addition to those matters listed in Rule .0604 of this Subchapter, failure to issue the required number and kind of warnings or other disciplinary actions prior to dismissal for unsatisfactory job performance shall also be considered to constitute a lack of substantive just cause.

Authority G.S. 126-4(9); 126-34.02; 126-35.

25 NCAC 01J .1313 SUSPENSION WITHOUT PAY

For grievances filed on or after August 21, 2013, back pay shall be ordered in those cases in which it is determined that a suspension without pay lacked substantive just cause or was an act of discrimination, harassment, or retaliation prohibited by G.S. 126-16 or 126-34.02, or violated G.S. 126-34.02 because the employee was found to be whistleblower under Article 14 of Chapter 126 of the General Statutes.

Authority G.S. 126-4(6); 126-16; 126-34.02; 126-35.

25 NCAC 01J .1314 DISCRIMINATION, HARASSMENT, OR RETALIATION

For grievances filed on or after August 21, 2013, back pay, transfer, promotion, or other appropriate remedies, including corrective remedies to ensure that the same or similar acts do not recur, may be ordered where discrimination, harassment, or retaliation in violation of G.S. 126-16 or 126-34.02 is found.

Authority G.S. 126-4(9); 126-16; 126-34.02.

25 NCAC 01J .1315 VOLUNTARY PROGRAMS OR BENEFITS

Because voluntary programs or benefits (such as the 401K program, voluntary health and life insurance programs or deferred compensation) are the choice of the employee and therefore the employee's financial responsibility, such voluntary

programs or benefits are not addressed by any awards under these rules and Chapter 126. Retroactive contributions or membership in any such program shall not be part of any remedy awarded to any employee. To the extent that retroactive coverage or membership is available, the grievant is responsible for taking action seeking to obtain such benefits.

Authority 126-4(9); 126-34.02.

25 NCAC 01J .1316 REMEDIES FOR PROCEDURAL VIOLATIONS

(a) Failure to give written notice of applicable appeal rights in connection with a dismissal, demotion or suspension without pay shall be deemed a procedural violation. The sole remedy for this violation shall be an extension of the time in which to file an appeal. The extension shall be from the date of the procedural violation to no more than 30 calendar days from the date the employee is given written notice of applicable appeal rights.

(b) Failure to give specific reasons for dismissal, demotion or suspension without pay shall be deemed a procedural violation. Back pay, attorney's fees, or both may be awarded for such a violation. Back pay or attorney's fees, or both may be awarded for such a period of time as is appropriate under the law, considering all the circumstances.

(c) Failure to conduct a pre-dismissal conference shall be deemed a procedural violation. Further, the remedy for this violation shall require that the employee be granted back pay from the date of the dismissal until a date determined appropriate in light of the purpose of pre-dismissal conferences, which is to provide notice to the employee and an opportunity to be heard. Reinstatement shall not be a remedy for lack of a pre-dismissal conference.

Authority G.S. 126-4(9); 126-34.02; 126-35.

25 NCAC 01J .1317 REMEDIES: SALARY ADJUSTMENTS

(a) No department, agency or institution may use within-grade or within-range salary adjustments as a method of resolving any grievance, contested case or lawsuit without advance notice to the Office of State Human Resources and the specific, written approval of the State Human Resources Director.

(b) Any within-grade or within-range salary adjustment proposed to be approved by the State Human Resources Director must be in compliance with existing salary administration policies (see 25 NCAC 01D .0100 et seq) or shall have prior approval as an exception to or waiver from such policies in accordance with Rule 25 NCAC 01A .0104.

Authority G.S. 126-4(2); S.L. 2013-382.

25 NCAC 01J .1318 CERTAIN REMEDIES NOT AVAILABLE

Punitive, exemplary, and other special damages are not available as remedies in appeals brought under Chapter 126 of the North Carolina General Statutes; only solely compensatory relief, in the nature of back pay, front pay, or other omitted benefits, along with attorney's fees in certain cases, is available as

remedies in appeal under Chapter 126 of the North Carolina General Statutes.

Authority G.S. 126-4(9); 126-34.02.

25 NCAC 01J .1319 SITUATIONS IN WHICH ATTORNEY'S FEES MAY BE AWARDED

For grievances filed on or after August 21, 2013, attorney's fees may be awarded only in the following situations:

- (1) the grievant is reinstated;
- (2) the grievant is awarded back pay from either a demotion or a dismissal, without regard to whether the grievant has been reinstated; or
- (3) the grievant prevails in a whistleblower grievance.

Authority G.S. 126-4(11); 126-34.02.

25 NCAC 01J .1320 ATTORNEY'S FEES MAY BE AWARDED AS A RESULT OF A SETTLEMENT

Attorney's fees may be paid as the result of a settlement in the grievance procedure, providing such fees are explicitly incorporated as a part of a settlement agreement signed by both parties. Attorney's fees shall not be awarded as the result of a settlement unless such fees are a specific part of the written settlement agreement.

Authority 126-4(11); 126-34.01; 126-34.02.

SECTION .1400 – EMPLOYEE MEDIATION AND GRIEVANCE PROCESS

25 NCAC 01J .1401 MINIMUM PROCEDURAL REQUIREMENTS

- ~~(a) Mediation involves the services of a neutral third person that assists an employee and an agency representative in resolving an employee grievance in a mutually acceptable manner.~~
- ~~(b) In situations where mediation does not produce agreement or if a grievance involves an issue that the agency has identified as not subject to mediation, employees may present the grievance to a Hearing Officer or Hearing Panel within the agency. The Hearing Officer or Hearing Panel shall forward a recommendation to the Agency Head for a Final Agency Decision (FAD).~~
- ~~(c) Employees may appeal the FAD to the Office of Administrative Hearings (OAH) where an Administrative Law Judge will render a recommended decision to the State Personnel Commission. The State Personnel Commission will issue a Final Decision and Order.~~
- ~~(d) Grievances alleging discrimination may, at the grievant's choice, proceed either through the agency procedure or may proceed directly to the OAH. Complaints of unlawful workplace harassment shall proceed through the agency's Unlawful Workplace Harassment procedure as required by 25 NCAC 01J .1100.~~

Authority G.S. 126-4(1); 126-4(9); 126-16; 126-34; 126-34.1; 126-34.2; 126-35; 126-36; 126-37; 126-38; 150B-23; S.L. 2013-382.

25 NCAC 01J .1402 FLEXIBILITY

~~Agencies shall have the flexibility to decide which grievable issues will not be subject to mediation. In addition, agencies may choose to mediate nongrievable issues by developing internal agency policies and procedures outside the scope of the rules in this Section. Agencies may utilize mediators serving in the OSP Mediator Pool, 25 NCAC 01J .1410, for mediating nongrievable issues. In such situations, OSP and the requesting agency shall work out a mutually acceptable process to access the mediator pool of resources.~~

Authority G.S. 126-4(9); 126-4(10); S.L. 2013-382.

25 NCAC 01J .1403 INFORMAL MEETING WITH SUPERVISOR

~~For all grievable issues, the agencies shall encourage employees to first attempt to resolve a grievable issue with their immediate or other supervisor in the employee's chain of command.~~

Authority G.S. 126-4(9). 126-4(10); S.L. 2013-382.

25 NCAC 01J .1404 MEDIATION PROCEDURE

- ~~(a) Where an agency has designated an issue as subject to mediation, mediation is Step 1 in the Employee Mediation and Grievance Process. Mediation follows unsuccessful attempts by employees to resolve grievable issues with their immediate or other supervisor in the employee's chain of command. An employee must begin the grievance process by filing a grievance in accordance with the agency's grievance procedure. An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance or after unsuccessfully attempting to resolve the grievance informally, whichever is longer.~~
- ~~(b) The Office of State Personnel (OSP) shall assign mediators to grievances. The mediation process shall be concluded within 45 calendar days from the filing of the grievance unless the parties agree in writing to a longer period of time.~~
- ~~(c) Mediations shall be conducted in a location approved by the mediator and shall be scheduled for an amount of time determined by the mediator to be sufficient. Mediations may be recessed by the mediator and reconvened at a later time.~~
- ~~(d) Only mediators in the OSP Mediation Pool, 25 NCAC 01J .1410, shall mediate grievances presented by state agency employees.~~
- ~~(e) The following pertains to attendance at the mediation proceedings:

 - ~~(1) A designated agency representative with the authority to reach an agreement shall attend on behalf of the agency.~~
 - ~~(2) In situations where the selected mediator cannot attend the mediation, there must be an emergency substitution of a mediator. This substitution must be approved by the OSP Mediation Administrator or designee.~~
 - ~~(3) OSP Mediation Administrator and designees may attend as observers.~~
 - ~~(4) Representatives, advisors and attorneys are not permitted to attend.~~~~

~~(5) — Audiotope, videotape or other automated recordings are not permitted.~~

~~(f) Because mediation is Step 1 of the internal agency grievance process, attorneys are not permitted to participate directly in the process. However, because a mediation that resolves an employee's grievance will result in a Mediation Agreement, either party may ask for a recess at any time during the mediation in order to obtain legal advice regarding the terms of the Mediation Agreement.~~

Authority G.S. 126-4(9); 126-4(10); 126-4(17); 126-34; 126-35; S.L. 2013-382.

25 NCAC 01J .1405 CONCLUSION OF MEDIATION

~~(a) At the end of mediation, the mediator shall prepare either a Mediation Agreement that is signed by the parties, or a statement that mediation did not result in resolution.~~

~~(b) When mediation resolves a grievance, the following shall occur:~~

- ~~(1) — Employee and agency representative sign a Mediation Agreement.~~
- ~~(2) — Each party receives a copy of the signed Mediation Agreement.~~
- ~~(3) — Mediation Agreements shall be maintained on file in the agency for not less than three years.~~
- ~~(4) — Mediation Agreements shall not transfer to another agency if the employee transfers.~~
- ~~(5) — Mediation Agreements shall be binding on both parties.~~

~~(c) Mediation Agreements are considered public documents under G.S. 132-1.3.~~

Authority G.S. 126-4(9); 126-4(10); 126-4(17); S.L. 2013-382.

25 NCAC 01J .1406 LIMITATIONS ON A MEDIATION AGREEMENT

~~(a) Parties to the mediation shall not enter into an agreement that would exceed the scope of their authority. The Mediation Agreement shall:~~

- ~~(1) — serve as a written record;~~
- ~~(2) — not contain any provision contrary to State Personnel Commission rules, and applicable state and federal law; and~~
- ~~(3) — not be transferable to another state agency.~~

~~(b) When mediation resolves a grievance but it is later determined that one or more provisions of the Mediation Agreement do not comply with State Personnel Commission rules, applicable state or federal law, the parties may return to mediation to resolve those issues that can be resolved by the parties.~~

~~(c) Any resolution achieved through mediation, to the extent that it involves a grievance or a contested case issue, shall be treated as a settlement agreement and, as such, is subject to approval by the State Personnel Director and the State Personnel Commission as outlined in Rule .1412 of this Section.~~

Authority G.S. 126-4(9); 126-4(10); S.L. 2013-382.

25 NCAC 01J .1407 POST MEDIATION

~~(a) Employees and supervisors who breach a mediated agreement may be subject to disciplinary action up to and including dismissal based on unacceptable personal conduct.~~

~~(b) Except for the Mediation Agreement itself, all other documents generated during the course of mediation and any communications shared in connection with mediation are confidential to the extent provided by law.~~

~~(c) When mediation does not result in agreement, the employee may proceed to Step 2, 25 NCAC 01J .1411(6) through (8), in the grievance process following written notice to the employee that mediation did not result in resolution of the grievance.~~

Authority G.S. 126-4(6); 126-4(7); 126-4(10); 126-34; S.L. 2013-382.

25 NCAC 01J .1408 EMPLOYEE RESPONSIBILITIES FOR MEDIATION

~~Each employee shall:~~

- ~~(1) — make a good faith effort to mediate disputes;~~
- ~~(2) — attend mediations as scheduled by the agency; and~~
- ~~(3) — notify agency personnel in advance when circumstances prevent the employee from attending a scheduled mediation. Failure to make such an advanced notification shall cause the grievance to be dismissed.~~

Authority G.S. 126-4(9); S.L. 2013-382.

25 NCAC 01J .1409 AGENCY RESPONSIBILITIES FOR MEDIATION

~~(a) Each agency shall:~~

- ~~(1) — administer the mediation program within the agency;~~
- ~~(2) — appoint an agency intake coordinator who will be responsible for organizing the mediation process;~~
- ~~(3) — determine suitable locations for conducting mediations;~~
- ~~(4) — ensure confidentiality of the mediation to the extent provided by law;~~
- ~~(5) — schedule only mediators from the OSP Mediation Pool for each mediation session;~~
- ~~(6) — reimburse mediators for travel and other expenses at state approved rates and covering any administrative costs associated with mediation;~~
- ~~(7) — designate management personnel, such as human resources personnel and legal counsel, to be available to answer questions that may arise during the mediation process;~~
- ~~(8) — designate agency representatives who will mediate in good faith and who will have the authority to reach an agreement on behalf of the agency to resolve a grievance;~~
- ~~(9) — submit data to OSP for the purpose of evaluating the mediation process for cost~~

~~containment and resolution of grievances efficiently and effectively; and~~

- ~~(10) submit to OSP a copy of all Mediation Agreements executed by the agency.~~

~~(b) An agency employee designated to attend mediation on behalf of the agency shall notify agency personnel in advance when circumstances prevent the employee from attending a scheduled mediation. Failure to make such an advanced notification may subject the employee to disciplinary action.~~

Authority G.S. 126-4(6); 126-4(9); 126-4(10); S.L. 2013-382.

25 NCAC 01J .1410 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

The Office of State Personnel (OSP) shall:

- ~~(1) appoint the OSP Mediation Administrator as program manager;~~
- ~~(2) develop an OSP mediator pool;~~
- ~~(3) identify mediator training programs and resources; and~~
- ~~(4) conduct on going studies/analysis to evaluate program effectiveness.~~

Authority G.S. 126-4(9); 126-4(10); S.L. 2013-382.

25 NCAC 01J .1411 AGENCY PROCEDURAL REQUIREMENTS FOR EMPLOYEE MEDIATION AND GRIEVANCE POLICY

The following are minimum procedures for an agency grievance process:

- ~~(1) The agency grievance procedure shall state the issues that, in addition to those listed in G.S. 126 may be grieved at the agency level.~~
- ~~(2) The agency grievance procedure shall list which issues are subject to mediation (Step 1) and which issues shall proceed directly to a grievance hearing (Step 2).~~
- ~~(3) The agency grievance procedure shall encourage direct communication between employees and their immediate supervisor or other supervisor in the chain of command to attempt to resolve the grievance.~~
- ~~(4) All decisions issued by the agency after the discussion between the employee and the immediate supervisor or other supervisor in the chain of command shall be in writing and a copy provided to the employee.~~
- ~~(5) For those issues subject to mediation, the agency grievance process shall require both the employee and an agency representative to mediate a dispute by attending a scheduled mediation.~~

- ~~(6) If mediation does not result in agreement, the employee is entitled to proceed to Step 2. The agency shall notify the employee within 10 days of the unsuccessful mediation of the option to present the grievance orally to a reviewer or reviewers outside of the chain of command, e.g., Hearing Officer or Hearing Panel.~~

- ~~(7) The employee shall have the right to challenge whether the person, or body of persons outside of the chain of command review level, can render an unbiased recommendation. The agency procedure shall establish a process for the challenge as well as the procedure for selection of a replacement reviewer, when necessary.~~

- ~~(8) The agency shall set up time limits for appeal and for the employee and the agency to respond to each other during the grievance procedure. The agency may not set any time limit for itself that is more than twice the time limit established for employees.~~

- ~~(9) An employee filing a grievance shall do so not later than 15 calendar days after the last incident for which the employee is filing the grievance unless the internal agency procedure provides for a longer period.~~

- ~~(10) Neither party to the grievance shall be represented by attorneys or other persons during the internal agency grievance procedure or during any mediation procedure.~~

Authority G.S. 126-4(9); 126-4(10); 126-34.1(a); S.L. 2013-382.

25 NCAC 01J .1412 OFFICE OF STATE PERSONNEL RESPONSIBILITIES FOR EMPLOYEE MEDIATION AND GRIEVANCE PROCESS

The Office of State Personnel shall:

- ~~(1) review each proposed Employee Mediation and Grievance Process for conformity with State Personnel Commission rules, and applicable state and federal law;~~
- ~~(2) present the procedure to the State Personnel Commission for consideration and approval at its next available scheduled meeting; and~~
- ~~(3) provide consultation and technical assistance to agencies as needed.~~

Authority G.S. 126-4(9); 126-4(10); S.L. 2013-382.

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 October 16, 2014.

**REGISTER CITATION TO THE
NOTICE OF TEXT****INDUSTRIAL COMMISSION**

<u>Discovery</u>	04 NCAC 10A .0605*	n/a S.L. 2014-77
<u>Medical Motions and Emergency Medical Motions</u>	04 NCAC 10A .0609A*	n/a S.L. 2014-77
<u>Review by the Full Commission</u>	04 NCAC 10A .0701*	n/a S.L. 2014-77
<u>Review of Administrative Decisions</u>	04 NCAC 10A .0702*	n/a S.L. 2014-77
<u>Vocational Rehabilitation Services and Return to Work</u>	04 NCAC 10C .0109*	n/a S.L. 2014-77
<u>Hearing Costs or Fees</u>	04 NCAC 10E .0202*	n/a S.L. 2014-77
<u>Fees Set by the Commission</u>	04 NCAC 10E .0203*	n/a S.L. 2014-77
<u>Form 21 - Agreement for Compensation for Disability</u>	04 NCAC 10L .0101*	n/a S.L. 2014-77
<u>Supplemental Agreement as to Payment of Compensation</u>	04 NCAC 10L .0102*	n/a S.L. 2014-77
<u>Form 26A - Employer's Admission of Employee's Right to Pe...</u>	04 NCAC 10L .0103*	n/a S.L. 2014-77

MEDICAL CARE COMMISSION

<u>Itemized Charges</u>	10A NCAC 13B .3110*	29:01 NCR
<u>Required Policies, Rules, and Regulations</u>	10A NCAC 13B .3502*	29:01 NCR
<u>Requirements for Issuance of a License</u>	10A NCAC 13C .0202*	29:01 NCR
<u>Itemized Charges</u>	10A NCAC 13C .0205*	29:01 NCR
<u>Governing Authority</u>	10A NCAC 13C .0301*	29:01 NCR
<u>Preservation of Medical Records</u>	10A NCAC 13D .2402*	29:01 NCR
<u>Use of Nurse Practitioners and Physician Assistants</u>	10A NCAC 13D .2503*	29:01 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Basic Law Enforcement Training</u>	12 NCAC 09B .0205*	28:24 NCR
<u>Criminal Justice Instructor Training</u>	12 NCAC 09B .0209*	28:24 NCR
<u>Specialized Firearms Instruction Training</u>	12 NCAC 09B .0226*	28:24 NCR
<u>Specialized Driver Instructor Training</u>	12 NCAC 09B .0227*	28:24 NCR
<u>Specialized Subject Control Arrest Techniques Instructor ...</u>	12 NCAC 09B .0232*	28:24 NCR
<u>Specialized Physical Fitness Instructor Training</u>	12 NCAC 09B .0233*	28:24 NCR
<u>General Instructor Certification</u>	12 NCAC 09B .0302*	28:24 NCR
<u>Specialized Instructor Certification</u>	12 NCAC 09B .0304*	28:24 NCR
<u>Time Requirement for Completion of Training</u>	12 NCAC 09B .0401*	28:24 NCR

APPROVED RULES

<u>Evaluation for Training Waiver</u>	12 NCAC 09B .0403*	28:24 NCR
<u>Comprehensive Written Examination - Basic Law Enforcement...</u>	12 NCAC 09B .0406*	28:24 NCR
<u>Comprehensive Written Examination - Basic SMI Certification</u>	12 NCAC 09B .0408*	28:24 NCR
<u>Comprehensive Written Exam – Instructor Training</u>	12 NCAC 09B .0413*	28:24 NCR
<u>Comprehensive Written Exam - Specialized Instructor Training</u>	12 NCAC 09B .0414*	28:24 NCR
<u>Satisfaction of Minimum Training - SMI Instructor</u>	12 NCAC 09B .0416*	28:24 NCR
<u>Pre-Delivery Report of Training Course Presentation</u>	12 NCAC 09C .0211*	28:24 NCR
<u>Reports of Training Course Presentation and Completion</u>	12 NCAC 09C .0403*	28:24 NCR
<u>Minimum Training Specifications: Annual In-Service Training</u>	12 NCAC 09E .0105*	28:20 NCR
<u>Topical Areas</u>	12 NCAC 09F .0102*	28:24 NCR
<u>General Instructor Certification</u>	12 NCAC 09G .0308*	28:24 NCR
<u>Comprehensive Written Exam - Instructor Training</u>	12 NCAC 09G .0314*	28:24 NCR
<u>Instructor Training</u>	12 NCAC 09G .0414*	28:24 NCR

DENTAL EXAMINERS, BOARD OF

<u>Application</u>	21 NCAC 16D .0104*	28:18 NCR
<u>Application</u>	21 NCAC 16E .0103*	28:18 NCR
<u>Examination</u>	21 NCAC 16E .0104*	28:18 NCR

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

<u>Definitions</u>	21 NCAC 32V .0102*	28:22 NCR
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TITLE 04 – DEPARTMENT OF COMMERCE**04 NCAC 10A .0605 DISCOVERY**

In addition to depositions provided for in G.S. 97-80, parties may obtain discovery by the use of interrogatories and requests for production of documents as follows:

- (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including subparts thereof, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available from the party interrogated.
- (2) Interrogatories may, without leave of the Commission, be served upon any party after the filing of a Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent*, Form 18B

Claim by Employee, Representative, or Dependent for Benefits for Lung Disease, or Form 33 Request that Claim be Assigned for Hearing, or after the acceptance of liability for a claim by the employer.

- (3) Each interrogatory shall be answered separately and in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them and the objections shall be signed by the party making them. The party on whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories. The parties may stipulate to an extension of time to respond to the interrogatories. A motion to extend the time to respond shall state that an attempt to reach agreement with the opposing party to

- informally extend the time for response has been unsuccessful and the opposing party's position or that there has been an attempt to contact the opposing party to ascertain its position.
- (4) If there is an objection to or other failure to answer an interrogatory, the party submitting the interrogatories may move the Commission for an order compelling answer.
 - (5) Interrogatories and requests for production of documents shall relate to matters that are not privileged, that are relevant to an issue in dispute, or that the requesting party reasonably believes may later be disputed. The signature of a party or attorney serving interrogatories or requests for production of documents constitutes a certificate by such person that he or she has personally read each of the interrogatories and requests for production of documents, that no such interrogatory or request for production of documents will oppress a party or cause any unnecessary expense or delay, that the information requested is not known or equally available to the requesting party, and that the interrogatory or requested document relates to an issue presently in dispute or that the requesting party reasonably believes may later be in dispute. A party may serve an interrogatory, however, to obtain verification of facts relevant to an issue presently in dispute. Answers to interrogatories may be used to the extent permitted by Chapter 8C of the North Carolina General Statutes.
 - (6) The parties may serve requests for production of documents without leave of the Commission until 35 days prior to the date of hearing.
 - (7) Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may be used only upon motion and approval by the Commission or by agreement of the parties. The Commission may approve the motion if it is shown to be in the interests of justice or to promote judicial economy.
 - (8) Discovery requests and responses, including interrogatories and requests for production of documents, shall not be filed with the Commission, except for the following:
 - (a) notices of depositions;
 - (b) discovery requests and responses deemed by filing party to be pertinent to a pending motion;
 - (c) responses to discovery following a motion or order to compel; and
 - (d) post-hearing discovery requests and responses.

- The above-listed documents shall be filed with the Commission, as well as served on the opposing party.
- (9) Sanctions shall be imposed under this Rule for failure to comply with a Commission order compelling discovery unless the Commission excuses the failure based on an inability to comply with the order. A motion by a party or its attorney to compel discovery under this Rule and Rule .0607 of this Subchapter shall represent that informal means of resolving the discovery dispute have been attempted in good faith and state the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position.

History Note: Authority G.S. 97-80(a); 97-80(f); S.L. 2014-77;
 Eff. January 1, 1990;
 Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000.

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

- (a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted electronically to medicalmotions@ic.nc.gov. Motions and responses shall be submitted contemporaneously to the Commission and the opposing party or opposing party's counsel, if represented.
- (b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.
- (c) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation with the Docket Director at dockets@ic.nc.gov and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.
- (d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain the following:
 - (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly underneath the case caption clearly indicating the request is for either an administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
 - (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of employee's counsel;

- (3) the employer's name and employer code;
 - (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, to the extent available, email address;
 - (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer and carrier has not been retained;
 - (6) if an attorney has been retained for the employer or carrier, the attorney's name, email address, telephone number, and fax number;
 - (7) a statement of the treatment or relief requested;
 - (8) a statement of the medical diagnosis of the employee and the name of any health care provider having made a diagnosis or treatment recommendation that is the basis for the motion;
 - (9) a statement as to whether the claim has been admitted on a Form 60, *Employer's Admission of Employee's Right to Compensation*, Form 63, *Notice to Employee of Payment of Compensation without Prejudice (G.S. 97-18(d)) or Payment of Medical Benefits Only without Prejudice (G.S. 97-2(19) & 97-25)*, Form 21, *Agreement for Compensation for Disability*, or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
 - (10) a statement of the time-sensitive nature of the request, if any;
 - (11) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
 - (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the employee has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any;
 - (13) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known; and
 - (14) a proposed Order.
- (e) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:
- (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
 - (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number. If the employee is represented, the name, email address, telephone number, and fax number of the employee's counsel;
 - (3) the employer's name and employer code, if known;
 - (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if available, email address;
 - (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer/carrier has not been retained;
 - (6) the counsel for employer/carrier's name, email address, telephone number, and fax number;
 - (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
 - (8) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended relief is not provided emergently;
 - (9) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
 - (10) a representation that informal means of resolving the issue have been attempted in good faith, and the opposing party's position, if known;
 - (11) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
 - (12) a proposed Order.
- (f) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary.
- (g) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by submitting notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.
- (h) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts, briefs, and proposed Opinion and Awards submitted to the Deputy Commissioner within 60 days of the filing of the motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.

(i) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by giving notice of appeal to the Full Commission within 15 calendar days of receipt of the decision. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

(j) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by submitting notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

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

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77; Eff. January 1, 2011; Amended Eff. November 1, 2014.

SECTION .0700 - APPEALS

04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION

(a) Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the Order or Opinion and Award from which appeal is taken.

(b) After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The Commission

shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure File Transfer Protocol (FTP) site where the official transcript and exhibits may be downloaded. The e-mail shall also provide instructions for the submission of the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the official transcript and exhibits to the Commission. Parties represented by counsel shall sign a joint certification acknowledging receipt of the Form 44 *Application for Review* and the official transcript and exhibits and submit the certification within ten days of receipt of the Form 44 *Application for Review* and the official transcript and exhibits. The certification shall stipulate the date the Form 44 *Application for Review* and the official transcript and exhibits were received by the parties and shall note the date the appellant's brief is due. The Commission shall save a copy of the parties' acknowledgements in the file for the claim to serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript and exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S. Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.

(c) A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either party files a letter requesting review as set forth in Paragraph (a) of this Rule, jurisdiction shall be transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so remanded. Upon the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, either party may thereafter file a letter requesting review of the Deputy Commissioner's decision as set forth in Paragraph (a) of this Rule.

(d) The appellant shall submit a Form 44 *Application for Review* upon which appellant shall state the grounds for the review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded. Grounds for review not set forth in the Form 44 *Application for Review* are deemed

abandoned, and argument thereon shall not be heard before the Full Commission.

(e) The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice that there will be no transcript. The appellee shall have 25 days from service of the Form 44 *Application for Review* and appellant's brief to file a responsive brief with the Commission. The appellee's brief shall include a certificate of service on the appellant. When an appellant fails to file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 *Application for Review* and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time exceed 30 days.

(f) After a request for review has been submitted to the Full Commission, any motions related to the issues for review shall be filed with the Full Commission, with service on the other parties. Motions related to the issues for review including motions for new trial, to supplement the record, including documents from offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission, shall be argued before the Full Commission at the time of the hearing of the request for review, except motions related to the official transcript and exhibits. The Full Commission, for good cause shown, may rule on such motions prior to oral argument.

(g) Case citations shall be to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North Carolina Reporter, and when possible, to the South Eastern Reporter. If no reporter citation is available at the time a brief is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the case to its brief. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute wrongful acts or motives to opposing counsel or members of the Commission.

(h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award based on the record and briefs.

(i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetical entry that designates the source of the quoted or paraphrased material and the page number within the applicable source. The party shall use "T" to refer to the transcript of

hearing testimony, "Ex" for exhibit, and "p" for page number. For example, if a party quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format "(T p 11)," and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following format "(Ex p 12)." When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the party shall include the last name of the deponent and the page on which such testimony is located. For example, if a party quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the following format "(Smith p 11)."

(j) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to permit the Full Commission to view the disfigurement.

History Note: Authority G.S. 97-80(a); 97-85; S.L. 2014-77; Eff. January 1, 1990; Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; June 1, 2000.

04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS

(a) Administrative decisions include orders, decisions, and awards made in a summary manner, without findings of fact, including decisions on the following:

- (1) applications to approve agreements to pay compensation and medical bills;
- (2) applications to approve the termination or suspension or the reinstatement of compensation;
- (3) applications to change the interval of payments; and
- (4) applications for lump sum payments of compensation.

Administrative decisions shall be reviewed upon the filing of a Motion for Reconsideration with the Commission addressed to the Administrative Officer who made the decision or may be reviewed by requesting a hearing within 15 days of receipt of the decision or receipt of the ruling on a Motion to Reconsider. These issues may also be raised and determined at a subsequent hearing.

(b) Motions for Reconsideration shall not stay the effect of the order, decision, or award; provided that the Administrative Officer making the decision or a Commissioner may enter an order staying its effect pending the ruling on the Motion for Reconsideration or pending a decision by a Commissioner or Deputy Commissioner following a formal hearing. In determining whether or not to grant a stay, the Commissioner or Administrative Officer shall consider whether granting the stay will frustrate the purposes of the order, decision, or award. Motions to Stay shall not be filed with both the Administrative Officer and a Commissioner.

(c) Any request for a hearing to review an administrative decision shall be made to the Commission and filed with the Commission's Docket Director. The Commission shall designate a Commissioner or Deputy Commissioner to hear the review. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues de novo, and no issue shall be

considered moot solely because the order has been fully executed during the pendency of the hearing.

(d) Orders filed by a single Commissioner, including orders dismissing reviews to the Full Commission or denying the right of immediate request for review to the Full Commission, are administrative orders and are not final determinations of the Commission. As such, an order filed by a single Commissioner is not appealable to the North Carolina Court of Appeals. A one-signature order filed by a single Commissioner may be reviewed by:

- (1) filing a Motion for Reconsideration addressed to the Commissioner who filed the order; or
- (2) requesting a review to a Full Commission panel by requesting a hearing within 15 days of receipt of the order or receipt of the ruling on a Motion for Reconsideration.

(e) This Rule shall not apply to medical motions filed pursuant to G.S. 97-25; provided, however, that a party may request reconsideration of an administrative ruling on a medical motion, or may request a stay, or may request an evidentiary hearing de novo, all as set forth in G.S. 97-25.

History Note: Authority G.S. 97-79(g); 97-80(a); 97-85; S.L. 2014-77;

Eff. January 1, 1990;

Amended Eff. November 1, 2014; January 1, 2011; June 1, 2000.

04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed as defined by Rule .0103(5) of this Subchapter or by applicable statute.

(c) Return-to-work options should be considered in the following order of priority:

- (1) current job, current employer;
- (2) new job, current employer;
- (3) on-the-job training, current employer;
- (4) new job, new employer;
- (5) on-the-job training, new employer;
- (6) formal education or vocational training to prepare the worker for a job with current or new employer; and
- (7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request that includes an evaluation of:

- (1) the retraining or education requested;
- (2) the availability, location, cost, and identity of providers of the requested retraining or education;
- (3) the likely duration until completion of the requested retraining or education, the number of credits needed to complete the retraining or education, the course names and schedules for the retraining or education, and identification of which courses are available on-line versus in person;
- (4) the current or projected availability of employment upon completion of the requested retraining or education; and
- (5) the anticipated pay range for employment upon completion of the requested retraining or education.

(e) The rehabilitation professional shall obtain a list of work restrictions from the health care provider that addresses the demands of any proposed employment. If ordered by a physician, the rehabilitation professional shall schedule an appointment with a third party provider to evaluate an injured employee's functional capacity, physical capacity, or impairments to work.

(f) The rehabilitation professional shall refer the worker only to opportunities for suitable employment, as defined by Rule .0103(5) of this Subchapter or by applicable statute.

(g) If the, rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-work process, the rehabilitation professional shall provide a copy of the description to all parties for review before the job description is provided to the doctor. The employee or the employee's attorney shall have seven business days from the mailing of the job description to notify the rehabilitation professional, all parties, and the physician of any objections or amendments. There to. The job description and the objections or amendments, if any, shall be submitted to the physician simultaneously. This process shall be expedited when job availability is critical. This waiting period does not apply if the employee or the employee's attorney has given prior approval to the job description.

(h) In preparing written job descriptions, the rehabilitation professional shall utilize standards including, but not limited to, the Dictionary of Occupational Titles and the Handbook for Analyzing Jobs published by the United States Department of Labor. These standards can be accessed at no cost at <http://www.oalj.dol.gov/LIBDOT.HTM> and www.woprs.net/etc/dot/RHAJ.pdf, respectively. *The Handbook for Analyzing Jobs may also be purchased from major online booksellers for approximately eighty-five dollars (\$85.00).*

(i) The rehabilitation professional may conduct follow-up after job placement to verify the appropriateness of the job placement.

(j) The rehabilitation professional shall not initiate or continue placement activities that do not appear reasonably likely to result in placement of the injured worker in suitable employment. The rehabilitation professional shall report to the parties when efforts to initiate or continue placement activities do not appear reasonably likely to result in placement of the injured worker in suitable employment.

History Note: Authority G.S. 97-2(22); 97-25.5; 97-32.2; S.L. 2014-77, s. 6(4);
Eff. January 1, 1996;
Amended Eff. November 1, 2014; June 1, 2000.

04 NCAC 10E .0202 HEARING COSTS OR FEES

(a) **(Effective until July 1, 2015)** The following hearing costs or fees apply to all subject areas within the authority of the Commission:

- (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged after the hearing has been held;
- (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a specific hearing date, to be paid by the requesting party or parties;
- (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case is calendared for a specific hearing date;
- (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged after the hearing has been held; and
- (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for review is scheduled for a specific hearing date before the Full Commission:
 - (A) the appeal or request for review is withdrawn; or
 - (B) the appeal or request for review is dismissed for failure to prosecute or perfect the appeal or request for review.

In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise, except as specified in Subparagraph (a)(2) above.

(a) **(Effective July 1, 2015)** The following hearing costs or fees apply to all subject areas within the authority of the Commission other than workers' compensation cases:

- (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged after the hearing has been held;
- (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a specific hearing date, to be paid by the requesting party or parties;
- (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case is calendared for a specific hearing date;
- (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged after the hearing has been held; and
- (5) one hundred twenty dollars (\$120.00) if one of the following occurs after an appeal or request for review is scheduled for a specific hearing date before the Full Commission:
 - (A) the appeal or request for review is withdrawn; or
 - (B) the appeal or request for review is dismissed for failure to prosecute or

perfect the appeal or request for review.

(b) The Commission may waive fees set forth in Paragraph (a) of this Rule, or assess such fees against a party or parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or defended without reasonable ground.

History Note: Authority G.S. 97-73; 97-80; 97-88.1; 143-291.1; 143-291.2; 143-300; S.L. 2014-77;
Eff. November 1, 2014.

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

(a) **(Effective until July 1, 2015)** In workers' compensation cases, the Commission sets the following fees:

- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
- (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the employee and the employer or the employer's carrier in equal shares. The employer or the employer's carrier shall pay such fee in full when submitting the agreement to the Commission. Unless the parties agree otherwise or the award totals three thousand dollars (\$3,000) or less, the employer and the employer's carrier shall be entitled to a credit for the employee's 50 percent share of such fee against the award;
- (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and

(4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

(a) **(Effective July 1, 2015)** In workers' compensation cases, the Commission sets the following fees:

- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
- (2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s)

or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and

(3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be Assigned for Hearing*, to be paid by the intervenor.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

History Note: Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; S.L 2014-77; Eff. November 1, 2014.

SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS

SECTION .0100 – WORKERS' COMPENSATION FORMS

04 NCAC 10L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY

(a) **(Effective until July 1, 2015)** The parties to a workers' compensation claim shall use the following Form 21, *Agreement for Compensation for Disability*, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 21, *Agreement for Compensation for Disability*, shall read as follows:

North Carolina Industrial Commission
 Agreement for Compensation for Disability
 (G.S. 97-82)

IC File # _____
 Emp. Code # _____
 Carrier Code # _____
 Carrier File # _____
 Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

 Employee's Name

 Address

 City State Zip

 Home Telephone Work Telephone

Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

APPROVED RULES

Employer's Name	Telephone Number
Employer's Address	City State Zip
Insurance Carrier	
Carrier's Address	City State Zip
Carrier's Telephone Number	Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the carrier/administrator for the employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by _____.
3. The injury by accident or occupational disease resulted in the following injuries: _____.
4. The employee ☐ was/ ☐ was not paid for the entire day when the injury occurred.
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$_____, subject to verification unless otherwise agreed upon in Item 9 below.
6. Disability resulting from the injury or occupational disease began on _____.
7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$_____ per week beginning _____, and continuing for _____ weeks.
8. The employee ☐ has / ☐ has not returned to work for _____ on _____, at an average weekly wage of \$_____.
9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability: _____.
10. If applicable, the Second Injury Fund Assessment is \$_____. Check ☐ is ☐ is not attached.
11. The date of this agreement is _____. Date of first payment: _____ Amount: _____.
12. **IMPORTANT NOTICE TO EMPLOYEE:** The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.
Check one of the boxes below if the award is more than \$3,000.00:
☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
☐ The employee and employer have agreed that the employer will pay the entire fee.

Name Of Employer	Signature	Title
Name Of Carrier / Administrator	Signature	Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Pages 1 and 2 of this form.

Signature of Employee	Address
Signature of Employee's Attorney	Address

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
Attorney's Fee Approved	

- ☐ Check Box If No Attorney Retained.
☐ Check Box If Employee Is In Managed Care.

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, *Employee's Application for Additional Medical Compensation (G.S. 97-25.1)*, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 21
11/2014

Self-Insured Employer or Carrier, Mail to:
NCIC - Claims Section
4335 Mail Service Center
Raleigh, NC 27699-4335
Telephone: (919) 807-2502
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(a) **(Effective July 1, 2015)** The parties to a workers' compensation claim shall use the following Form 21, *Agreement for Compensation for Disability*, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 21, *Agreement for Compensation for Disability*, shall read as follows:

North Carolina Industrial Commission
Agreement for Compensation for Disability
(G.S. 97-82)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

APPROVED RULES

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone
Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the carrier/administrator for the employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by _____.
3. The injury by accident or occupational disease resulted in the following injuries: _____.
4. The employee ☐ was/ ☐ was not paid for the entire day when the injury occurred.
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$_____, subject to verification unless otherwise agreed upon in Item 9 below.
6. Disability resulting from the injury or occupational disease began on _____.
7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$_____ per week beginning _____, and continuing for _____ weeks.
8. The employee ☐ has / ☐ has not returned to work for _____ on _____, at an average weekly wage of \$_____.
9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability: _____.
10. If applicable, the Second Injury Fund Assessment is \$_____. Check ☐ is ☐ is not attached.
11. The date of this agreement is _____. Date of first payment: _____ Amount: _____.

Name Of Employer Signature Title

Name Of Carrier / Administrator Signature Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 2 of this form.

Signature of Employee Address

Signature of Employee's Attorney Address

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner Date

Attorney's Fee Approved

- ☐ Check Box If No Attorney Retained.
☐ Check Box If Employee Is In Managed Care.

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, *Employee's Application for Additional Medical Compensation (G.S. 97-25.1)*, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 21
7/2015

Self-Insured Employer or Carrier, Mail to:
NCIC - Claims Section
4335 Mail Service Center
Raleigh, NC 27699-4335
Telephone: (919) 807-2502
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;
Eff. November 1, 2014.

04 NCAC 10L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF COMPENSATION

(a) **(Effective until July 1, 2015)** If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of Compensation*, for agreements

APPROVED RULES

regarding subsequent additional disability and payment of compensation pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of Compensation*, shall read as follows:

North Carolina Industrial Commission
Supplemental Agreement as to Payment
of Compensation (G.S. §97-82)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone
Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1. Date of injury: _____
2. The employee ☐ returned to work / ☐ was rated on _____ (date), at a weekly wage of \$_____.
3. The employee became totally disabled on _____.
4. Employee's average weekly wage ☐ was reduced / ☐ was increased on _____, from \$_____ per week to \$_____ per week.
5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$_____ per week.
Beginning _____, and continuing for _____ weeks. The type of disability compensation is _____.

6. State any further matters agreed upon, including disfigurement or temporary partial disability: _____

7. **IMPORTANT NOTICE TO EMPLOYEE:** The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

- ☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
☐ The employee and employer have agreed that the employer will pay the entire fee.

APPROVED RULES

8. The date of this agreement is _____.

Name Of Employer	Signature	Title
Name Of Carrier/Administrator	Signature	Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Pages 1 and 2 of this form.

Signature of Employee	Address
Signature of Employee's Attorney	Address

☐ Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
-----------------	------

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, *Employee's Application for Additional Medical Compensation (G.S. 97-25.1)*, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

This form shall be used only to supplement Form 21, *Agreement for Compensation for Disability (G.S. 97-82)*, or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form when the agreement is signed by the employee. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26
11/2014

Self-Insured Employer or Carrier Mail to:
NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335

Main Telephone: (919) 807-2500
 Helpline: (800) 688-8349
 Website: <http://www.ic.nc.gov/>

(a) **(Effective July 1, 2015)** If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of Compensation*, for agreements regarding subsequent additional disability and payment of compensation pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of Compensation*, shall read as follows:

North Carolina Industrial Commission
 Supplemental Agreement as to Payment
 of Compensation (G.S. §97-82)

IC File # _____
 Emp. Code # _____
 Carrier Code # _____
 Carrier File # _____
 Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

 Employee's Name

 Address

 City State Zip

Home Telephone _____ Work Telephone _____
 Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

 Employer's Name Telephone Number

 Employer's Address City State Zip

 Insurance Carrier

 Carrier's Address City State Zip

 Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1. Date of injury: _____.
2. The employee ☐ returned to work / ☐ was rated on _____ (date), at a weekly wage of \$ _____.
3. The employee became totally disabled on _____.
4. Employee's average weekly wage ☐ was reduced / ☐ was increased on _____, from \$ _____ per week to \$ _____ per week.
5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$ _____ per week.
 Beginning _____, and continuing for _____ weeks. The type of disability compensation is _____.
6. State any further matters agreed upon, including disfigurement or temporary partial disability:
 _____.

APPROVED RULES

7. The date of this agreement is _____.

Name Of Employer	Signature	Title
Name Of Carrier/Administrator	Signature	Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 2 of this form.

Signature of Employee	Address
Signature of Employee's Attorney	Address

☐ Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
-----------------	------

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS
If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS
If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, *Employee's Application for Additional Medical Compensation (G.S. 97-25.1)*, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

This form shall be used only to supplement Form 21, *Agreement for Compensation for Disability (G.S. 97-82)*, or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form when the agreement is signed by the employee. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26
7/2015

Self-Insured Employer or Carrier Mail to:
NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335
Main Telephone: (919) 807-2500

Helpline: (800) 688-8349
 Website: <http://www.ic.nc.gov/>

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;
 Eff. November 1, 2014.

04 NCAC 10L .0103 FORM 26A – EMPLOYER’S ADMISSION OF EMPLOYEE’S RIGHT TO PERMANENT PARTIAL DISABILITY

(a) **(Effective until July 1, 2015)** The parties to a workers' compensation claim shall use the following Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, shall read as follows:

North Carolina Industrial Commission
 Employer's Admission of Employee's Right to Permanent Partial Disability
 (G.S. §97-31)

IC File # _____
 Emp. Code # _____
 Carrier Code # _____
 Carrier File # _____
 Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

 Employee's Name

 Address

 City State Zip

 Home Telephone Work Telephone
 Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

 Employer's Name Telephone Number

 Employer's Address City State Zip

 Insurance Carrier

 Carrier's Address City State Zip

 Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the Carrier/Administrator for the Employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on _____.
3. The injury by accident or occupational disease resulted in the following injuries:
 _____.

4. The employee ☐ was ☐ was not paid for the 7 day waiting period.
If not, was salary continued? ☐ yes ☐ no. Was employee paid for the date of injury? ☐ yes ☐ no
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$_____. This results in a weekly compensation rate of \$_____.
6. The employee ☐ has ☐ has not returned full time to work for _____
on _____, at an average weekly wage of \$_____.
7. Claimant was released ☐ with permanent restrictions ☐ without permanent restrictions.
8. Permanent partial disability compensation will be paid to the injured worker as follows:
 _____ weeks of compensation at rate of \$_____ per week for _____% rating to _____ (body part)
 _____ weeks of compensation at rate of \$_____ per week for _____% rating to _____ (body part)
 _____ weeks of compensation at rate of \$_____ per week for _____% rating to _____ (body part)
- Total amount of permanent partial disability compensation is \$_____. Date of first payment:_____.

9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: _____.
10. An overpayment is claimed in the amount of \$_____. Overpayment was calculated as follows:_____.

If overpayment claimed, a Form 28B, *Report of Compensation and Medical Compensation Paid*, is attached. ☐ yes ☐ no

11. If applicable, the Second Injury Fund Assessment is \$_____. A check ☐ is ☐ is not included.

12. **IMPORTANT NOTICE TO EMPLOYEE:** The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.

Check one of the boxes below if the award is more than \$3,000.00:

- ☐ The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
- ☐ The employee and employer have agreed that the employer will pay the entire fee.

The undersigned hereby certify that the material medical and vocational reports related to the injury have been provided to the employee or the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 04 NCAC 10A .0501.

_____ Name Of Employer	_____ Signature	_____ Title	_____ Date
_____ Name Of Carrier/Administrator	_____ Signature	_____ Direct Phone Number	_____ Title Date

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on pages 2 and 3 of this form.

_____ Signature of Employee	_____ Address	_____ Date
_____ Signature of Employee's Attorney	_____ Address	_____ Date

☐ Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

_____ Claims Examiner	_____ Date
--------------------------	---------------

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS
If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, *Employee's Application for Additional Medical Compensation* (G.S. 97-25.1), available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A
11/2014

Self-Insured Employer or Carrier Mail to:
NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335
Main Telephone: (919) 807-2500
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(a) **(Effective July 1, 2015)** The parties to a workers' compensation claim shall use the following Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 04 NCAC 10A .0501, where applicable. The Form 26A, *Employer's Admission of Employee's Right to Permanent Partial Disability*, shall read as follows:

North Carolina Industrial Commission
Employer's Admission of Employee's Right to Permanent Partial Disability
(G.S. §97-31)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone
Social Security Number: _____ Sex: ☐ M ☐ F Date of Birth: _____

APPROVED RULES

Employer's Name	Telephone Number
Employer's Address	City State Zip
Insurance Carrier	
Carrier's Address	City State Zip
Carrier's Telephone Number	Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the Carrier/Administrator for the Employer.
 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on _____.
 3. The injury by accident or occupational disease resulted in the following injuries: _____.
 4. The employee ☐ was ☐ was not paid for the 7 day waiting period.
If not, was salary continued? ☐ yes ☐ no. Was employee paid for the date of injury? ☐ yes ☐ no
 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ _____. This results in a weekly compensation rate of \$ _____.
 6. The employee ☐ has ☐ has not returned full time to work for _____
on _____, at an average weekly wage of \$ _____.
 7. Claimant was released ☐ with permanent restrictions ☐ without permanent restrictions.
 8. Permanent partial disability compensation will be paid to the injured worker as follows:
_____ weeks of compensation at rate of \$ _____ per week for _____% rating to _____ (body part)
_____ weeks of compensation at rate of \$ _____ per week for _____% rating to _____ (body part)
_____ weeks of compensation at rate of \$ _____ per week for _____% rating to _____ (body part)
Total amount of permanent partial disability compensation is \$ _____. Date of first payment: _____.
 9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: _____.
 10. An overpayment is claimed in the amount of \$ _____. Overpayment was calculated as follows: _____.
- If overpayment claimed, a Form 28B, *Report of Compensation and Medical Compensation Paid*, is attached. ☐ yes ☐ no
11. If applicable, the Second Injury Fund Assessment is \$ _____. A check ☐ is ☐ is not included.

The undersigned hereby certify that the material medical and vocational reports related to the injury have been provided to the employee or the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 04 NCAC 10A .0501.

Name Of Employer	Signature	Title	Date
Name Of Carrier/Administrator	Signature	Direct Phone Number	Title Date

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 3 of this form.

Signature of Employee	Address	Date
Signature of Employee's Attorney	Address _____	Date

☐ Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner

Date

Attorney's fee approved**IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS**

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, *Employee's Application for Additional Medical Compensation (G.S. 97-25.1)*, available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 04 NCAC 10A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A
7/2015

Self-Insured Employer or Carrier Mail to:
NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335
Main Telephone: (919) 807-2500
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77; Eff. November 1, 2014.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**10A NCAC 13B .3110 ITEMIZED CHARGES**

(a) The facility shall either present an itemized list of charges to all discharged patients or the facility shall include on patients' bills that are not itemized, notification of the right to request an itemized bill within three years of receipt of the non-itemized

bill or so long as the hospital, a collections agency, or other assignee asserts the patient has an obligation to pay the bill.

(b) If requested, the facility shall present an itemized list of charges to each patient or the patient's representative. This list shall detail in language comprehensible to an ordinary layperson the specific nature of the charges or expenses incurred by the patient.

(c) The itemized listing shall include each specific chargeable item or service in the following service areas:

- (1) room rate
- (2) laboratory;
- (3) radiology and nuclear medicine;
- (4) surgery;
- (5) anesthesiology;
- (6) pharmacy;
- (7) emergency services;
- (8) outpatient services;
- (9) specialized care;
- (10) extended care;
- (11) prosthetic and orthopedic appliances; and
- (12) professional services provided by the facility.

History Note: Authority G.S. 131E-79; 131E-91; S.L. 2013-382, s. 13.1; Eff. January 1, 1996; Temporary Amendment Eff. May 1, 2014; Amended Eff. November 1, 2014.

10A NCAC 13B .3502 REQUIRED POLICIES, RULES, AND REGULATIONS

(a) The governing body shall adopt written policies, rules, and regulations in accordance with all requirements contained in this Subchapter and in accordance with the community responsibility of the facility. The written policies, rules, and regulations shall:

- (1) state the purpose of the facility;
- (2) describe the powers and duties of the governing body officers and committees and the responsibilities of the chief executive officer;
- (3) state the qualifications for governing body membership, the procedures for selecting members, and the terms of service for members, officers and committee chairmen;
- (4) describe the authority delegated to the chief executive officer and to the medical staff. No assignment, referral, or delegation of authority by the governing body shall relieve the governing body of its responsibility for the conduct of the facility. The governing body shall retain the right to rescind any such delegation;
- (5) require Board approval of the bylaws of any auxiliary organizations established by the hospital;
- (6) require the governing body to review and approve the bylaws of the medical staff organization;
- (7) establish a procedure for processing and evaluating the applications for medical staff membership and for the granting of clinical privileges;
- (8) establish a procedure for implementing, disseminating, and enforcing a Patient's Bill of Rights as set forth in Rule .3302 of this Subchapter and in compliance with G.S. 131E-117; and

(9) require the governing body to institute procedures to provide for:

- (A) orientation of newly elected board members to specific board functions and procedures;
- (B) the development of procedures for periodic reexamination of the relationship of the board to the total facility community; and
- (C) the recording of minutes of all governing body and executive committee meetings and the dissemination of those minutes, or summaries thereof, on a regular basis to all members of the governing body.

(b) The governing body shall assure written policies and procedures to assure billing and collection practices in accordance with G.S. 131E-91. These policies and procedures shall include:

- (1) a financial assistance policy as defined in G.S. 131E-214.14(b)(3);
- (2) how a patient may obtain an estimate of the charges for the statewide 100 most frequently reported Diagnostic Related Groups (DRGs), where applicable, 20 most common outpatient imaging procedures, and 20 most common outpatient surgical procedures. The policy shall require that the information be provided to the patient in writing, either electronically or by mail, within three business days;
- (3) how a patient or patient's representative may dispute a bill;
- (4) issuance of a refund within 45 days of the patient receiving notice of the overpayment when a patient has overpaid the amount due to the hospital;
- (5) providing written notification to the patient or patient's representative at least 30 days prior to submitting a delinquent bill to a collections agency;
- (6) providing the patient or patient's representative with the facility's charity care and financial assistance policies, if the facility is required to file a Schedule H, federal form 990;
- (7) the requirement that a collections agency, entity, or other assignee obtain written consent from the facility prior to initiating litigation against the patient or patient's representative;
- (8) a policy for handling debts arising from the provision of care by the hospital involving the doctrine of necessities, in accordance with G.S. 131E-91(d)(5); and
- (9) a policy for handling debts arising from the provision of care by the hospital to a minor, in accordance with G.S. 131E-91(d)(6).

(c) The written policies, rules, and regulations shall be reviewed every three years, revised as necessary, and dated to indicate when last reviewed or revised.

(d) To qualify for licensure or license renewal, each facility must provide to the Division, upon application, an attestation statement in a form provided by the Division verifying compliance with the requirements of this Rule.

(e) On an annual basis, on the license renewal application provided by the Division, the facility shall provide to the Division the direct website address to the facility's financial assistance policy. This Rule applies only to facilities required to file a Schedule H, federal form 990.

History Note: Authority G.S. 131E-79; 131E-91; 131E-214.13(f); 131E-214.14; S.L. 2013-382, s. 10.1; S.L. 2013-382, s. 13.1;

Eff. January 1, 1996;

Temporary Amendment Eff. May 1, 2014;

Amended Eff. November 1, 2014.

10A NCAC 13C .0202 REQUIREMENTS FOR ISSUANCE OF LICENSE

(a) Upon application for a license from a facility never before licensed, a representative of the Department shall make an inspection of that facility. Every building, institution, or establishment for which a license has been issued shall be inspected for compliance with the rules found in this Subchapter. An ambulatory surgery facility shall be deemed to meet licensure requirements if the ambulatory surgery facility is accredited by The Joint Commission (formerly known as "JCAHO"), AAAHC or AAAASF. Accreditation does not exempt a facility from statutory or rule requirements for licensure nor does it prohibit the Department from conducting inspections as provided in this Rule to determine compliance with all requirements.

(b) If the applicant has been issued a Certificate of Need and is found to be in compliance with the Rules found in this Subchapter, then the Department shall issue a license to expire on December 31 of each year.

(c) The Department shall be notified at the time of:

- (1) any change of the owner or operator;
- (2) any change of location;
- (3) any change as to a lease; and
- (4) any transfer, assignment, or other disposition or change of ownership or control of 20 percent or more of the capital stock or voting rights thereunder of a corporation that is the operator or owner of an ambulatory surgical facility, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of such corporation that results in the ownership or control of more than 20 percent of the stock or voting rights thereunder of such corporation by any person.

A new application shall be submitted to the Department in the event of such a change or changes.

(d) The Department shall not grant a license until the plans and specifications that are stated in Section .1400 of this Subchapter, covering the construction of new buildings, additions, or material alterations to existing buildings are approved by the Department.

(e) The facility design and construction shall be in accordance with the licensure rules for ambulatory surgical facilities found in this Subchapter, the North Carolina State Building Code, and local municipal codes.

(f) Submission of Plans.

- (1) Before construction is begun, schematic plans and specifications and final plans and specifications covering construction of the new buildings, alterations, renovations, or additions to existing buildings shall be submitted to the Division for approval.
- (2) The Division shall review the plans and notify the licensee that said buildings, alterations, additions, or changes are approved or disapproved. If plans are disapproved the Division shall give the applicant notice of deficiencies identified by the Division.
- (3) The plans shall include a plot plan showing the size and shape of the entire site and the location of all existing and proposed facilities.
- (4) Plans shall be submitted in duplicate. The Division shall distribute a copy to the Department of Insurance for review of the North Carolina State Building Code requirements if required by the North Carolina State Building Code which is hereby incorporated by reference, including all subsequent amendments. Copies of the Code may be accessed electronically free of charge at http://www.ecodes.biz/ecodes_support/Free_Resources/2012NorthCarolina/12NorthCarolina_main.html.

(g) To qualify for licensure or license renewal, each facility shall provide to the Division, with its application, an attestation statement in a form provided by the Division verifying compliance with the requirements defined in Rule .0301(d) of this Subchapter.

History Note: Authority G.S. 131E-91; 131E-147; 131E-149; S.L. 2013-382, s. 13.1;

Eff. October 14, 1978;

Amended Eff. April 1, 2003;

Temporary Amendment Eff. May 1, 2014;

Amended Eff. November 1, 2014.

10A NCAC 13C .0205 ITEMIZED CHARGES

(a) The facility shall either present an itemized list of charges to all discharged patients or include on patients' bills that are not itemized notification of the right to request an itemized bill within three years of receipt of the non-itemized bill or so long as the facility, collections agency, or other assignee asserts the patient has an obligation to pay the bill.

(b) If requested, the facility shall present an itemized list of charges to each patient or his or her representative. This list shall detail in language comprehensible to an ordinary layperson the specific nature of the charges or expenses incurred by the patient.

(c) The listing shall include each specific chargeable item or service in the following service areas:

- (1) Surgery (facility fee);
- (2) Anesthesiology;
- (3) Pharmacy;
- (4) Laboratory;
- (5) Radiology;
- (6) Prosthetic and Orthopedic appliances; and
- (7) Other professional services.

(d) The facility shall indicate on the initial or renewal license application that patient bills are itemized, or that each patient or his or her representative is formally advised of the patient's right to request an itemized listing within three years of receipt of a non-itemized bill.

History Note: Authority G.S. 131E-91; 131E-147.1; S.L. 2013-382, s. 13.1; Eff. December 1, 1991; Temporary Amendment Eff. May 1, 2014; Amended Eff. November 1, 2014.

10A NCAC 13C .0301 GOVERNING AUTHORITY

(a) The facility's governing authority shall adopt bylaws or other operating policies and procedures to assure that:

- (1) a named individual is identified who is responsible for the overall operation and maintenance of the facility. The governing authority shall have methods in place for the oversight of the individual's performance;
- (2) at least annual meetings of the governing authority are conducted if the governing authority consists of two or more individuals. Minutes shall be maintained of such meetings;
- (3) a policy and procedure manual is created that is designed to ensure professional and safe care for the patients. The manual shall be reviewed annually and revised when necessary. The manual shall include provisions for administration and use of the facility, compliance, personnel quality assurance, procurement of outside services and consultations, patient care policies and services offered; and
- (4) annual reviews and evaluations of the facility's policies, management, and operation are conducted.

(b) When services such as dietary, laundry, or therapy services are purchased from others, the governing authority shall be responsible to assure the supplier meets the same local and state standards the facility would have to meet if it were providing those services itself using its own staff.

(c) The governing authority shall provide for the selection and appointment of the professional staff and the granting of clinical privileges and shall be responsible for the professional conduct of these persons.

(d) The governing authority shall establish written policies and procedures to assure billing and collection practices in accordance with G.S. 131E-91. These policies and procedures shall include:

- (1) a financial assistance policy as defined in G.S. 131E-214.14(b)(3);
- (2) how a patient may obtain an estimate of the charges for the statewide 20 most common outpatient imaging procedures and 20 most common outpatient surgical procedures based on the primary Current Procedure Code (CPT). The policy shall require that the information be provided to the patient in writing, either electronically or by mail, within three business days;
- (3) how a patient or patient's representative may dispute a bill;
- (4) issuance of a refund within 45 days of the patient receiving notice of the overpayment when a patient has overpaid the amount due to the facility;
- (5) providing written notification to the patient or patient's representative, at least 30 days prior to submitting a delinquent bill to a collections agency;
- (6) providing the patient or patient's representative with the facility's charity care and financial assistance policies, if the facility is required to file a Schedule H, federal form 990;
- (7) the requirement that a collections agency, entity, or other assignee obtain written consent from the facility prior to initiating litigation against the patient or patient's representative;
- (8) a policy for handling debts arising from the provision of care by the ambulatory surgical facility involving the doctrine of necessities, in accordance with G.S. 131E-91(d)(5); and
- (9) a policy for handling debts arising from the provision of care by the ambulatory surgical facility to a minor, in accordance with G.S. 131E-91(d)(6).

History Note: Authority G.S. 131E-91; 131E-147.1; 131E-149; 131E-214.13(f); 131E-214.14; S.L. 2013-382, s. 10.1; S.L. 2013-382, s. 13.1; Eff. October 14, 1978; Amended Eff. November 1, 1989; November 1, 1985; December 24, 1979; Temporary Amendment Eff. May 1, 2014; Amended Eff. November 1, 2014.

10A NCAC 13D .2402 PRESERVATION OF MEDICAL RECORDS

(a) A facility shall keep medical records on file for five years following the discharge of an adult patient.

(b) Notwithstanding Paragraph (c) of this Rule, if the patient is a minor when discharged from the nursing facility, then the records shall be kept on file until his or her 19th birthday and for the timeframe specified in G.S. 1-17(b) for commencement of an action on behalf of a minor.

(c) If a facility discontinues operation, the licensee shall inform the Division of Health Service Regulation where its records are stored. Records shall be stored with a business offering medical

record storage and retrieval services for five years after the closure date.

(d) All medical records are confidential. The facility shall be compliant with 42 CFR Parts 160,162 and 164 of the Health Insurance Portability and Accountability Act.

(e) At the time of the inspection, the facility shall inform the surveyor of the name of any patient who has denied the Department access to his or her medical record pursuant to G.S. 131E-105.

History Note: Authority G.S. 131E-104; 131E-105;

Eff. January 1, 1996.

Amended Eff. November 1, 2014.

10A NCAC 13D .2503 USE OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS

(a) Any facility that employs nurse practitioners or physician assistants shall maintain the following information for each nurse practitioner and physician assistant:

- (1) verification of current approval to practice as a nurse practitioner by the Medical Board and Board of Nursing for each practitioner, or verification of current approval to practice as a physician assistant by the Medical Board for each physician assistant; and
- (2) a copy of instructions or written protocols signed by the nurse practitioner or physician assistant and the supervising physicians.

(b) The privileges of the nurse practitioner or physician assistant shall be defined by the facility's policies and procedures and shall be limited to those privileges authorized in 21 NCAC 32M and 21 NCAC 36 .0800 for the nurse practitioner or 21 NCAC 32S for the physician assistant.

History Note: Authority G.S. 131E-104;

Eff. January 1, 1996;

Amended Eff. November 1, 2014.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

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

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 616 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- (1) **LEGAL UNIT**
 - (A) Motor Vehicle Laws 20 Hours
 - (B) Preparing for Court and Testifying in Court 12 Hours
 - (C) Elements of Criminal Law 24 Hours
 - (D) Juvenile Laws and Procedures 8 Hours

- (E) Arrest, Search and Seizure/Constitutional Law 28 Hours
- (F) ABC Laws and Procedures 4 Hours
- UNIT TOTAL 96 Hours**

(2) **PATROL DUTIES UNIT**

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

(3) **LAW ENFORCEMENT COMMUNICATION UNIT**

- (A) Responding to Victims and the Public 10 Hours
- (B) Domestic Violence Response 12 Hours
- (C) Ethics for Professional Law Enforcement 4 Hours
- (D) Individuals with Mental Illness and Developmental Disabilities 8 Hours
- (E) Crime Prevention Techniques 6 Hours
- (F) Communication Skills for Law Enforcement Officers 8 Hours
- UNIT TOTAL 48 Hours**

(4) **INVESTIGATION UNIT**

- (A) Fingerprinting and Photographing Arrestee 6 Hours
- (B) Field Note-taking and Report Writing 12 Hours
- (C) Criminal Investigation 34 Hours
- (D) Interviews: Field and In-Custody 16 Hours
- (E) Controlled Substances 12 Hours
- (F) Human Trafficking 2 Hours
- UNIT TOTAL 82 Hours**

(5) **PRACTICAL APPLICATION UNIT**

- (A) First Responder 32 Hours
- (B) Firearms 48 Hours
- (C) Law Enforcement Driver Training 40 Hours
- (D) Physical Fitness (classroom instruction) 8 Hours
- (E) Fitness Assessment and Testing 12 Hours
- (F) Physical Exercise 1 hour daily, 3 days a week 34 Hours
- (G) Subject Control Arrest Techniques 40 Hours
- UNIT TOTAL 214 Hours**

(6) **SHERIFF-SPECIFIC UNIT**

(A)	Civil Process	24 Hours
(B)	Sheriffs' Responsibilities: Detention Duties	4 Hours
(C)	Sheriffs' Responsibilities: Court Duties	6 Hours
	UNIT TOTAL	34 Hours
(7)	COURSE ORIENTATION	2 Hours
(8)	TESTING	16 Hours
	TOTAL COURSE HOURS	616 Hours

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

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

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

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

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

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;
Amended Eff. January 1, 2015; February 1, 2014; July 1, 2011; July 1, 2009; January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.*

12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 75 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation/Self Assessment	3 Hours
(2)	Curriculum Development: ISD Model	3 Hours
(3)	Law Enforcement Instructor Liabilities	2 Hours
	and Responsibilities	
(4)	Interpersonal Communication in Instruction	4 Hours

(5)	Lesson Plan Preparation: Professional Resources	2 Hours
(6)	Lesson Plan Preparation: Format and Objectives	6 Hours
(7)	Teaching Adults	4 Hours
(8)	Principles of Instruction: Demonstration Methods and Practical Exercise	6 Hours
(9)	Methods and Strategies of Instruction	4 Hours
(10)	The Evaluation Process	4 Hours
(11)	Principles of Instruction: Audio-Visual Aids	6 Hours
(12)	Student 10-Minute Talk and Video Critique	6 Hours
(13)	Student Performance: First 30-Minute Presentation	6 Hours
	Second 30-Minute Presentation	6 Hours
	Final 80-Minute Presentation and Review	12 Hours
(14)	Course Closing	1 Hour

(d) The "Instructor Training" manual published by the North Carolina Justice Academy shall be the curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

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

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

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

*History Note: Authority G.S. 17C-6;
Eff. January 1, 1981;
Amended Eff. January 1, 2015; December 1, 2009; August 1, 2005; November 1, 1998; January 1, 1995; March 1, 1990; July 1, 1989; January 1, 1985.*

12 NCAC 09B .0226 SPECIALIZED FIREARMS INSTRUCTOR TRAINING

(a) The instructor training course for specialized firearms instructor certification shall consist of a minimum of 81 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in a Basic Law Enforcement Training Course or a law enforcement officer in-service firearms training program.

(c) Each applicant for specialized firearms instructor training shall:

- (1) have completed the criminal justice general instructor training course; and
- (2) present a written endorsement by either
 - (A) a certified school director indicating the student may be utilized to instruct

- firearms in the Basic Law Enforcement Training Course; or
- (B) a department head, certified school director, or in-service training coordinator, indicating the student may be utilized to instruct firearms in a law enforcement officer in-service firearms training program.

(d) Each specialized firearms instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- | | | |
|------|--|----------|
| (1) | Orientation/Pretest | 8 Hours |
| (2) | Range Operations | 38 Hours |
| (3) | Civil Liability | 4 Hours |
| (4) | Night Firing | 2 Hours |
| (5) | Combat Shooting | 8 Hours |
| (6) | Mental Conditioning | 1 Hours |
| (7) | Shotgun Operation and Firing | 4 Hours |
| (8) | Service Handgun - Operation and Use | 5 Hours |
| (9) | Rifle - Operation and Maintenance | 4 Hours |
| (10) | Service Handgun - Maintenance and Cleaning | 2 Hours |
| (11) | Range Medical Emergencies | 2 Hours |
| (12) | In-Service Firearms Requirements | 2 Hours |
| (13) | BLET Lesson Plan Review | 1 Hour |

(e) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be the curriculum for specialized firearms instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27610

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

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

(f) The Commission-certified school that is certified to offer the "Specialized Firearms Instructor Training" course is the North Carolina Justice Academy.

*History Note: Authority G.S. 17C-6;
Eff. May 1, 1986;*

Amended Eff. January 1, 2015; February 1, 2013; August 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; February 1, 1991; March 1, 1990; July 1, 1989.

12 NCAC 09B .0227 SPECIALIZED DRIVER INSTRUCTOR TRAINING

(a) The instructor training course required for specialized driver instructor certification shall consist of a minimum of 33 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized driver instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice driver instructor in a

Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized driver instructor training shall:

- | | |
|-----|---|
| (1) | have completed the criminal justice general instructor training course; |
| (2) | present a written endorsement by either |
| (A) | a certified school director indicating the student may be utilized to instruct driving in Basic Law Enforcement Training Courses; or |
| (B) | a department head, certified school director, or in-service training coordinator, indicating the student may be utilized to instruct driver training in the "Law Enforcement Officer's Annual In-Service Training Program"; |
| (3) | possess a valid operator driver's license; and |
| (4) | maintain a safe driving record where no more than four points have been assigned against the driving record within the past three years. |

(d) Each specialized driver instructor training course shall include the following identified topic areas and instructional hours for each area:

- | | | |
|-----|---|----------|
| (1) | Orientation | 1 Hours |
| (2) | Lesson Plan Review (BLET) | 4 Hours |
| (3) | General Mechanical Knowledge | 1 Hour |
| (4) | Before - Operation Inspection | 1 Hours |
| (5) | Laws of Natural Force & Operating Characteristics | 2 Hours |
| (6) | Driver Practicum/Pre-Test | 19 Hours |
| (7) | Fundamentals of Professional Liability for Trainers | 4 Hours |
| (8) | Course Review | 1 Hour |

(e) The "Specialized Driver Instructor Training Manual" as published by the North Carolina Justice Academy shall be the curriculum for specialized driver instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27610

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

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

(f) Commission-certified schools that are certified to offer the "Specialized Driver Instructor Training" course are The North Carolina Justice Academy and The North Carolina State Highway Patrol Training Center.

*History Note: Authority G.S. 17C-6;
Eff. May 1, 1986;*

Amended Eff. January 1, 2015; February 1, 2013; August 1, 2006; February 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; February 1, 1991; March 1, 1990; July 1, 1989.

12 NCAC 09B .0232 SPECIALIZED SUBJECT CONTROL ARREST TECHNIQUES INSTRUCTOR TRAINING

(a) The instructor training course required for specialized subject control arrest techniques instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized subject control arrest techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice subject control arrest techniques instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized subject control arrest techniques instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course; and
- (3) present a written endorsement by either
 - (A) a certified school director indicating the student may be utilized to instruct subject control arrest techniques in Basic Law Enforcement Training Courses; or
 - (B) a department head, certified school director, or in-service training coordinator indicating the student may be utilized to instruct Subject Control Arrest Techniques for the "Law Enforcement Officers' In-Service Training Program."

(d) Each specialized subject control arrest techniques instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	1 Hour
(2)	Skills Pre-Test	1 Hour
(3)	Student Instructional Practicum	3 Hours
(4)	Practical Skills Evaluation	3 Hours
(5)	Response to Injury	4 Hours
(6)	Combat Conditioning	12 Hours
(7)	Safety Guidelines/Rules	2 Hours
(8)	Practical Skills Enhancement	4 Hours
(9)	Subject Control/Arrest Techniques Practical Skills and Instructional Methods	44 Hours
(10)	Fundamentals of Professional Liability For Law Enforcement Trainers	4 Hours
	TOTAL	78 Hours

(e) The "Specialized Subject Control Arrest Techniques Instructor Training Manual" as published by the North Carolina Justice Academy shall be the curriculum for specialized subject control arrest techniques instructor training courses. Copies of this publication may be inspected at the:

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

Raleigh, North Carolina 27610

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

North Carolina Justice Academy
Post Office Box 99

Salemberg, North Carolina 28385

(f) The Commission-certified school that is certified to offer the "Specialized Subject Control Arrest Techniques Instructor Training" course is the North Carolina Justice Academy.

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

Eff. February 1, 1987;

Amended Eff. January 1, 2015; February 1, 2013; December 1, 2009; August 1, 2006; August 1, 2000; November 1, 1998; August 1, 1995; March 1, 1990; July 1, 1989.

12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING

(a) The instructor training course required for specialized physical fitness instructor certification shall consist of a minimum of 58 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized physical fitness instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice physical fitness instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized physical fitness training shall:

- (1) qualify through one of the following three options:
 - (A) have completed the criminal justice general instructor training course;
 - (B) hold a current and valid North Carolina Teacher's Certificate, hold a baccalaureate degree in physical education, and be teaching in physical education topics; or
 - (C) be presently instructing physical education topics in a community college, college, or university and possess a baccalaureate degree in physical education; and
- (2) present a written endorsement by either:
 - (A) a school director indicating the student may be utilized to instruct physical fitness in Basic Law Enforcement Training Courses; or
 - (B) a certified school director, or in-service training coordinator indicating the student may be utilized to instruct physical fitness for the "Law Enforcement Officers' In-Service Training Program"; and
- (3) present a letter from a physician stating fitness to participate in the course.

(d) Each specialized physical fitness instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- | | | |
|-----|---|-----------------|
| (1) | Orientation | 5 Hours |
| (2) | Lesson Plan Review | 4 Hours |
| (3) | Physical Fitness Assessments, Exercise Programs and Instructional Methods | 31 Hours |
| (4) | Injury Care and Prevention | 4 Hours |
| (5) | Nutrition | 6 Hours |
| (6) | Civil Liabilities for Trainers | 2 Hours |
| (7) | CVD Risk Factors | 2 Hours |
| (8) | Developing In-Service Wellness Programs and Validating Fitness Standards | 4 Hours |
| | TOTAL | 58 Hours |

(e) The "Physical Fitness Instructor Training Manual" as published by the North Carolina Justice Academy shall be the curriculum for specialized physical fitness instructor training courses. Copies of this publication may be inspected at the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27610

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

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

(f) The Commission-certified school that is certified to offer the "Specialized Physical Fitness Instructor Training" course is the North Carolina Justice Academy.

History Note: Authority G.S. 17C-6; Eff. July 1, 1989; Amended Eff. January 1, 2015; February 1, 2013; December 1, 2009; August 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; March 1, 1990; August 1, 1985.

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) General Instructor Certification issued after December 31, 1984 shall be limited to those topics that are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Section, entitled "Specific Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the Commission. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and
 - (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system.

- (2) Present evidence showing completion of a Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.
- (3) Pass the comprehensive written examination administered by the Commission, as required in Rule .0413(d) of this Subchapter.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses shall possess general instructor certification.

History Note: Authority G.S. 17C-6. Eff. January 1, 1981; Amended Eff. January 1, 2015; January 1, 2006; May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1, 1985; January 1, 1985.

12 NCAC 09B .0304 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission shall issue a Specialized Instructor Certification to an applicant who has developed specific motor skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Subject Control Arrest Techniques;
- (2) First Responder;
- (3) Firearms;
- (4) Law Enforcement Driver Training;
- (5) Physical Fitness;
- (6) Restraint, Control and Defense Techniques (Department of Public Safety, Division of Adult Correction and Juvenile Justice);
- (7) Medical Emergencies (Department of Public Safety, Division of Adult Correction and Juvenile Justice); or
- (8) Explosive and Hazardous Materials Emergencies.

(b) To qualify for and maintain any Specialized Instructor Certification, an applicant shall possess a valid CPR Certification that includes cognitive and skills testing, through the American Red Cross, American Heart Association,

American Safety and Health Institute, or National Safety Council.

(c) An applicant shall achieve a minimum score of 75 percent on the comprehensive written exam, as specified in Rule .0414 of this Subchapter in order to qualify for Specialized Instructor Certification in the following topical areas:

- (1) Subject Control Arrest Techniques;
- (2) Firearms;
- (3) Law Enforcement Driver Training;
- (4) Physical Fitness; and
- (5) Explosive and Hazardous Materials Emergencies.

(d) To qualify for Specialized Instructor Certification in the Subject Control Arrest Techniques topical area, an applicant shall meet the following requirements:

- (1) Hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
- (2) Complete the pertinent Commission-approved specialized instructor course; and
- (3) Obtain the recommendation of a Commission-certified school director or in-service training coordinator.

(e) To qualify for Specialized Instructor Certification in the First Responder topical area, an applicant shall satisfy one of the following two options:

- (1) The first option is:
 - (A) Hold CPR instructor certification through the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council;
 - (B) Hold, or have held, basic Emergency Medical Technician certification;
 - (C) Have completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a North Carolina Professional Educator's License, issued by the Department of Public Instruction; and
 - (D) Obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (2) The second option is:
 - (A) Hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (B) Hold CPR instructor certification through the American Red Cross, American Heart Association, American Safety and Health Institute or National Safety Council;
 - (C) Hold, or have held, basic EMT certification; and

(D) Obtain the recommendation of a Commission-certified school director or in-service training coordinator.

(f) To qualify for Specialized Instructor Certification in the Firearms topical area, an applicant shall meet the following requirements:

- (1) Hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
- (2) Complete the Commission-approved specialized firearms instructor training course; and
- (3) Obtain the recommendation of a Commission-certified school director or in-service training coordinator.

(g) To qualify for Specialized Instructor Certification in the Law Enforcement Driver Training topical area, an applicant shall meet the following requirements:

- (1) Hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
- (2) Complete the Commission-approved specialized driver instructor training course; and
- (3) Obtain the recommendation of a Commission-certified school director or in-service training coordinator.

(h) To qualify for Specialized Instructor Certification in the Physical Fitness topical area, an applicant shall become certified through one of the following two methods:

- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (B) complete the Commission-approved specialized physical fitness instructor training course; and
 - (C) obtain the recommendation of a Commission-certified School Director.
- (2) The second method is:
 - (A) Complete the Commission-approved specialized physical fitness instructor training course;
 - (B) obtain the recommendation of a Commission-certified School director or in-service training coordinator; and
 - (C) meet one of the following qualifications:
 - (i) hold a valid North Carolina Professional Educator's License, issued by the Department of Public Instruction, hold a baccalaureate degree in physical education, and be

(ii) presently teaching in physical education topics; or be presently instructing physical education topics in a community college, college, or university and hold a baccalaureate degree in physical education.

(i) To qualify for Specialized Instructor Certification in the Department of Public Safety, Division of Adult Correction and Juvenile Justice Restraint, Control and Defense Techniques topical area, an applicant shall meet the following requirements:

- (1) Hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
- (2) Complete the Commission-approved corrections specialized instructor training – controls, restraints, and defensive techniques course; and
- (3) Obtain the recommendation of a Commission-certified school director.

(j) To qualify for Specialized Instructor Certification in the Department of Public Safety, Division of Adult Correction and Juvenile Justice Medical Emergencies topical area, an applicant shall meet the following requirements:

- (1) Have completed a Commission-certified basic instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise;
- (2) Hold instructor certification in CPR and First Aid by the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council; and
- (3) Obtain the recommendation of a Commission-certified school director.

(k) To qualify for Specialized Instructor Certification in the Explosive and Hazardous Materials Emergencies topical area, an applicant shall satisfy one of the following two options:

- (1) The first option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section;
 - (B) Complete the Commission-approved specialized explosives and hazardous materials instructor training course; and
 - (C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.
- (2) The second option is:
 - (A) have completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional

Systems Design model, an international model with applications in education, military training, and private enterprise;

(B) Complete the Commission-approved specialized explosives and hazardous materials instructor training course; and

(C) obtain the recommendation of a Commission-certified school director or in-service training coordinator.

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

Eff. January 1, 1981;

Amended Eff. August 1, 2000; July 1, 1991; March 1, 1990; July 1, 1989; December 1, 1987;

Temporary Amendment Eff. January 1, 2001;

Amended Eff. January 1, 2015; June 1, 2013; April 1, 2009; August 1, 2006; January 1, 2006; December 1, 2004; August 1, 2002.

12 NCAC 09B .0401 TIME REQUIREMENT FOR COMPLETION OF TRAINING

(a) Each criminal justice officer, with the exception of law enforcement officers, holding probationary certification shall complete, with passing scores, a Commission-accredited basic training course that includes training in the skills and knowledge necessary to perform the duties of his or her office. The officer shall complete the course within one year from the date of his original appointment, as determined by the date of the probationary certification.

(b) Each law enforcement officer, except wildlife enforcement officers, shall have completed with passing scores the accredited basic training course as prescribed in Rule .0205 of this Subchapter prior to obtaining probationary certification.

(c) Each wildlife enforcement officer shall have satisfactorily completed in its entirety the Basic Training -- Wildlife Enforcement Officers' course stipulated in 12 NCAC 09B .0228(b) prior to obtaining probationary certification.

(c) If a trainee completes the basic training course prior to being employed as a law enforcement officer, the trainee shall be duly appointed and sworn as a law enforcement officer within one year of successfully passing the comprehensive written exam as specified in Rule .0406 of this Section for that basic training course to be recognized under these Rules.

(e) If local confinement supervisory and administrative personnel complete basic training prior to being employed by a facility in a supervisory and administrative position that requires certification, the personnel shall be duly appointed to a local confinement facility supervisory and administrative position within one year of the completion of training for the basic training course specified in 12 NCAC 09B .0205. This one year period shall begin with the date the applicant achieves a passing score on the comprehensive written exam, as specified in Rule .0411 of this Section.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10;

Eff. January 1, 1981;

Amended Eff. January 1, 2015; January 1, 1995; March 1, 1992; July 1, 1989; June 1, 1986.

12 NCAC 09B .0403 EVALUATION FOR TRAINING WAIVER

(a) The Standards Division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been completed as specified in Rule .0402(a) of this Section. Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by Standards Division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

- (1) Persons having completed a Commission-accredited basic training program and not having been duly appointed and sworn as a law enforcement officer within one year of completion of the program shall complete a subsequent Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and achieve a passing score on the State Comprehensive Examination prior to obtaining probationary law enforcement certification, unless the Director determines that a delay in applying for certification was not due to neglect on the part of the applicant, in which case the Director may accept a Commission-accredited basic training program that is over one year old. The extension of the one year period shall not exceed 30 days from the first year anniversary of the passing of the state comprehensive examination;
- (2) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees shall not have a break in service exceeding one year. At a minimum, out-of-state transferees shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course accredited by the transferring State. Prior to employment as a certified law enforcement officer, out-of-state transferees must complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. At a minimum, out-of-state transferees shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive

Examination within the 12 month probationary period;

- (3) Persons who have completed a minimum 369-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1984 and have been separated from a sworn position for over one year but less than three years who have had a minimum of two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter, and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period. Prior to employment as a certified law enforcement officer, these persons shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E;
- (4) Persons out of the law enforcement profession for over one year but less than three years who have had less than two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and achieve a passing score on the State Comprehensive Examination;
- (5) Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and shall achieve a passing score on the State Comprehensive Examination;
- (6) Persons who separated from law enforcement employment during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for more than one year shall complete a subsequent Commission-accredited basic training program and achieve a passing score on the State Comprehensive Examination;
- (7) Persons who separated from a sworn law enforcement position during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for less than one year shall serve a new 12 month probationary period as prescribed in Rule .0401(a) of this Section, but need not complete an additional training program;

- (8) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have separated from a sworn law enforcement position for over one year but less than two years shall be required to complete the Legal Unit and the topical area entitled "Law Enforcement Driver Training" of a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) and .0205(b)(5)(C) of this Subchapter and achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;

(9) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and have been separated from a sworn law enforcement position for two or more years shall be required to complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section regardless of training and experience and shall achieve a passing score on the State Comprehensive Examination;

(10) Persons who have completed a minimum 240-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and have been separated from a sworn position over one year but less than three years shall be required to complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;

(11) Persons previously holding law enforcement certification in accordance with G.S. 17C-10(a) who have been separated from a sworn law enforcement position for over one year and who have not previously completed a minimum basic training program accredited by either the North Carolina Criminal Justice Training and Standards Council or the Commission shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State
- Comprehensive Examination prior to employment;

(12) Persons who have completed training as a federal law enforcement officer and are candidates for appointment as a sworn law enforcement officer in North Carolina shall be required to complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination;

(13) Applicants with part-time experience who have a break in service in excess of one year shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and achieve a passing score on the State Comprehensive Examination prior to employment;

(14) Applicants who hold or previously held certification issued by the North Carolina Sheriffs' Education and Training Standards Commission (Sheriffs' Commission) shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon:

 - (A) the active or inactive status held by the applicant;
 - (B) the amount of time served in an active status during the year immediately prior to application for certification by the Commission;
 - (C) the length of any break in the applicant's service; and
 - (D) whether the applicant has completed mandatory in-service training for each year his or her certification was held by the Sheriffs' Commission.

(15) Alcohol law enforcement agents who received basic alcohol law enforcement training prior to November 1, 1993 and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.

(16) Wildlife enforcement officers who separate from employment with the Wildlife Enforcement Division and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these

applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.

- (17) Active duty, guard, or reserve military members failing to complete all of the required annual in-service training topics, as defined in 12 NCAC 09E .0105, of this Chapter, due to military obligations, are subject to the following training requirements as a condition for return to active criminal justice status. The agency head shall verify the person's completion of the appropriate training by submitting a statement, on Form F-9C, Return to Duty Request form. This form is located on the agency's website: <http://www.ncdoj.gov/getdoc/ac22954d-5e85-4a33-87af-308ba2248f54/F-9C-6-11.aspx>.

(A) Active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for up to a period of three years, shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete with a passing score the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;

(B) Active, guard or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for a period greater than three years shall complete the following topic areas within the following time frames:

- (i) The person shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;
- (ii) The person shall achieve a passing score on the

practical skills testing for the First Responder, Law Enforcement Driver Training, and Subject Control Arrest Techniques topics enumerated in Rule .0205(b)(5) of this Subchapter prior to return to active criminal justice status. This practical skills testing may be completed either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a [Commission-certified] instructor for that particular skill. The person shall complete one physical fitness assessment in lieu of the Fitness Assessment and Testing topic. The person must also be examined by a physician per Rule .0104(b) of this Subchapter; and

- (iii) The person shall complete some of the topics in the legal unit of instruction in the Basic Law Enforcement Training course as set forth in Rule .0205(b)(1) of this Subchapter. The required topics include Motor Vehicle Law; Juvenile Laws and Procedures; Arrest, Search and Seizure/Constitutional Law; and ABC Laws and Procedures. The person shall achieve a passing score on the appropriate topic tests for each course delivery. The person may undertake each of these legal unit topics of instruction either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a Commission certified instructor for that particular topic of instruction. The person shall have 12 months from the beginning of his or her return to active criminal justice status to complete each of the enumerated topics of instruction.
- (b) In the event the applicant's prior training is not equivalent to the Commission's standards, the Commission shall prescribe as a

condition of certification supplementary or remedial training to equate previous training with current standards.

(c) Where certifications issued by the Commission require satisfactory performance on a written examination as part of the training, the Commission shall require the examinations for the certification.

(d) In those instances not incorporated within this Rule or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course would be impractical, the Director of the Standards Division is authorized to exercise his or her discretion in determining the amount of training those persons shall complete during their probationary period.

(e) The following criteria shall be used by Standards Division staff in evaluating prior training and experience of local confinement personnel to determine eligibility for a waiver of training requirements:

- (1) Persons who hold probationary, general, or grandfather certification as local confinement personnel and separate after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and have been separated for one year or more shall complete a subsequent Commission-accredited training course and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section;
- (2) Persons who separated from a local confinement personnel position after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and who have been separated for less than one year shall serve a new 12 month probationary period, but need not complete an additional training program;
- (3) Applicants who hold or previously held "Detention Officer Certification" issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. No additional training shall be required where the applicant obtained certification and successfully completed the required 120 hour training course, and has not had a break in service in excess of one year; and
- (4) Persons holding certification for local confinement facilities who transfer to a district or county confinement facility shall complete the course for district and county confinement facility personnel, as adopted by reference in Rule .0224 of this Subchapter, and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section.

Eff. January 1, 1981;

Amended Eff. November 1, 2014; August 1, 2000; November 1, 1993; March 1, 1992; July 1, 1989; February 1, 1987.

12 NCAC 09B .0406 COMPREHENSIVE WRITTEN EXAMINATION - BASIC LAW ENFORCEMENT TRAINING

(a) Within 60 days of the conclusion of a school's offering of the Basic Law Enforcement Training Course, the Commission shall administer a comprehensive written examination to each trainee who has completed all of the required course work. A trainee shall not be administered the comprehensive written examination until such time as all of the course work is completed.

(b) The examination shall be comprised of six units as specified in 12 NCAC 09B .0205(b).

(c) The Commission's representative shall submit to the school director within five business days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall have achieved a passing score on the comprehensive written examination upon achieving a minimum of 70 percent correct answers on each of the six units as prescribed in Paragraph (b) of this Rule.

(e) A trainee who has participated in a scheduled delivery of an accredited training course and has achieved a passing score in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on no more than two units of the Commission's comprehensive written examination may request the Director of the Standards Division to authorize a re-examination of the trainee in only those units for which he or she failed to make a passing score of 70 percent:

- (1) The trainee's request for re-examination shall be made in writing on the Commission's Re-Examination Request form and shall be received by the Standards Division within 30 days of the examination. The Re-examination Request form is located on the agency's website:
<http://www.ncdoj.gov/getdoc/b38b7eee-e311-4ec3-8f9c-bd8fd58f6281/SMI-6-Reexam-6-11.aspx>.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course(s).
- (3) A trainee shall have, within 60 days of the original examination(s), only one opportunity for re-examination and shall achieve a passing score on the subsequent unit examination.
- (4) The trainee shall be assigned in writing by the Director of the Standards Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve a minimum score of 70 percent on the examination, the trainee shall not be eligible for probationary certification, as prescribed in 12 NCAC 09C .0303(d). The trainee may enroll and complete a subsequent offering of

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1

the Basic Law Enforcement Training Course before further examination is permitted.

(f) A trainee who fails to achieve a passing score of 70 percent on three or more of the units as prescribed in 12 NCAC 09B .0406(b) shall not be given the opportunity for re-examination on those units; and shall enroll in and complete a subsequent offering of the Basic Law Enforcement Training Course before further examination is permitted.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. January 1, 2015; August 1, 2000; July 1, 1989; July 1, 1985; January 1, 1983.

12 NCAC 09B .0408 COMPREHENSIVE WRITTEN EXAMINATION - BASIC SMI CERTIFICATION

(a) Within 60 days of the conclusion of the classroom instruction portion of a school's offering of any speed measurement instrument operator course or re-certification course, the Commission shall administer a comprehensive written examination to each trainee who has completed all of the required course work.

(b) The examination shall be an objective test covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five business days of the administration of the examination a report of the results of the test for each candidate for certification.

(d) A trainee shall pass the operator training course as required in 12 NCAC 09B .0212, .0213, .0214, .0238, .0242, or .0244 by achieving 70 percent correct answers.

(e) An operator seeking recertification shall pass the operator training recertification course as specified in 12 NCAC 09B .0220, .0221, .0222 .0240, .0243, or .0245 by achieving 75 percent correct answers.

(f) A trainee who has participated in a scheduled delivery of a certified training course and has demonstrated 100 percent competence in each motor-skill or performance area of the course curriculum, but has failed to achieve a passing score, as specified in Paragraph (d) of this Rule, on the Commission's comprehensive written examination, may request the Director of the Standards Division to authorize a re-examination of the trainee under the following requirements:

- (1) The trainee's request for re-examination shall be made in writing on the Commission's Re-Examination Request form, located on the agency's website: <http://www.ncdoj.gov/getdoc/b38b7eee-e311-4ec3-8f9c-bd8fd58f6281/SMI-6-Reexam-6-11.aspx>. The Re-Examination Request form shall be received by the Standards Division within 30 days of the examination;
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course;
- (3) A trainee shall have, within 60 days of the original examination, only one opportunity for re-examination and shall achieve a passing score on the subsequent examination; and

- (4) The trainee shall be notified by the Standards Division staff of a place, time, and date for re-examination.

(g) If the trainee fails to achieve the minimum score as specified in Paragraph (d) of this Rule on the re-examination, the trainee may not be recommended for certification and shall enroll and complete a subsequent course offering before further examination may be permitted.

History Note: Authority G.S. 17C-6; Eff. November 1, 1981; Readopted Eff. July 1, 1982; Amended Eff. January 1, 2015; November 1, 2007; May 1, 2004; April 1, 1999; December 1, 1987; October 1, 1983; April 1, 1983.

12 NCAC 09B .0413 COMPREHENSIVE WRITTEN EXAM - INSTRUCTOR TRAINING

(a) The Director of the Standards Division, or his designee, shall administer a comprehensive written examination to each trainee who has completed the first 12 units of the "Criminal Justice Instructor Training Course" as described in the "Basic Instructor Training Manual." This comprehensive written examination shall be administered within 60 days of the completion of the first 12 units of the "Criminal Justice Instructor Training Course, as specified in Rule .0209 of this Subchapter.

(b) The examination shall be an objective test covering the topic areas contained in the accredited course curriculum.

(c) The Commission's representative shall submit to the school director within five business days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall achieve a passing score on the comprehensive written examination if he or she achieves a minimum of 75 percent correct answers.

(e) A trainee who has participated in a scheduled delivery of an accredited training course and has demonstrated competence in each performance area of the course curriculum, who has scored at least 65 percent but has failed to achieve the minimum passing score of 75 percent on the Commission's comprehensive written examination, may request the Director of the Standards Division to authorize a re-examination of the trainee under the following requirements:

- (1) The trainee's request for re-examination shall be made in writing on the Commission's Re-Examination Request form, located on the agency's website: <http://www.ncdoj.gov/getdoc/b38b7eee-e311-4ec3-8f9c-bd8fd58f6281/SMI-6-Reexam-6-11.aspx>. The Re-Examination Request form shall be received by the Standards Division within 30 days of the examination;
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course;
- (3) A trainee shall have, within 60 days of the original examination, only one opportunity for re-examination and shall achieve a passing score on the subsequent examination; and

- (4) The trainee shall be notified in writing by the Standards Division staff a place, time, and date for re-examination.

(f) Should the trainee not achieve a passing score on the re-examination the trainee shall not be given course completion and shall enroll and complete a subsequent offering of the instructor course before further examination may be permitted.

(g) A trainee who fails to score at least 65 percent on the Commission's comprehensive written examination shall not be eligible for re-examination, and shall complete a subsequent offering of the instructor training course before further examination may be permitted.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. February 1, 1987;
Amended Eff. January 1, 2015; January 1, 1995.*

12 NCAC 09B .0414 COMPREHENSIVE WRITTEN EXAM - SPECIALIZED INSTRUCTOR TRAINING

(a) The Commission shall administer a comprehensive written examination within 60 days of the completed required course work for the following courses:

- (1) Specialized Firearms Instructor Training;
- (2) Specialized Driver Instructor Training;
- (3) Specialized Subject Control Arrest Techniques Instructor Training;
- (4) Specialized Physical Fitness Instructor Training;
- (5) Specialized Explosives and Hazardous Materials Instructor Training;
- (6) Radar Instructor Training;
- (7) Criminal Justice Time-Distance/Speed Measurement Instrument (TD/SMI) Instructor Training;
- (8) LIDAR Instructor Training;
- (9) Re-Certification Training for Radar Instructors;
- (10) Re-Certification Training for TD/SMI Instructors; and
- (11) Re-Certification Training for LIDAR Instructors.

(b) The examination shall be an objective test covering the topic areas contained in the certified course curriculum.

(c) The Commission's representative shall submit to the school director within five business days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall achieve a passing score on the comprehensive written examination if he or she achieves 75 percent correct answers.

(e) A trainee who fails to achieve a minimum score of 75 percent on the Commission's comprehensive written examination shall enroll and complete a subsequent offering of the specialized instructor training course before further examination may be permitted.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. February 1, 1987;*

*Amended Eff. January 1, 2015; June 1, 2013; May 1, 2004;
August 1, 2000; April 1, 1999; July 1, 1989.*

12 NCAC 09B .0416 SATISFACTION OF MINIMUM TRAINING - SMI INSTRUCTOR

(a) To acquire successful completion of the "Speed Measurement Instrument (SMI) Instructor Training Courses," and the "SMI Instructor Re-Certification Courses", the trainee shall complete all required course work as specified in Rules .0210, .0211, .0218, .0219, .0237, or .0239 of this Subchapter for the specific course in attendance.

(b) If the trainee fails to demonstrate 100 percent competence in each motor-skill or performance area, he or she shall be authorized one opportunity for a re-test. Such re-test shall be at the recommendation of the school director and a request shall be made to the Standards Division within 30 days of the original testing. Re-examination shall be completed within 90 days of the original testing. Failure to score 100 percent on the re-test requires enrollment in a subsequent SMI operator course and an SMI instructor course.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. February 1, 1987;
Amended Eff. January 1, 2015; November 1, 2007; April 1, 1999.*

12 NCAC 09C .0211 PRE-DELIVERY REPORT OF TRAINING COURSE PRESENTATION

The Pre-delivery Report of Training Course Presentation is a form on which the School Director notifies the Commission of its intent to present the Basic Law Enforcement Training course. Information requested includes:

- (1) The number of training hours;
- (2) The training delivery period;
- (3) Location;
- (4) Anticipated number of trainees;
- (5) The requested date and location for the administration of the state comprehensive exam; and
- (6) Topical course schedule including proposed instructional assignments.

*History Note: Authority G.S. 17C-6; 150B-11;
Eff. January 1, 1981;
Amended Eff. January 1, 2015; August 1, 2000.*

12 NCAC 09C .0403 REPORTS OF TRAINING COURSE PRESENTATION AND COMPLETION

(a) Each presentation of the "Basic Law Enforcement Training" course shall be reported to the Commission as follows:

- (1) After acquiring accreditation for the course and before commencing each delivery of the course, the school director shall notify the Commission of the school's intent to offer the training course by submitting a Form F-10A(LE) Pre-delivery Report of Training Course Presentation; and
- (2) Not more than 10 days after completing delivery of the accredited course, the school

director shall notify the Commission regarding the progress and achievement of each enrolled trainee by submitting a Form F-10B(LE) Post-delivery Report of Training Course Presentation.

Forms F-10A(LE) and F-10B(LE) are located on the agency's website at: <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>.

Note: Special arrangements shall be made between the Standards Division and the school director for the reporting of law enforcement achievement in a Public Safety Officer course.

(b) Upon completion of a Commission-accredited training course by Juvenile Justice Officer and Chief/Juvenile Court Counselor trainees, the director of the school conducting such course shall notify the Commission of the achievement of trainees by submitting a Report of Training Course Completion (Form F-11). This form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. January 1, 2015; August 1, 2002; August 1, 2000; December 1, 1987.

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

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

- (1) 2015 Firearms Training and Qualification (6 credits);
- (2) 2015 Legal Update (4 credits);
- (3) 2015 Juvenile Minority Sensitivity Training: What does it have to do with me? (2 credits);
- (4) 2015 Domestic Violence: Teen Dating Violence (2 credits); and
- (5) 2015 Department Topics of Choice (10 credits). The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission.

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

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

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

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

(c) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

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

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

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

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

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

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

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005; Amended Eff. January 1, 2015; February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

12 NCAC 09F .0102 TOPICAL AREAS

The course entitled "Concealed Carry Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student shall be able to explain the following:
 - (a) the types of situations that the use of deadly physical force would be justified;
 - (b) list areas where the carrying of a concealed handgun is prohibited;
 - (c) the requirements of handgun storage under G.S. 14-315.1; and
 - (d) the laws governing the carrying of a concealed handgun.

The instructor shall determine the student's level of understanding of the relevant legal issues by a written examination.

- (2) Handgun Nomenclature: The students shall be able either verbally or in writing to list the primary parts of their personal handguns.
- (3) Handgun Safety: The students shall be able to:
 - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
 - (b) list four methods of safely storing a handgun and choose the method most appropriate for their personal use;
 - (c) describe safety issues relating to the safe carry of a handgun; and
 - (d) determine the proper storage of their handguns when there are minors in the home.
- (4) Handgun Fundamentals: The students shall be able to:
 - (a) demonstrate how to load both a revolver and a semiautomatic handgun;
 - (b) demonstrate how to unload both a revolver and a semiautomatic handgun;
 - (c) describe the operational characteristics of their handguns; and
 - (d) achieve a passing score on a proficiency test administered by the instructor as prescribed in Rule .0105 of this Section.
- (5) Marksmanship Fundamentals: The student shall be able to:
 - (a) demonstrate a proper handgun grip;
 - (b) demonstrate either the Weaver or Isosceles Stance;
 - (c) describe the elements of sight alignment and sight picture; and
 - (d) demonstrate trigger control in a dry fire exercise.
- (6) Presentation Techniques: The students shall be able to demonstrate the draw or presentation with their handguns.

- (7) Cleaning and Maintenance: The students shall be able to:
 - (a) demonstrate how to "field strip" the handguns if their handguns can be field stripped;
 - (b) describe how to perform a "Function Check" on their personal handguns; and
 - (c) based on the manufacturer's recommendations, list the lubrication points of their specific handguns.
- (8) Ammunition: The students shall be able to list the four components of handgun ammunition.
- (9) Proficiency Drills: The students shall be able to:
 - (a) demonstrate how to check a handgun in order to ensure that it is safe;
 - (b) demonstrate how to fire a handgun from a ready position;
 - (c) demonstrate the ability to fire a handgun from various distances; and
 - (d) achieve a passing score on a proficiency test administered by the instructor as prescribed in Rule .0105 of this Section.

History Note: Authority G.S. 14-415.12; Temporary Adoption Eff. November 1, 1995; Eff. May 1, 1996; Amended Eff. November 1, 2014; February 1, 2013; May 1, 2004.

12 NCAC 09G .0308 GENERAL INSTRUCTOR CERTIFICATION

(a) General Instructor Certification after December 31, 1984 shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in 12 NCAC 09G .0310, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in corrections and proficiency in the instructional process to the satisfaction of the Commission by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency; and
 - (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field related to the criminal justice system.
- (2) Present evidence showing successful completion of a Commission-certified instructor training program or an equivalent

instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and

- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as specified in 12 NCAC 09B .0413(d), of this Chapter, within 60 days of completion of the Commission-certified instructor training program.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant achieved a passing score on the comprehensive written examination administered by the Commission for the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; January 1, 2006.*

12 NCAC 09G .0314 COMPREHENSIVE WRITTEN EXAM - INSTRUCTOR TRAINING

(a) A representative of the Standards Division shall administer a comprehensive written examination to each trainee who has completed the first 12 units of the Criminal Justice Instructor Training Course as described in the "Instructor Training" manual.

(b) The examination shall be an objective test covering the topic areas contained in the accredited course curriculum.

(c) A trainee shall achieve a passing score on the comprehensive written examination if he or she achieves a minimum of 75 percent correct answers.

(d) A trainee who has participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each performance area of the course curriculum, who has scored at least 65 percent but has failed to achieve the minimum passing score of 75 percent on the comprehensive written examination, may request the Director of the Standards Division to authorize a re-examination of the trainee.

- (1) The trainee's request for re-examination shall be made in writing on the Commission's Re-Examination Request form and shall be received by the Standards Division within 30 days of the examination. The Re-Examination Request form is located on the Agency's website:
[http://www.ncdoj.gov/getdoc/b38b7eee-e311-](http://www.ncdoj.gov/getdoc/b38b7eee-e311-4ec3-8f9c-bd8fd58f6281/SMI-6-Reexam-6-11.aspx)

[4ec3-8f9c-bd8fd58f6281/SMI-6-Reexam-6-11.aspx](http://www.ncdoj.gov/getdoc/b38b7eee-e311-4ec3-8f9c-bd8fd58f6281/SMI-6-Reexam-6-11.aspx).

- (2) The trainee's request for re-examination shall include the favorable recommendation of the School Director who administered the course.
- (3) A trainee shall have, within 60 days of the original examination, only one opportunity for re-examination and shall achieve a passing score on the subsequent examination.
- (4) The trainee shall be assigned in writing by the Standards Division staff a place, time, and date for re-examination.
- (5) Should the trainee not achieve a minimum score of 75 percent on the re-examination, the trainee shall not be given course completion and shall enroll and complete a subsequent offering of the instructor course before further examination may be permitted.

(e) A trainee who fails to score at least 65 percent on the comprehensive written examination shall not be eligible for re-examination, and shall complete a subsequent offering of the instructor training course before further examination is permitted.

*History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015.*

12 NCAC 09G .0414 INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include as a minimum the following identified topic areas:

- (1) Orientation and Pretest;
- (2) Curriculum Development: ISD Model;
- (3) Civil Liability for Law Enforcement Trainers;
- (4) Interpersonal Communication in Instruction;
- (5) Lesson Plan Preparation: Professional Resources;
- (6) Lesson Plan Preparation: Format and Objectives;
- (7) Teaching Adults;
- (8) Principles of Instruction: Demonstration Methods and Practical Exercise;
- (9) Methods and Strategies of Instruction;
- (10) The Evaluation Process;
- (11) Principles of Instruction: Audio-Visual Aids;
- (12) Student 10-Minute Talk and Video Critique; and
- (13) Student Performance:
First 30-Minute Presentation;
Second 30-Minute Presentation; and
Final 80-Minute Presentation.

(d) The "Basic Instructor Training Manual" as published by the North Carolina Justice Academy is to be applied as the basic curriculum for delivery of basic instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:

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

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16D .0104 APPLICATION

(a) All applications for provisional licensure shall be made on the forms furnished by the Board at www.ncdentalboard.org. 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 within 10 business days. Applicants shall ensure that official transcripts of undergraduate college and dental school credits are sent in a sealed envelope to the Board office.

(b) The nonrefundable application fee shall accompany the application, along with a photograph of the applicant taken within six months of the date of 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.

(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 include a statement disclosing and explaining periods, within the last 10 years, of any voluntary or involuntary commitment to any hospital or treatment facility, for 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. 90-29.3; 90-41(a);
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. December 1, 2014; January 1, 2004.*

21 NCAC 16E .0103 APPLICATION

(a) All applications for provisional licensure shall be made on the forms furnished by the Board at www.ncdentalboard.org. 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. Applicants shall ensure that proof of a high school equivalency certificate issued by a government agency or unit or a final transcript from his or her high school is sent to the Board office in a sealed envelope. Applicants shall also ensure that official final transcripts from a dental hygiene program as set forth in G.S. 90-244 are sent in a sealed envelope to the Board office.

(b) The one hundred fifty dollar (\$150.00) nonrefundable application fee shall accompany the application, along with a photograph of the applicant, taken within six months of the date of 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.

(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 form and card are available from the Board office.

*History Note: Authority G.S. 90-226; 90-229(a); 90-232;
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. December 1, 2014; January 1, 2004.*

21 NCAC 16E .0104 EXAMINATION

As a condition precedent to issuing a provisional license, the Board may require an applicant to demonstrate professional competency by appearing before the Board for oral examination, written examination(s), clinical evaluation or any combination thereof.

The Board shall consider the applicant's training, experience, gaps in practice history and malpractice and disciplinary history in determining whether proof of competency will be required.

*History Note: Authority G.S. 90-226; 90-229(a)(5).
Eff. September 3, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. December 1, 2014; August 1, 2002; May 1, 1989.*

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32V .0102 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) Approved educational program – Any program within the United States that, at the time of the Applicant's attendance, was approved by the Commission on Accreditation of Allied Health

- Education Programs (CAAHEP) or the Accreditation Committee for Perfusion Education (AC-PE); any Canadian educational program recognized by the Conjoint Committee on Accreditation of the Canadian Medical Association (CMA); or any program attended by applicant that was subsequently approved by CAAHEP, ACPE, or CMA within seven years of the Applicant's graduation.
- (2) Board –The North Carolina Medical Board and its agents.
 - (3) Committee – The Perfusionist Advisory Committee and its agents.
 - (4) Provisional licensed perfusionist - The person who is authorized to practice perfusion pursuant to 90-698.
 - (5) Registering - Renewing the license by paying the biennial fee and complying with Rule .0104 of this Subchapter.
 - (6) Supervising - Overseeing the activities and accepting the responsibility for the perfusion services rendered by a provisional licensed perfusionist. Supervision means that the supervising perfusionist shall be available for consultation and assistance while the provisional licensee is performing or providing perfusion services. The availability requirement shall not require physical presence in the operating room. Supervision shall be continuous, except as otherwise provided in the rules of this Subchapter.
 - (7) Supervising Perfusionist – A perfusionist licensed by the Committee and who serves as a

primary supervising perfusionist or as a back-up supervising perfusionist.

- (a) The "Primary Supervising Perfusionist" means the perfusionist who, by signing the designation of supervising perfusionist form provided by the Committee, accepts responsibility for the provisional licensed perfusionist medical activities and professional conduct at all times, whether the Primary Supervising Perfusionist is personally providing supervision or the supervision is being provided by a Back-up Supervising Perfusionist. Conduct that violates the laws governing perfusionists may subject the supervising perfusionists to sanctions.
- (b) The "Back-up Supervising Perfusionist" means the perfusionist who accepts responsibility for the supervision of the provisional licensed perfusionist's activities in the absence of the Primary Supervising Perfusionist. The Back-up Supervising Perfusionist is responsible for the activities of the provisional licensed perfusionist only when providing supervision.

History Note: Authority G.S. 90-681; 90-682; 90-685(1)(3); 90-691;

Eff. September 1, 2007;

Amended Eff. November 1, 2014.

This Section contains information for the meeting of the Rules Review Commission on December 17 and 18, 2014 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Margaret Currin (Chair)
Jeff Hyde
Jay Hemphill
Faylene Whitaker

Appointed by House

Garth Dunklin (1st Vice Chair)
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

December 17 and 18, 2014 January 15, 2015
February 19, 2015 March 19, 2015

AGENDA**RULES REVIEW COMMISSION**

WEDNESDAY, DECEMBER 17, 2014 9:00 A.M.

THURSDAY, DECEMBER 18, 2014 9:00 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. Review of Log of Filings (Permanent Rules) for rules filed between October 21, 2014 and November 20, 2014
 - Board of Agriculture (Hammond)
 - Private Protective Services Board (Hammond)
 - Criminal Justice Education and Training Standards Commission (Hammond)
 - Sheriffs' Education and Training Standards Commission (Hammond)
 - Environmental Management Commission (Hammond)
 - Wildlife Resources Commission (Hammond)
 - Department of Transportation (Hammond)
 - Board of Cosmetic Art Examiners (Hammond)
 - Hearing Aid Dealers and Fitters Board (Hammond)
 - Board of Landscape Architects (Hammond)
 - Board of Nursing (Hammond)
 - Board of Occupational Therapy (Hammond)
 - Board of Pharmacy (Hammond)
 - Appraisal Board (Hammond)
 - Respiratory Care Board (Hammond)
 - Veterinary Medical Board (Hammond)
 - Board for Licensing of Soil Scientists (Hammond)
- IV. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- V. Existing Rules Review
 - 1. 10A NCAC 45A – Commission for Public Health (Hammond)
 - 2. 21 NCAC 02 – Board of Architecture (Hammond)
 - 3. 21 NCAC 14 – Board of Cosmetic Art Examiners (Hammond)

4. 21 NCAC 62 – Board of Environmental Health Specialists Examiners (Hammond)

VI. Commission Business

- Next meeting: Thursday, January 15, 2015
-

Commission Review
Log of Permanent Rule Filings
October 21, 2014 through November 20, 2014

AGRICULTURE, BOARD OF

The rules in Chapter 9 are from the Food and Drug Protection Division.

The rules in Subchapter 9O concern the marketing of shell eggs.

Standards for Shell Eggs
 Amend/*

02 NCAC 09O .0103

PRIVATE PROTECTIVE SERVICES BOARD

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

Uniforms and Equipment
 Amend/*

12 NCAC 07D .0105

Application Completion Deadline
 Adopt/*

12 NCAC 07D .0116

Authorized Firearms
 Amend/*

12 NCAC 07D .0809

Uniforms and Equipment
 Adopt/*

12 NCAC 07D .1408

Uniforms and Equipment
 Adopt/*

12 NCAC 07D .1508

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

This Criminal Justice Education and Training Standards Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

Definitions
 Amend/*

12 NCAC 09A .0103

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).

Admission of Trainees

12 NCAC 09B .0203

Amend/*

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>Scope and Applicability of Subchapter</u>	12	NCAC	09G	.0101
Amend/*				
<u>Definitions</u>	12	NCAC	09G	.0102
Amend/*				
<u>Citizenship</u>	12	NCAC	09G	.0202
Amend/*				
<u>Age</u>	12	NCAC	09G	.0203
Amend/*				
<u>Education</u>	12	NCAC	09G	.0204
Amend/*				
<u>Physical and Mental Standards</u>	12	NCAC	09G	.0205
Amend/*				
<u>Moral Character</u>	12	NCAC	09G	.0206
Amend/*				
<u>Certification of Correctional Officers and Probation/Paro...</u>	12	NCAC	09G	.0301
Amend/*				
<u>Notification of Criminal Charges/Convictions</u>	12	NCAC	09G	.0302
Amend/*				
<u>Probationary Certification</u>	12	NCAC	09G	.0303
Amend/*				
<u>General Certification</u>	12	NCAC	09G	.0304
Amend/*				
<u>Retention of Records of Certification</u>	12	NCAC	09G	.0306
Amend/*				
<u>Basic Training for Probation/Parole Officers</u>	12	NCAC	09G	.0412
Amend/*				
<u>Basic Training for Probation/Parole Officers Intermediate</u>	12	NCAC	09G	.0413
Repeal/*				
<u>Suspension: Revocation: or Denial of Certification</u>	12	NCAC	09G	.0504
Amend/*				
<u>General Provisions</u>	12	NCAC	09G	.0602
Amend/*				

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Rules in Subchapter 10B are from the NC Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

<u>Minimum Training Requirements</u>	12	NCAC	10B	.2005
Amend/*				

In-Service Training Program Specifications
Amend/*

12 NCAC 10B .2006

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Flow Design Criteria for Effluent Limitations
Amend/*

15A NCAC 02B .0206

Fresh Surface Water Quality Standards for Class C Waters
Amend/*

15A NCAC 02B .0211

Fresh Surface Water Quality Standards for Class WS-I Waters
Amend/*

15A NCAC 02B .0212

Fresh Surface Water Quality Standards for Class WS-II Waters
Amend/*

15A NCAC 02B .0214

Fresh Surface Water Quality Standards for Class WS-III Wa...
Amend/*

15A NCAC 02B .0215

Fresh Surface Water Quality Standards for Class WS-IV Waters
Amend/*

15A NCAC 02B .0216

Fresh Surface Water Quality Standards for Class WS-V Waters
Amend/*

15A NCAC 02B .0218

Tidal Salt Water Quality Standards for Class SC Waters
Amend/*

15A NCAC 02B .0220

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).

Definitions
Amend/*

15A NCAC 02D .0101

Purpose and Scope
Repeal/*

15A NCAC 02D .0801

Definitions
Repeal/*

15A NCAC 02D .0802

Airport Facilities
Repeal/*

15A NCAC 02D .0804

Parking Facilities
Repeal/*

15A NCAC 02D .0805

Ambient Monitoring and Modeling Analysis
Repeal/*

15A NCAC 02D .0806

Open Burning Purpose Scope
Amend/*

15A NCAC 02D .1901

Definitions
Amend/*

15A NCAC 02D .1902

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

<u>Definitions</u>	15A NCAC 02H .1002
Amend/*	
<u>Stormwater Requirements: Oil and Gas Exploration and Prod...</u>	15A NCAC 02H .1030
Adopt/*	

The rules in Subchapter 2Q are from the EMC and relate to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); exempt categories (.0800); and permit exemptions (.0900).

<u>Required Air Quality Permits</u>	15A NCAC 02Q .0101
Amend/*	
<u>Definitions</u>	15A NCAC 02Q .0103
Amend/*	
<u>Where to Obtain and File Permit Applications</u>	15A NCAC 02Q .0104
Amend/*	
<u>Permit and Application Fees</u>	15A NCAC 02Q .0203
Amend/*	
<u>Final Action on Permit Applications</u>	15A NCAC 02Q .0308
Amend/*	
<u>Purpose of Section and Requirement for a Permit</u>	15A NCAC 02Q .0601
Repeal/*	
<u>Definitions</u>	15A NCAC 02Q .0602
Repeal/*	
<u>Applications</u>	15A NCAC 02Q .0603
Repeal/*	
<u>Public Participation</u>	15A NCAC 02Q .0604
Repeal/*	
<u>Final Action on Permit Applications</u>	15A NCAC 02Q .0605
Repeal/*	
<u>Termination, Modification and Revocation of Permits</u>	15A NCAC 02Q .0606
Repeal/*	
<u>Application Processing Schedule</u>	15A NCAC 02Q .0607
Repeal/*	

The rules in Subchapter 2T set out the requirements for the issuance of permits for waste systems that do not discharge to the surface waters of the state and include general requirements (.0100); and requirements for various systems including: wastewater pump and haul systems (.0200); sewer extensions (.0300); system-wide collection system permitting (.0400); wastewater irrigation systems (.0500); single-family residence wastewater irrigation systems (.0600); high rate infiltration systems (.0700); other non-discharge wastewater systems (.0800); reclaimed water systems (.0900); closed-loop recycle systems (.1000); residuals management (.1100); coal combustion products management (.1200); animal waste management systems (.1300); manure hauler operations (.1400); soil remediation (.1500); and groundwater remediation systems (.1600).

<u>Permitting by Regulation</u>	15A NCAC 02T .0113
Amend/*	

<u>Scope</u>	15A NCAC 02T .1001
<u>Amend/*</u>	
<u>Scope</u>	15A NCAC 02T .1501
<u>Amend/*</u>	

The rules in Subchapter 2U concern reclaimed water including general requirements (.0100); application requirements (.0200); effluent standards (.0300); design standards (.0400); general utilization requirements (.0500); bulk distribution of reclaimed water (.0600); setbacks (.0700); operational plans (.0800); local program approval (.0900); wetlands augmentation (.1100); and irrigation to food chain crops (.1400).

<u>Permitting by Regulation</u>	15A NCAC 02U .0113
<u>Amend/*</u>	

WILDLIFE RESOURCES COMMISSION

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Mountain Island Lake: Mecklenburg, Gaston and Lincoln Cou...</u>	15A NCAC 10F .0353
<u>Amend/*</u>	
<u>Perquimans County</u>	15A NCAC 10F .0355
<u>Amend/*</u>	

TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 2 are from the Division of Highways.

The rules in Subchapter 2E concern miscellaneous operations including tort claims (.0100); outdoor advertising (.0200); junkyard control (.0300); general ordinances (.0400); selective vegetation removal policy (.0600); professional or specialized services (.0700); solicitation of contributions for religious purposes at rest areas (.0800); distribution of newspapers from dispensers at rest areas and welcome centers (.0900); scenic byways (.1000); tourist-oriented directional sign program (.1100); private property owners (.1200).

<u>Selective Vegetation Removal Permit Required to Remove Ve...</u>	19A NCAC 02E .0601
<u>Amend/*</u>	
<u>Requests for Selective Vegetation Removal Permits for a F...</u>	19A NCAC 02E .0602
<u>Amend/*</u>	
<u>Issuance or Denial of Selective Vegetation Removal Permit...</u>	19A NCAC 02E .0603
<u>Amend/*</u>	
<u>Conditions of Selective Vegetation Removal Permit for Fac...</u>	19A NCAC 02E .0604
<u>Amend/*</u>	
<u>Requests for Selective Vegetation Removal Permits for Out...</u>	19A NCAC 02E .0608
<u>Amend/*</u>	
<u>Issuance or Denial of Selective Vegetation Removal Permit...</u>	19A NCAC 02E .0609
<u>Amend/*</u>	
<u>Conditions of Selective Vegetation Removal Permit for Out...</u>	19A NCAC 02E .0610
<u>Amend/*</u>	
<u>Beautification and Replanting Requirements for Selective ...</u>	19A NCAC 02E .0611
<u>Amend/*</u>	
<u>Modified Vegetation Cut or Removal Zone for Outdoor Adver...</u>	19A NCAC 02E .0612
<u>Adopt/*</u>	

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14A are the Cosmetic Art Board of Examiners departmental rules including organizational rules (.0100); and license renewal waiver for armed forces (.0400).

<u>Address</u>	21 NCAC 14A .0104
<u>Amend/*</u>	

The rules in Subchapter 14T concern cosmetic art schools including the scope of the rules and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student equipment (.0400); record keeping (.0500); curricula for all cosmetic art disciplines (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>All Cosmetic Art Schools</u>	21 NCAC 14T .0201
<u>Amend/*</u>	
<u>Cosmetology Curriculum</u>	21 NCAC 14T .0602
<u>Amend/*</u>	
<u>Apprentice Cosmetology Curriculum</u>	21 NCAC 14T .0603
<u>Amend/*</u>	
<u>Esthetics Curriculum</u>	21 NCAC 14T .0604
<u>Amend/*</u>	
<u>Manicuring Curriculum</u>	21 NCAC 14T .0605
<u>Amend/*</u>	
<u>Natural Hair Care Curriculum</u>	21 NCAC 14T .0606
<u>Amend/*</u>	
<u>School Performance Requirements</u>	21 NCAC 14T .0705
<u>Amend/*</u>	

HEARING AID DEALERS AND FITTERS BOARD

The rules in Subchapter 22I concern professional affairs.

<u>Visual Inspection and Hearing Test</u>	21 NCAC 22I .0103
<u>Amend/*</u>	

The rules in Subchapter 22J concern code of ethics.

<u>Scope of Practice</u>	21 NCAC 22J .0116
<u>Adopt/*</u>	

LANDSCAPE ARCHITECTS, BOARD OF

The rules in Chapter 26 are from the Board of Landscape Architects and include statutory and administrative provisions (.0100); practice rules for registered landscape architects (.0200); examination and licensing procedures (.0300); rules, petitions and hearings (.0400); and board disciplinary procedures (.0500).

<u>Authority: Name and Location of the Board</u>	21 NCAC 26 .0101
<u>Amend/*</u>	
<u>Organization of the Board's Officers</u>	21 NCAC 26 .0103
<u>Amend/*</u>	
<u>Fees</u>	21 NCAC 26 .0105
<u>Amend/*</u>	
<u>Suspension of Authority to Expend Funds</u>	21 NCAC 26 .0106

Adopt/*				
<u>Definitions</u>	21	NCAC	26	.0107
Adopt/*				
<u>Board Listing of Individuals and Firm Names</u>	21	NCAC	26	.0201
Amend/*				
<u>Examination and Licensure</u>	21	NCAC	26	.0301
Amend/*				
<u>Reciprocity License by Comity</u>	21	NCAC	26	.0303
Amend/*				
<u>Continuing Education as a Condition of Annual Renewal</u>	21	NCAC	26	.0307
Amend/*				
<u>Duties and Functions of Continuing Education Advisory Com...</u>	21	NCAC	26	.0308
Adopt/*				
<u>Exemptions</u>	21	NCAC	26	.0309
Adopt/*				
<u>Reinstatement Criteria</u>	21	NCAC	26	.0310
Adopt/*				
<u>Applications for Approval</u>	21	NCAC	26	.0311
Adopt/*				
<u>Compliance</u>	21	NCAC	26	.0312
Adopt/*				
<u>Individual Licenses</u>	21	NCAC	26	.0313
Adopt/*				
<u>Corporate Practice of Landscape Architecture</u>	21	NCAC	26	.0314
Adopt/*				
<u>Out-of-State Entities</u>	21	NCAC	26	.0315
Adopt/*				
<u>Disciplinary Review</u>	21	NCAC	26	.0510
Amend/*				

NURSING, BOARD OF

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Clinical Nurse Specialist Practice</u>	21	NCAC	36	.0228
Amend/*				
<u>Administration</u>	21	NCAC	36	.0317
Amend/*				
<u>Faculty</u>	21	NCAC	36	.0318
Amend/*				
<u>Records and Reports</u>	21	NCAC	36	.0323
Amend/*				

OCCUPATIONAL THERAPY, BOARD OF

The rules in Chapter 38 cover organization and general provisions (.0100); application for license (.0200); licensing (.0300); business conduct (.0400); provisions concerning rulemaking (.0500); administrative hearing procedures (.0600); professional corporations (.0700); continuing competence activity (.0800); supervision, supervisory roles, and clinical responsibilities of occupational therapists and occupational therapy assistants (.0900); supervision of

limited permittees (.1000); and supervision of unlicensed personnel (.1100).

<u>Continuing Competence Requirements for Licensure</u>	21	NCAC 38	.0802
Amend/*			

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Physical Requirements</u>	21	NCAC 46	.1412
Amend/*			

<u>Compounding</u>	21	NCAC 46	.1810
Repeal/*			

<u>Medication in Health Departments</u>	21	NCAC 46	.2401
Amend/*			

<u>Drugs and Devices to be Dispensed</u>	21	NCAC 46	.2403
Amend/*			

<u>Compounding</u>	21	NCAC 46	.2801
Amend/*			

<u>Definitions</u>	21	NCAC 46	.2802
Repeal/*			

<u>Reg/Pharmacies Dispensing Sterile Pharmaceuticals</u>	21	NCAC 46	.2803
Repeal/*			

<u>Responsibilities of Pharmacist-Manager</u>	21	NCAC 46	.2804
Repeal/*			

<u>Labeling</u>	21	NCAC 46	.2805
Repeal/*			

<u>Records and Reports</u>	21	NCAC 46	.2806
Repeal/*			

<u>Anti-Neoplastic Agents</u>	21	NCAC 46	.2807
Repeal/*			

<u>Quality Assurance</u>	21	NCAC 46	.2808
Repeal/*			

APPRAISAL BOARD

The rules in Subchapter 57A cover licensing, certification and practice rules for appraisers including application procedures (.0100); licensing and certification (.0200); examination (.0300); general practice requirements (.0400); and appraisal standards (.0500).

<u>Supervision of Trainees</u>	21	NCAC 57A	.0407
Amend/*			

The rules in Subchapter 57B cover real estate appraisal education including the courses required for licensure or certification (.0100); course sponsor standards for pre-licensing or pre-certification courses (.0200); pre-licensing and pre-certification course standards (.0300); course sponsor fees (.0400); fees for private real estate appraisal education schools (.0500); and continuing education course standards (.0600).

<u>Registered Trainee Course Requirements</u> Amend/*	21	NCAC 57B .0101
<u>Criteria for Course Approval</u> Amend/*	21	NCAC 57B .0603

RESPIRATORY CARE BOARD

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); miscellaneous provisions (.0500); rulemaking and declaratory rulings (.0600); and administrative hearing procedures (.0700).

<u>Continuing Education Requirements</u> Amend/*	21	NCAC 61 .0401
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VETERINARY MEDICAL BOARD

The rules in Chapter 66 are from the Veterinary Medical Board including statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); rules petitions hearings (.0400); declaratory rulings (.0500); administrative hearings procedures (.0600); administrative hearings decisions related rights (.0700) and judicial review (.0800).

<u>Fees</u> Amend/*	21	NCAC 66 .0108
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SOIL SCIENTISTS, BOARD FOR LICENSING OF

The rules in Chapter 69 are from the Board for Licensing of Soil Scientists including statutory and administrative provisions (.0100); licensing of soil scientists (.0200); continuing professional competency (.0300); standards of professional conduct (.0400); and disciplinary action and procedure (.0500).

<u>Authority: Name and Location of Board</u> Amend/*	21	NCAC 69 .0101
<u>Fees</u> Amend/*	21	NCAC 69 .0104

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
Don Overby
J. Randall May

A. B. Elkins II
Selina Brooks
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	
Kelvin M. Williams, dba Da Wave v. ABC Commission	14 ABC 04723	09/12/14	
ABC Commission v. Prescott Elliot Urban Environments LLC T/A Marquis Market	14 ABC 04798	10/02/14	
<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	
Karen Tate v. Victims Compensation Commission	14 CPS 02397	09/03/14	
Waheeda Ammeri v. Department of Public Safety	14 CPS 03254	07/21/14	
Jacorey Thomas v. NC DPS Victim Services	14 CPS 05922	10/20/14	
Rodger L. Ackerson v. Janice W. Carmichael, NC Crime Victims Compensation Commission	14 CPS 06627	10/14/14	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
M. Yaghi, DDS, P.A. v. DHHS	11 DHR 11579	09/15/14	
M. Yaghi, DDS, P.A. v. DHHS	11 DHR 11580	09/15/14	
Senior Home Care Services, Inc. v. DHHS	12 DHR 09750	08/13/14	
Parker Home Care LLC v. DHHS, Division of Medical Assistance	12 DHR 10864	10/06/14	
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
Cleveland Otis Dunston v. North Carolina Nurse Aide Registry	13 DHR 10364	10/06/14	
Kenneth Terrell Ford v. DHHS, Division of Facility Services	13 DHR 10745	02/12/14	29:03 NCR 356

CONTESTED CASE DECISIONS

Pamela Byrd v. DHHS	13 DHR 12691	11/05/13	29:06 NCR 685
Mary Lynne Nance v. DHHS, Division of Health Service	13 DHR 13351	05/13/14	29:08 NCR 959
Tricare Counseling and Consulting, Inc. v. DHHS, Division of Medical Assistance	13 DHR 14221	12/31/13	29:04 NCR 460
Neogenesis, LLC v. DHHS, Division of Medical Assistance and its agent Eastpointe Human Services Local Management Entity	13 DHR 14222	06/09/14	29:09 NCR 1113
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
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	
David LeGrand v. DHHS, Division of Health Service Regulation , Health Care Personnel Registry	13 DHR 18668	08/01/14	29:10 NCR 1229
Absolute Home Care Agency, Inc. v. DHHS, Division of Medical Assistance	13 DHR 18689	09/02/14	29:11 NCR 1445
John A. Page v. DHHS	13 DHR 19546	09/24/14	
United Home Care, Inc. d/b/a Untied Home Health, Inc. d/b/a United Home Health v. DHHS, Division of Health Service Regulation, Certificate of Need Section, and Maxim Healthcare Services, Inc.	13 DHR 19690	06/05/14	29:09 NCR 1122
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	
Akinsola Ade Okunsokan v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 20066	09/26/14	
Marilyn Sherrill v. DHHS	13 DHR 20086	08/13/14	
Angelo Cornilus Graham v. Office of Administrative Hearings	13 DHR 20090	10/01/14	
HSB Enterprise Corporation, Hettion S. Booker v. DHHS, Division of Medical Assistance, Program Integrity Section	13 DHR 20235	09/02/14	
Leisa Lenora Dockery v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	13 DHR 20318	09/15/14	
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	
Parker Home Care LLC v. DHHS	14 DHR 00752	10/06/14	
Nadiah Porter v. Durham County Department of Social Services (DSS) (Formerly Durham's Alliance for Child Care Access, DACC)	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	
Victoria McLaughlin v. DHHS, Division of Health Service Regulation	14 DHR 01741	10/01/14	
Elite Care Inc. Demetrice Wilson v. DHHS and East Carolina Behavioral Health	14 DHR 01926	09/02/14	
Elizabeth Mitchell v. Durham DSS	14 DHR 01982	06/23/14	
Wayne Mitchell v. Durham DSS	14 DHR 02044	06/23/14	
Sylvia B. Thompson v. DHHS, Vital Records	14 DHR 02280	10/17/14	
Robert Stanley Hendricks v. Walter B. Jones	14 DHR 02367	10/21/14	
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	
Evangela Wayne v. DHHS, Division of Health Service Regulation	14 DHR 03296	09/09/14	
Peter K. Kagwanja, owner Lighthouse Foodmart v. DHHS, Division of Public Health	14 DHR 03335	07/03/14	
Independent Living Group Home Shanita Lovelace v. DHHS	14 DHR 03482	09/05/14	
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	
TT & T Services, Inc. v. DHHS, Division of Medical Assistance and Eastpointe Human Services	14 DHR 04461	09/19/14	
TT & T Services Inc., Eunice Teen Diggs v. Eastpoint MCO	14 DHR 04560	11/04/14	
Lori Brady, Administrator, Randolph Fellowship Home Inc., Alpha House v. DHHS,	14 DHR 04606	10/08/14	

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Wilbert Nichols III, Community Alternative Housing Inc. v. Eastpointe MCO, Tichina Hamer	14 DHR 04640	09/16/14
Derrik J. Brown v. DHHS	14 DHR 05065	10/08/14
Jacqueline McAdoo v. DHHS	14 DHR 05287	09/12/14
Eva Lewis Washington, Successful Transitions LLC	14 DHR 05447	10/06/14
Duke Raleigh Hospital, Designated Rep: Mary Planisek v. DHHS, Division of Medical Assistance, Program Integrity Program	14 DHR 06107	10/29/14
Muna Elmi v. DHHS	14 DHR 06563	10/13/14

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Riki Paul Matsufugi Johnson v. NC Alarm Systems Licensing Board	12 DOJ 09070	09/18/14	
Brian Louis Scott v. NC Private Protective Services Board	12 DOJ 10093	09/23/14	
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	08/14/14	29:07 NCR 877
Garrett Dwayne Gwin v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 17240	06/10/14	
Donald Shane Dublin v. NC Criminal Justice Education and Training Standards Commission	13 DOJ 18990	09/12/14	29:11 NCR 1453
Howard Ron Simons v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 19148	06/20/14	
William Richard Herring v. NC Sheriffs' Education and Training Standards Commission	13 DOJ 19149	09/18/14	
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	
Dennis Kevin Creed v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 00878	05/23/14	29:08 NCR 992
Jeremy Samuel Jordan v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 01203	06/12/14	
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Antwain Renae Smith v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 02721	10/31/14	29:11 NCR 1474
Dierdre Aston Rhinehart v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 03523	09/16/14	
Kenneth Lamont McCoy v. NC Alarm Systems Licensing Board	14 DOJ 03904	07/17/14	
Brenda Louise Lassiter v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04104	09/17/14	
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	29:09 NCR 1183
James Cornelius Tatum, Jr. v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 05715	10/07/14	
Jeremy Clark v. NC Private Protection Services Board	14 DOJ 05882	11/07/14	

DEPARTMENT OF LABOR

Jacquelyn Thomas v. NCDOL	14 DOL 05878	09/26/14
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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
DG Gassaway v. NC Teachers and State Employees Retirement Systems	14 DST 06260	10/06/14

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Tara Jane Dumas v. Department of Public Instruction	13 EDC 18876	05/02/14	29:08 NCR 966
Catherine Helgesen v. Department of Public Instruction, Licensure Section	13 EDC 20059	07/22/14	29:10 NCR 1244

Crystal Arnae Kelly v. Department of Public Instruction	14 EDC 03803	09/05/14	
Barbara Cheskin v. Department of Public Instruction	14 EDC 04962	10/06/14	

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	
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	
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DEPARTMENT OF INSURANCE

Sandy T. Moore v. Blue Cross/Blue Shield NC, State Health Plan	14 INS 00275	08/07/14	
Beryl Joan Waters v. NC State Health Plan	14 INS 01413	09/18/14	

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Beth Ford v. NC LPC Board	14 LPC 03805	08/25/14	
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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	
Dammion C. Wright v. North Carolina Central University	14 MIS 05200	09/16/14	

OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)

Ricky Lynn Mason v. NC Correctional Institution for Women	10 OSP 07753	10/09/14	
Peter Duane Deaver v. NC Department State Bureau of Investigation and NC Department of Justice	11 OSP 05950	08/26/14	29:09 NCR 1091
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
Mary S. Hardin v. Department of Public Safety	13 OSP 13014	07/10/14	29:10 NCR 1255
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
Elaine Rouse v. Winston-Salem State University	13 OSP 17182	08/26/14	
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Meg DeMay v. Richmond County Department of Social Services	13 OSP 18084	07/02/14	29:06 NCR 719
Chris Edward Fidler v. Department of Revenue	13 OSP 18255	08/25/14	29:11 NCR 1459
Renecia Morgan v. Washington County Department of Social Services	13 OSP 18590	04/21/14	29:08 NCR 983
Gregg Sipler v. University of NC at Greensboro	13 OSP 18692	04/21/14	29:07 NCR 885
Josephine Keke v. DHHS	13 OSP 19639	04/17/14	29:08 NCR 973
Carolyn Collins v. Department of Public Safety	13 OSP 19827	07/11/14	29:10 NCR 1273
Joseph Vincoli v. Department of Public Safety	14 OSP 00389	04/10/14	29:02 NCR 218

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Pamela M. Walsh v. Deborah McSwain, (NC DPS), Department of Public Safety	14 OSP 01345	09/25/14
Ralph Douglas Moody v. NC State Treasurer's Office, Deputy Treasurer Brenda Williams	14 OSP 01733	09/24/14
Craig Williams v. Billy Deaver NCCU Superintendent, NC Central University of Building Trades	14 OSP 02111	06/06/14
Shaneda L. Gilliam v. Department of Public Safety, Division of Adult Correction	14 OSP 02493	10/21/14
Crystal McLean v. Alicia Lopez, NC SCO/DOA, NC State Construction Office/Department of Administration	14 OSP 02944	07/01/14
Sion A. Moss III v. NC School for the Deaf	14 OSP 02993	09/17/14
Teresa Wheeler v. County of Currituck-Currituck County Fire/EMS Department	14 OSP 03688	08/12/14
Martin J. Rios v. DHHS, Cherry Hospital	14 OSP 05062	11/03/14
Vickey A. Ingram v. CLT Transit Management of CLT Inc.	14 OSP 05202	09/19/14
Denise Malloy Hubbard v. North Carolina State University	14 OSP 06909	11/06/14

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C-Co Mini Mart Inc. v. Department of Revenue	13 REV 10490	09/10/14	
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	
Kacey Suo v. Department of Revenue	14 REV 02878	10/14/14	
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

Cheryl A. Tatum v. Department of Secretary of State	13 SOS 18521	06/09/14	29:09 NCR 1176
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	

UNC HOSPITALS

Sarah W. Robbins v. UNC Hospitals	13 UNC 13904	10/03/14
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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

JURISDICTION

As stipulated by the parties: This matter is in the appropriate form and venue. The matter was filed in a timely and appropriate fashion. All parties necessary are joined, and there is no question as to misjoinder or nonjoinder of parties.

APPLICABLE STATUTES AND RULES

42 U.S.C. §§ 1396a - 1396v
42 C.F.R. Parts 455 and 456
N.C. Gen. Stat. § 150B-22 *et seq.*
N.C.G.S. § 108C-7
10A N.C.A.C. 22F .0602 *et seq*
N.C. State Plan for Medical Assistance

BURDEN OF PROOF

Respondent bears the burden of proof in this matter, pursuant to N.C. Gen. Stat. §108C-12.

DOCUMENTARY EVIDENCE

Prior to the hearing, the parties stipulated as to authenticity and admissibility of the following documentary evidence. All of the following documents were accepted and admitted into evidence:

For Respondent:

1. Letter from CCME to Absolute (Prepayment Review Initial Notice) (6/20/12)
2. Green card for 6/20/12 letter
3. Letter from CCME to Absolute (Prepayment Review Initial Notice) (8/2/12)
4. Green card for 8/2/12 letter
5. Letter from CCME to Absolute (Prepayment Review Initial Notice) (8/3/12)
6. Green card for 8/3/12 letter
7. Batch summary exhibit
8. Claims summary detail exhibit
9. Records delivery log exhibit
10. Spreadsheet showing missed questions (Q1-Q8)
11. Review details exhibit
12. Provider Monthly Accuracy Report (summary)
13. Provider Monthly Accuracy Report (by month)
14. Provider billing activity

15. Provider billing summary
16. Letter from DHHS/DMA to Absolute (Termination of Participation) (5/8/13)
17. Tracking information for 5/8/13 letter
18. Letter from DHHS/DMA to Absolute (Termination of Participation) (5/22/13)
19. Tracking information for 5/22/13 letter
20. Provider communication log
21. Recipient MID list (26 recipients)
22. Provider staff list
23. (Not admitted.)
24. Clinical Coverage Policy 3E
25. Clinical Coverage Policy 3L
26. Provider Participation Agreement
27. Records relating to C. Barringer (notebook)
28. Records relating to M. Brown (notebook)
29. Records relating to V. France (notebook)
30. Records relating to W. Miller (notebook)
31. Records relating to W. Murrill (notebook)
32. Records relating to L. Tate (notebook)
33. Altered documents relating to L. Tate
34. Altered documents relating to L. Tate
35. Altered documents relating to C. Barringer
36. Altered documents relating to C. Barringer

For Petitioner:

1. N.C. Auditor, Performance Audit, Department of Health and Human Services, NCTracks (May 2013) (admission limited to the purposes stated in the report).
- 1A. Criminal background check document relating to M Martin.
2. N.C. Auditor, Performance Audit, Department of Health and Human Services, NCTracks (December 2013) (admission limited to the purposes stated in the report).
5. CCME document request to Petitioner (Sept. 3, 2013)
6. CCME document request to Petitioner (Sept. 19, 2013)

WITNESSES

Carol Lukosius, Section Chief, Home Care Review Section, Program Integrity, DMA
Robyn Winters, Assistant Manager, Prepayment Claims Review, CCME
Donna Hendrix, Prepayment Claims Review Supervisor, HCBS, CCME
Tammy Crawford, Principal, Absolute Home Care Agency, Inc.

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

FINDINGS OF FACT

1. At all times material to this matter, Petitioner was an enrolled provider in the North Carolina Medicaid Program. Petitioner entered into a North Carolina Medicaid Participation Agreement with the DMA to participate in this program. (Respondent's Ex. 26).

2. By entering into the Medicaid Participation Agreement, Petitioner agreed to comply with "state laws and regulations, medical coverage policies of the Department, and all guidelines, policies, provider manuals, implementation updates, and bulletins published by CMS, the Department its divisions and/or its fiscal agent in effect at the time the service is rendered." (Respondent's Ex. 6 at ¶ 3). Petitioner agreed to "submit claims for services rendered to eligible North Carolina Medicaid recipients ... in accordance with rules and billing instructions in effect at the time the service is rendered." (*Id.*, at ¶ 5(a)). Petitioner agreed to "[k]eep, maintain and make available complete and accurate medical and fiscal records in accordance with Department record-keeping requirements that fully justify and disclose the extent of the services or items furnished and claims submitted to the Department." (*Id.*, ¶ 7(a)(ii)).

3. DMA Clinical Coverage Policy 3E, original effective date of June 1, 2011, pertaining to In-Home Care for Adults, was in effect at all times relevant to this dispute. (Resp. Ex. 24). Policy 3E is a properly promulgated medical coverage policy. Petitioner, as a Medicaid provider in North Carolina, was obligated to comply with the requirements of Policy 3E. (*Id.*; see also Resp. Ex. 26 (participation agreement)). Policy 3E is 18 pages long, and includes a 2-page table of contents. (Resp. Ex. 24).

Prepayment Claims Review

4. DMA's prepayment review contractor is The Carolinas Center for Medical Excellence ("CCME"). CCME maintained a staff of reviewers who performed the prepayment claims review on behalf of DMA. DMA had performed training and educational programs for the CCME staff, including training on Policy 3E and the audit tool. CCME representatives Robyn Winters and Donna Hendrix explained the process and procedures used by CCME in connection with the prepayment claims review.

5. In June 2012, DMA placed Petitioner on prepayment claims review. DMA has authority pursuant to N.C.G.S. § 108C-7 to place a Medicaid provider on prepayment claims review “[i]n order to ensure that the claims presented by a provider for payment by the Department meet the requirements of federal and State laws and regulations and medical necessity criteria...” N.C.G.S. § 108C-7(a).

6. CCME prepared letters dated June 20, 2012, August 2, 2012 and August 3, 2012 to Petitioner, to provide notice pertaining to the prepayment claims review process. (Resp. Exs. 1, 3, 5). Although there were some issues with the addresses on the letters, there was no dispute that Petitioner received written notice about the prepayment claims review no later than August 6, 2012. (Resp. Exs. 2, 4, 6). The August 3, 2012 notice stated that prepayment claims review would begin for all claims submitted by Petitioner after August 24, 2012. (Res. Ex. 5).

7. These letters merely recited the grounds required by N.C. Gen. Stat. 108C-7(a) in order to conduct a prepayment review. No specific instances of the grounds enumerated in N.C. Gen. Stat. 108C-7(a) were cited in these letters. Furthermore, no evidence was presented with respect to these grounds at the hearing in this matter.

8. Petitioner was on prepayment claims review between August 24, 2012 and December 18, 2013. (Resp. Ex. 12).

DMA's Notice of Termination

9. DMA prepared and mailed via certified mail a letter dated May 8, 2013 to notify Petitioner that DMA was terminating its participation in the North Carolina Medicaid program. Resp. Ex. 16, at 1. The notice provided, “As a result of not meeting minimum accuracy rate requirements of prepayment review, your agency is terminated from participation in the North Carolina Medicaid program in accordance with 10A N.C.A.C. 22F .0602 and .0605 effective 30 days from the date of this letter.” *Id.* The May 8, 2013 termination notice was prepared by Ms. Lukosius on or about May 8, 2013.

10. The May 8, 2013 termination notice included an old address for Petitioner. Because the address was not current, this letter did not reach Petitioner but instead was returned to DMA as undeliverable. (Resp. Ex. 16, 17).

11. DMA prepared and mailed via certified mail a second letter, dated May 22, 2013, to notify Petitioner that DMA was terminating its participation in Medicaid. Resp. Ex. 18, at 1. The May 22, 2013 notice stated that the termination would become effective in 30 days. *Id.* The May 22, 2013 termination notice was prepared by Ms. Lukosius and signed by her on or about May 22, 2013.

12. The evidence showed that the May 22, 2013 termination notice was mailed by certified mail on October 2, 2013. Resp. Exs. 18, 19. Petitioner received the termination notice on October 7, 2013. *Id.* Petitioner's representative Ms. Crawford admitted that Petitioner received the termination notice in October 2013. There is no dispute that Petitioner received written notice of the termination from DMA in October 2013.

13. The termination notice stated that termination would become effective in 30 days. To date, however, Petitioner has not been terminated. Other than sending the termination notice to Petitioner in October 2013, DMA has taken no affirmative steps to terminate Petitioner from the Medicaid program. During a conference call with the Court on December 6, 2013, DMA agreed and stipulated that it would not seek to terminate Petitioner prior to a hearing and decision on the merits. *See* Order (Jan. 10, 2014). At the time of hearing, in April, May and June, Petitioner was still authorized and enrolled to participate in the North Carolina Medicaid program, and DMA had not terminated Petitioner from participating in the program, pending a decision on the merits.

CONCLUSIONS OF LAW

1. All parties properly are before the Office of Administrative Hearings. This tribunal has jurisdiction of the parties and of the subject matter at issue.

2. Respondent bears the burden of proof in this matter pursuant to N.C. Gen. Stat. §108C-12.

3. DMA has authority pursuant to N.C.G.S. § 108C-7 to place a Medicaid provider on prepayment claims review “[i]n order to ensure that the claims presented by a provider for payment by the Department meet the requirements of federal and State laws and regulations and medical necessity criteria....” N.C.G.S. § 108C-7(a). “Grounds for being placed on prepayment review shall include, but shall not be limited to, receipt by the Department of credible allegations of fraud, identification of aberrant billing practices as a result of investigations or data analysis performed by the Department or other grounds as defined by the Department in rule.” *Id.* No evidence of any of these grounds existed in this case.

4. N.C.G.S. § 108C-7(e) provides that a Medicaid “provider shall remain subject to the prepayment claims review process until the provider achieves three consecutive months with a minimum seventy percent (70%) clean claims rate.” The statute further provides that, “where a provider fails to meet this standard within six months of being placed on prepayment claims review, the Department may implement sanctions, including termination of the applicable Medicaid Administrative Participation Agreement”

5. 10A N.C.A.C. 22F .0602 authorizes DMA to impose administrative sanctions upon a Medicaid provider, including termination. *Id.*, at (a)(3) (“Termination of a provider from further participation in the Medicaid program, provided the appropriate findings have been made”).

6. Petitioner and DMA entered into a valid Medicaid Participation Agreement. Respondent’s Ex. 6. Petitioner was required to comply with “state laws and regulations, medical coverage policies of the Department, and all guidelines, policies, provider manuals, implementation updates, and bulletins published by CMS, the Department its divisions and/or its fiscal agent in effect at the time the service is rendered.” (Respondent’s Ex. 6 at ¶3).

7. DMA Clinical Coverage Policy 3E, original effective date of June 1, 2011, pertaining to In-Home Care for Adults, was in effect at all times relevant to this dispute. (Resp. Ex. 24). Policy 3E is a properly promulgated medical coverage policy. Petitioner, as a Medicaid provider in North Carolina, was obligated to comply with the requirements of Policy 3E. (*Id.*; *see also* Resp. Ex. 26 (participation agreement)).

8. While Respondent presented evidence of Petitioner's noncompliance with N.C. Gen. Stat. 108C-7(e), Respondent failed to present any evidence of the grounds for Petitioner to be placed on prepayment review pursuant to N.C. Gen. Stat. 108C-7(a). Respondent does not meet this threshold. Prepayment review in this case is random selection. However, prepayment review shall be based on grounds listed in N.C. Gen. Stat. 108C-7(a) and the Prepayment Review Initial Notice in Respondent's Exhibits 1, 3, and 5.

9. Using a criminal procedure analogy, Respondent's prepayment review is akin to a law enforcement officer stopping a car without reasonable suspicion to stop the car. The officer finds a stolen firearm or illegal drugs in the car. Since the officer did not have a reason to stop the car, that evidence cannot be used against the defendant. Here, we have evidence presented by Respondent showing noncompliance by Petitioner. However, no grounds existed to place Petitioner on prepayment review in the first place. Therefore, the results of the prepayment review due to Respondent's failure to present sufficient or any evidence on the grounds for prepayment review are not reached. Merely reciting the statutory grounds in the Prepayment Review Initial Notice does not meet the requirements of N.C. Gen. Stat. 108C-7(a).

10. In order for Petitioner to prevail, N.C. Gen. Stat. 150B-23 requires that an agency substantially prejudiced Petitioner's rights and "[e]xceeded its authority or jurisdiction; [a]cted erroneously; [f]ailed to use proper procedure; [a]cted arbitrarily or capriciously; or [f]ailed to act as required by law or rule." Respondent's termination substantially prejudiced Petitioner's rights. Respondent exceeded its authority, acted erroneously, failed to use proper procedure and failed to act by law or rule by placing Petitioner on prepayment review. Respondent failed to comply with N.C. Gen. Stat. 108C-7(a) in its failure to show grounds for prepayment review. Failure to show grounds for prepayment review makes this prepayment review appear random. Random prepayment review is arbitrary and capricious.

11. Pursuant to N.C. Gen. Stat. § 108C-7 and N.C. Gen. Stat. § 150B-23(a), Respondent did not properly terminate Petitioner from the North Carolina Medicaid Program.

12. Respondent deprived Petitioner of property and substantially prejudiced Petitioner's rights. Further, Respondent exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; and failed to act as required by law or rule.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

The Court hereby REVERSES Respondent DMA's May 2013 decision terminating Petitioner Absolute Home Care Agency, Inc. from further participation in the North Carolina Medicaid program, as set forth in the May 22, 2013 termination notice (Resp. Ex. 18) received by Petitioner on October 7, 2013.

NOTICE

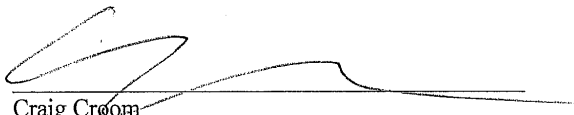
This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of 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.

IT IS SO ORDERED.

Dated this the 2nd day of September, 2014.


Craig Cream
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

DONALD SHANE DUBLIN,

Petitioner,

v.

**NORTH CAROLINA CRIMINAL
JUSTICE EDUCATION AND
TRAINING STANDARDS
COMMISSION,**

Respondent

Filed

2014 SEP 12

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 18990**

Office of
Administrative Hearings

PROPOSAL FOR DECISION

This case came on for hearing on June 24, 2014 before Administrative Law Judge Craig Croom in High Point, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: William L. Hill
Attorney for Petitioner
Frazier, Hill & Fury
2407 Cone Blvd
Greensboro, North Carolina 27402

Respondent: Lauren Tally Earnhardt
Attorney for Respondent
Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, North Carolina 27602-0629

ISSUES

Does substantial evidence exist to revoke or suspend Petitioner's certification as a law enforcement officer?

BASED UPON the Court's careful consideration of the sworn testimony of the witnesses presented at the hearing, the documentary evidence, and the entire record in this proceeding, the Undersigned Administrative Law Judge makes the following findings of fact and conclusions of law. In making the findings of fact, the Undersigned has weighed all the evidence and has

assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. 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, the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter "The Commission"), on September 23, 2013.

2. Petitioner was certified as a sheriff's deputy with the Davidson County Sheriff's Office from November 14, 2003 until he was separated at the discretion of the Sheriff on May 11, 2010. Petitioner was then certified as a law enforcement officer with East Spencer Police Department from September 8, 2011 until his dismissal on October 31, 2012.

3. Petitioner now seeks certification as a part time law enforcement officer with the Denton Police Department, and part time law enforcement officer with Statewide Company Police Department.

4. When reviewing Petitioner's request for certification at East Spencer, Richard Squires, an investigator for Respondent, investigated why Petitioner left the Davidson County Sheriff's Office. Mr. Squires found that in 2010, Petitioner had been investigated by Davidson County Sheriff's Office Internal Affairs and the North Carolina SBI for allegations of sexual assault. The allegations did not lead to any criminal charges against Petitioner.

5. Once the criminal investigation was complete, Mr. Squires requested documents from the investigations and received a summary of the SBI investigation from legal counsel. Mr. Squires also contacted Petitioner and the alleged victim for their statements.

6. Based on his investigation, Mr. Squires prepared a memorandum summarizing his findings and that memorandum was presented to Respondent's Probable Cause Committee on August 22, 2013. Petitioner was presented at the Committee meeting and was able to speak with the Committee members and present evidence.

7. The Probable Cause Committee found probable cause to believe that Petitioner committed the felonious offense of Second-Degree Sexual Offense, the Class B Misdemeanor offense of Sexual Battery, and lacks good moral character.

8. Petitioner stated that he and Mrs. Dipilato had a sexual relationship in 2008. Petitioner admitted to engaging in sexual acts with Mrs. Dipilato on two separate occasions while he was on duty as a Davidson County Sheriff's Deputy and in uniform. Sometime between March 2008 and November 2008 Petitioner claimed Mrs. Dipilato performed oral sex on him while the two of them were inside the communications office and both on duty. Petitioner failed to remember any other details of this incident.

9. In November 2008, Bobbie Byerly Dipilato was 4 months pregnant and was working at the Davidson County Sheriff's Office as a telecommunicator. At this time, Petitioner was also employed by Davidson County as a Sheriff's Deputy, and had known Mrs. Dipilato for at least eight years. Mrs. Dipilato and Petitioner often worked the same shifts and communicated about work.

10. On November 3, 2008, while working night shift Petitioner was ordered to transport a female to Carolina Medical Center in Concord under an involuntary commitment order. Davidson County Department policy required a female officer or staff member to accompany any transport of a female citizen. Mrs. Dipilato was asked by her supervisor to accompany Petitioner and the female citizen on the transport. Petitioner, Mrs. Dipilato and the female drove in a marked Crown Victoria patrol car with a light bar on the top and Davidson County Sheriff's Office markings on the side. They arrived at the hospital without incident, left the female at the hospital and started driving back to the Sheriff's office.

11. Around 2:00 a.m., on the return trip, Petitioner was driving the patrol car on Highway 85 and Mrs. Dipilato was sitting in the front passenger seat. Petitioner then exited Highway 85 on the China Grove exit and stopped the patrol car on the exit ramp. The exit ramp had no street lights or businesses.

12. Petitioner admitted to engaging in sexual contact with Mrs. Dipilato on November 3, 2008 in his patrol car at the China Grove exit. Petitioner admitted to touching Mrs. Dipilato's breasts and kissing her. He further admitted that Mrs. Dipilato ejaculated him with her hands, but he did not touch her in any other way. Petitioner testified that he was newly married at the time he engaged in sexual acts with Mrs. Dipilato on November 3, 2008.

13. At the time this incident occurred on November 3, 2008, Petitioner was representing the Sheriff's Office and the citizens of Davidson County.

14. While Mrs. Dipilato contended that this sexual act was by force and against her will, she did not report Petitioner's actions on November 3, 2008 to anyone until May of 2010 when she disclosed the details of the incident to her supervisor. She waited over a year to report because her husband was out of work and she was the only source of income and health insurance for her family. Mrs. Dipilato feared she would lose her job and the benefits of health insurance. Petitioner was separated from the Davidson County Sheriff's Office the same week Mrs. Dipilato reported this sexual encounter.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given labels.

2. The North Carolina Criminal Justice Education and Training Standards Commission has the authority granted under Chapter 17C of the North Carolina General Statutes

and Title 12 of the North Carolina Administrative Code, Chapter 9G, to certify correctional officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09A.0204(b)(2) states that:

(b) The Commission may suspend, revoke or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

(2) fails to meet or maintain one or more of the minimum standards required by 12 NCAC 09B.0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 9B.0200 or 12 NCAC 9B.0400 for the category of the officer's certification[.]

4. 12 NCAC 09B.0111(1)(a) states that: In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law enforcement officer employed by an agency in North Carolina shall:

(1) not have committed or been convicted of:

(a) a felony[.]

5. N.C.G.S. § 14-27.5. Second-degree sexual offense.

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

6. N.C.G.S. § 14-27.1(4) defines "Sexual act" to mean "cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes."

7. 12 NCAC 09A.0204(b)(3)(A) states that:

- (b) The Commission may suspend, revoke or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

- (3) has committed or been convicted of:

- (A) a criminal offense or unlawful act defined in 12 NCAC09A.0103 as a Class B misdemeanor

8. N.C.G.S. § 14-27.5A. Sexual battery.

- (a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

- (1) By force and against the will of the other person; or

- (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

- (b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor.

9. N.C.G.S. § 14-27.1(4) defines "Sexual contact" to mean: (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

10. 12 NCAC 09B.0101(3) states that: Every criminal justice officer employed by an agency in North Carolina shall:

- (3) be of good moral character pursuant to G.S.17C-10 and as determined by a thorough background investigation[.]

11. A preponderance of the evidence does not exist to support the conclusion that Petitioner committed the felony offense of second degree sex offense on November 3, 2008.

12. A preponderance of the evidence does not exist to support the conclusion that Petitioner committed the Class B misdemeanor of Sexual Battery on November 3, 2008.

13. A preponderance of the evidence exists to support the conclusion that Petitioner lacks good moral character that is required of a sworn law enforcement officer in this State. Petitioner admitted to engaging in sexual acts with Mrs. Dipilato on two separate occasions which both occurred while Petitioner was on duty and in uniform. Such outrageous conduct demonstrates that Petitioner does not possess the good moral character that is required of a sworn

justice officer in this state. This conduct is so extreme, it constitutes a manifest indifference to Petitioner's Oath of Office and to the public trust that it bestowed upon a sworn officer. The essence of a sworn justice officer, what defines that officer, is complete moral integrity at all times. Where, as here, a sworn justice officer engages in sex acts while discharging his duties, that officer has demonstrated that he does not possess the good moral character required of a sworn justice officer under Respondent's rules.

14. The findings of the Probable Cause Committee of the Respondent are supported by substantial evidence with respect to lack of good moral character.

15. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

16. Respondent has the burden of proof in the case at bar. Respondent has not shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's law enforcement certification based on his commission of the offense of sexual battery, a Class B misdemeanor, is supported by substantial evidence. Respondent has not shown by a preponderance of the evidence that Respondent's proposed revocation of Petitioner's law enforcement certification for the commission of the felony offense of second degree sex offense. Respondent has shown by a preponderance of the evidence that Respondent's proposed suspension of Petitioner's law enforcement certification for his lack of good moral character is supported by substantial evidence.

PROPOSAL FOR DECISION


Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Petitioner's certification as a law enforcement officer be suspended for five (5) years based upon Petitioner's lack of good moral character.

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 Criminal Justice Education and Training Standards Commission.

This the 12th day of September, 2014.


Craig Croom
Administrative Law Judge

Filed

STATE OF NORTH CAROLINA 2014 AUG 25 AM 11:27 IN THE OFFICE OF
COUNTY OF WAKE Office of ADMINISTRATIVE HEARINGS
 Administrative Hearings 13 OSP 18255

Chris Edward Fidler, v. N.C. Department of Revenue,	Petitioner Respondent.	FINAL DECISION
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THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Petitioner's Motion for summary Judgment filed with the Office of Administrative Hearings ("OAH") on April 4, 2014, as well as Respondent's response thereto filed with OAH on April 11, 2014 and Petitioner's response to Respondent's response filed with OAH on April 16, 2014. Having considered the respective filings of the parties and matters of record appropriate for consideration, the Court makes the following

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings for consideration.
2. Both parties contend in their respective submissions that there are no genuine issues of material fact. From the submissions there appears to be some question and disagreement of particular facts but the parties both contend that those facts do not impact the propriety of entry of summary judgment. Therefore, it is concluded that summary judgment is appropriate in this contested case.
3. Petitioner was dismissed from State service because of his use of a state issued cell phone for personal phone calls and texts. Respondent contends Petitioner's personal use of the state issued cell phone constitutes "Unacceptable Personal Conduct" ("UPC") as defined in 25NCAC 01 J .0614(8).
4. Petitioner is a "career state employee" as defined by N. C. Gen. Stat. § 126-1.1. As a career state, he could only be dismissed for "just cause." N. C. Gen. Stat. § 126-35; 25 NCAC 01J .0604.

5. UPC may be, among other things, “job related conduct which constitutes a violation of state or federal law; . . . (or) the willful violation of known or written work rules.” 25NCAC 01 J .0614(8)(b)(d).
6. Although “just cause” is not defined by statute or rule, the words are to be accorded their ordinary meaning. Amanini v. Dep’t of Human Resources, 114 N.C. App. 668, 443 S.E.2d 114 (1994) (defining “just cause” as, among other things, good or adequate reason).
7. While “just cause” is not susceptible of precise definition, our courts have held that it is “a flexible concept, embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case.” NC DENR v. Carroll, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004).
8. In Carroll, 358 N.C. 649, 599 S.E.2d 888 (2004), the Supreme Court states that the fundamental question in determining just cause is whether the disciplinary action taken was just. Citing further, “Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations.” Our Supreme Court said that there is no bright line test to determine “just cause”—it depends upon the specific facts and circumstances in each case.”
9. In Carroll, the Court went on to say that “not *every* violation of law gives rise to ‘just cause’ for employee discipline.” In other words, not every instance of unacceptable personal conduct as defined by the Administrative Code provides just cause for discipline. *Id.* at 670, 599 S.E.2d at 901.
10. Further, the Supreme Court held that, “Determining whether a public employee had ‘just cause’ to discipline its employee requires two separate inquiries: First, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes ‘just cause’ for the disciplinary action taken.” NC DENR v. Carroll, 358 N.C. 649, 665, 599 S.E.2d 888, 898 (2004).
11. In expounding on Carroll, the Court of Appeals in the Warren case articulates the tests that courts must consider in assessing whether or not discipline is proper and if so the degree of discipline. Warren establishes a commensurate discipline approach to discipline in North Carolina. It states:

We conclude that the best way to accommodate the Supreme Court’s flexibility and fairness requirements for just cause is to balance the equities after the unacceptable personal conduct analysis. This avoids contorting the language of the Administrative Code defining unacceptable personal conduct. The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee’s conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative

Code. Unacceptable personal conduct does not necessarily establish “just cause” for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to “just cause” for the disciplinary action taken. (Internal cites omitted.)

Warren v. N. Carolina Dep't of Crime Control & Pub. Safety, N. Carolina Highway Patrol, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) review denied, 735 S.E.2d 175 (N.C. 2012).

12. In this contested case both parties acknowledge that Petitioner did engage in the conduct alleged by Respondent; i.e., Petitioner did use a state issued cellular phone for his own personal and private use.
13. The second test under Warren is whether or not Petitioner's conduct falls within one of the categories of unacceptable personal conduct.
14. Respondent first contends that Petitioner's conduct is “job related conduct which constitutes a violation of state or federal law” and thus UPC. Respondent contends that Petitioner's actions are in violation of N. C. Gen. Stat. §14-91.
15. A person “violates” N. C. Gen. Stat. §14-91 when he or she “knowingly and willfully” misapplies or converts to his or her own use property of the state held in trust by that person. In this contested case, the only issue is whether or not Petitioner “knowingly and willfully” converted the property to his own use. Contentions by Petitioner that he did not otherwise deprive the State of the phones use and/or that there was no disruption in the performance of his job duties are without merit as to whether or not he violated the criminal statute.
16. A person acts “knowingly” when he or she is aware or conscious of what he or she is doing. A person does not act knowingly if he or she merely should have known.
17. “Knowing” or “knowledge” is not necessarily accomplished by establishing the existence of circumstances which cause the defendant to “reasonably believe” particular facts. “Knowledge connotes a more certain and definite mental attitude than reasonable belief, and whether knowledge is implied from circumstances sufficient to establish reasonable belief is a question for the jury.” State v. Miller, 212 N.C. 361, 193 S.E. 388, 389 (1937).
18. In Underwood v. Board of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971), our Supreme Court noted:

Knowledge means “an impression of the mind, the state of being aware: . . . It is usually obtained from a variety of facts and circumstances. [W]hen it is said that a person has knowledge of a given condition, it is meant that his relation to it, his association with it, his control over it, and his

direction of it are such as to give him actual information concerning it.”
(Emphasis added.)

19. In State v. Stephenson, 218 N.C. 258, 10 S.E.2d 819 (1940), the Supreme Court explained “[t]he word ‘knowingly’ ... means that defendant knew what he was about to do, and, with such knowledge, proceeded to do the act charged.” That definition has continuously and consistently been relied upon. See, *e.g.*, State v. Aguilar-Ocampo, 724 S.E.2d 117, 125 (N.C. Ct. App. 2012)
20. Respondent’s reliance on State v. Pate, 40 N.C. App. 580, 583-84, 253 S.E.2d 266, 269 (1979) is not well founded. That case is based upon a violation of N.C. Gen. Stat. 14-90, the statute for embezzlement. That statute requires the defendant to either “fraudulently or knowingly and willfully” misapply or convert the property of his principle. (Emphasis added) That test is different from N.C. Gen. Stat. 14-91, which is only “knowingly and willfully.”
21. In criminal cases North Carolina, unlike many other jurisdictions, does not accept the doctrine of “willful blindness” or the deliberate avoidance of the requisite knowledge. However, a defendant’s reliance on the excuse of “I just didn’t know” does not end the inquiry.

Knowledge is a mental state that may be proved by offering circumstantial evidence to prove a contemporaneous state of mind. Jurors may infer knowledge from all the circumstances presented by the evidence. It “may be proved by the conduct and statements of the defendant, by statements made to him by others, by evidence of reputation which it may be inferred had come to his attention, and by [other] circumstantial evidence from which an inference of knowledge might reasonably be drawn.” (Internal cite omitted.)

State v. Bogle, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989)

22. The applicable standard for whether or not Petitioner violated a state or federal law is NOT the standard applied in criminal cases of beyond a reasonable doubt. At this stage, the applicable standard is whether or not a preponderance of the evidence substantiates Petitioner’s conduct violates the rule. While not equivalent, it is closely akin to the “probable cause” standard in criminal cases
23. There is sufficient circumstantial evidence to satisfy the standard articulated in Bogle from which it might be inferred that Petitioner had the requisite knowledge. This contested case is before the undersigned on summary judgment motion and both parties agree that there is no genuine issue as to material fact. As such, based upon the representations of the parties to this point, this “jury” can conclude that Petitioner “knowingly” violated N. C. Gen. Stat. §14-91.

24. The facts set out more particularly in paragraph 37 below are some of the facts from which it is concluded that Petitioner did “knowingly” engage in “job related conduct which constitutes a violation of state or federal law.”
25. Respondent next contends that Petitioner’s conduct was a “wilful violation of known or written work rules.” (Emphasis added) The plain language of this rule establishes that there are two possible methods by which one might violate: violation of a known work rule, or, alternatively, violation of a written work rule. The use of “or” is a clear implication that the violation of a known work rule is not the equivalent of a written rule which does not require any actual knowledge.
26. “Willfulness” is not equivalent to knowledge. For an act to be willful, it is not necessary for the person to know that he or she is actually breaking the law.
27. A willful violation of known or written work rules occurs when an employee “willfully takes action which violates the rule and does not require that the employee intend [the] conduct to violate the work rule.” Teague v. N. Carolina Dep’t of Transp., 177 N.C. App. 215, 222, 628 S.E.2d 395, 400 (2006), citing Hilliard v. N. C. Dept. of Correction, 173 N.C. App. 594, 620 S.E.2d 14.
28. Petitioner acknowledges that indeed such work rules exist. Petitioner acknowledges his personal use of the state owned cell phone violates such work rules.
29. Petitioner contends that such written work rules are buried deep within manuals and thus he did not have actual knowledge. In this instance, actual knowledge is not required.
30. Violation of known or written work rules is not equivalent to insubordination and does not require any further “reasonable and proper” instruction on the particular rules by a supervisor. Petitioner would yearly sign an acknowledgment that he was aware of and familiar with Respondent’s policies and procedures.
31. There is no requirement that a supervisor or anyone in authority would have to have a face to face meeting with Petitioner and tell him of the prohibition on his personal use of the cell phone. Such a requirement would in essence require a supervisor to hold each employee’s hand and go line by line through all policy requirements to insure that the employees understand every line. Such is untenable.
32. Petitioner’s conduct was a “wilful violation of known or written work rules.” Thus, the Petitioner’s conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code as set forth as the second requirement in Warren.
33. Upon finding unacceptable personal conduct, the final inquiry in the Warren analysis is determining whether the discipline imposed for that conduct was just. “If the employee’s act qualifies as a type of unacceptable conduct, the tribunal proceeds to

the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken. Just cause must be determined based "upon an examination of the facts and circumstances of each individual case." The Warren Court refers to this process as "balancing the equities."

34. In "balancing the equities" and trying to determine what is just, or the "right" thing to do, one must look at the totality of the facts and circumstances as opposed to just looking coldly and blindly at whether or not Petitioner violated rules or policy.
35. Mitigating factors in the employee's conduct should be considered in this third prong. See Warren, citing Roger Abrams and Dennis Nolan, TOWARD A THEORY OF "JUST CAUSE" IN EMPLOYEE DISCIPLINE CASES, 1985 Duke L.J. 594 (September 1985).
36. Petitioner's discipline-free employment history with Respondent is considered, as well as his excellent prior work history. Petitioner received overall ratings of "good" to "outstanding" performance reviews. He was Agent of the Year in 2008. Also by mitigation, when confronted in April 2013, Petitioner was honest and admitted his personal use of the state cell phone. Petitioner identified for Respondent personal calls made on the state phone.
37. In looking at the facts and circumstance pertinent to this contested case, to determine whether termination was "just" one must consider the following factors as well:
 - a. Petitioner's use of the cell phone was discovered by Respondent in February 2013 after the phone bill showed that the allotted minutes on Respondent's plan had been exceeded. That had not happened before.
 - b. All of the overage was attributable to Petitioner.
 - c. The overage alone for January, February and March 2013, averaged in excess of 5,000 minutes. Those were the only months in which the usage had exceeded the entire unit's allotment. The average use by the other agents in 2012 was 755 minutes per month. The sheer magnitude of usage by Petitioner's personal use of the phone is astronomical, making his justification even more incredulous.
 - d. Petitioner had not had a personal phone since January 2011. He had relied solely on the state phone as his personal phone since January 2011, in excess of two years prior to discovery.
 - e. If Respondent had an unlimited allotment plan, it is unlikely the personal use would have been discovered, and certainly not at the time that it was discovered.

- f. To calculate how much Petitioner owed the state in restitution, the Respondent only charged Petitioner the amount that the entire plan was over the allotment, in essence giving him credit for unused minutes by his fellow officers. He did not offer to pay any restitution during the months in which the total bill did not exceed the allotment.
 - g. In the three months in which there was an overage, Petitioner had 45 calls that were more than an hour but less than two hours and 12 calls that were in excess of two hours. All of these calls were personal calls and many of them were made during Petitioner's work hours. It is incredible to believe that he saw nothing wrong with this.
 - h. Petitioner was told directly by a supervisor that texting was not allowed on the plan; however, he admits to texting anyway. He did not pay any restitution for the texting charge.
 - i. The only restitution Petitioner paid was by the calculated amount being withheld from his last pay check. Petitioner did not volunteer to pay before that, nor has he paid or offered to pay any amount since.
 - j. Petitioner did not pay or offer to pay full restitution, even though no number was ever tendered to him. He profited greatly by the method of calculating how much he was to pay as restitution for the overage.
 - k. Petitioner profited greatly from not having to pay for a personal phone, especially in light of the number of minutes he was using. He knew that a personal phone bill was an expense he no longer had.
 - l. Petitioner was a sworn law enforcement officer with a sworn duty to uphold the laws of this state and the United States. He was aware that other officers in his unit carried two phones, one state phone and one personal phone.
 - m. Aside from any knowledge attributable to being a law enforcement officer, applying a test of reasonableness, Petitioner should have known that using the phone for personal use was improper. Even those of lesser stature and education know to not take from the boss. A test of reasonableness would have told him talking with a friend on a state phone in excess of two hours was not proper.
 - n. Petitioner's justification that he simply did not want to carry, tend to and charge two separate phones is without merit.
38. The facts and circumstances of this contested case are distinguishable from the cases cited by Petitioner.

39. One act of unacceptable personal conduct can present just cause for any discipline of an employee, up to and including dismissal.
40. Based upon the facts and circumstances of this contested case, just cause exists to discipline the Petitioner and the “just” discipline for Petitioner is that he be dismissed and his termination upheld.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law the Respondent’s decision to terminate Petitioner’s employment is **AFFIRMED** on the basis that Petitioner violated a State law and he violated a written work rule which constituted unacceptable personal conduct.

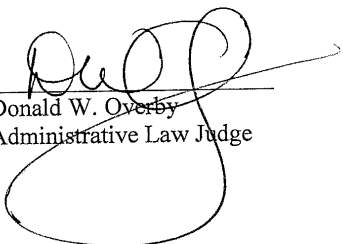
NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision.** In conformity with the Office of Administrative Hearings’ rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the ____22nd day of August, 2014.


Donald W. Overby
Administrative Law Judge

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the private protective services business, which includes Private Investigators.
2. Petitioner is licensed with Respondent Board as a Private Investigator and has continually held a license since September, 2006. Petitioner owns Graves Investigations, Inc. Petitioner is a licensee of the Board
3. This matter arose from a complaint submitted to the Board from Ms. Cynthia Nykamp of Walnut Cove, North Carolina. Ms. Nykamp sought Petitioner's assistance with investigating her husband. Her Complaint was assigned to Investigator Kim Odom.
4. As a result of the investigation into Ms. Nykamp's complaint, the Board voted on February 20, 2014, to suspend Petitioner's license. Petitioner was sent a notice of the Board's action, entitled "Board Findings" on February 24, 2014.
5. Petitioner requested a hearing on Respondent's suspension of his license.
6. A hearing was held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on June 24, 2014. Petitioner appeared at the hearing and was represented by counsel. Anthony Bonapart, Deputy Director of Respondent Board, testified at the hearing on behalf of Respondent.
7. On August 27, 2014 the Board staff received a Complaint Form from Cynthia Nykamp against Kerry Graves of Graves Investigation, Inc. (Respondent's Exhibit 4.) She stated that she hired Graves Investigations on June 4, 2013 for assistance in investigating her husband for marital infidelity. She first talked with Kerry Graves by telephone, and then went to his office on June 10, 2013 to obtain a tracker to put on her husband's car to get an idea of his habits.
8. At the time, Petitioner's brother, Kobie Graves, was working in his office providing administrative assistance. Kobie Graves is not a licensed private investigator. Kobie Graves no longer works for the Petitioner.
9. Kobie Graves, Petitioner's brother, showed her how the tracker operated and demonstrated how to place it on her husband's vehicle. Ms. Nykamp was told they could find out on a computer where her husband was going, and that they would take pictures and video for her when she went out of town the week of June 25th. She put the tracker on his car on June 10, 2013 knowing the battery would only last 2 weeks.
10. Ms. Nykamp was quoted a fee of \$750.00, and she paid one-half, \$375.00, to Graves Investigations on June 10th. She received a receipt from Kobie Graves for her payment. (Respondent's Exhibit 5)

11. Ms. Nykamp called Graves Investigations on June 20, 2013 and June 21, 2013, leaving messages that the battery on the tracker was dead and that she needed to pick up another tracker. No one returned her calls.
12. According to Ms. Nykamp, when she got no response to her voice mail messages regarding the battery in the tracker, she then left a message stating that she wanted to return the tracker, but never heard back from them.
13. According to Ms. Nykamp, no one from Graves ever asked whether the vehicle was in her name and never asked her for ownership paperwork. She has never personally met Kerry Graves and her only dealings with Graves Investigations was through his brother, Kobie. Ms. Nycamp was not aware that Kobie was not licensed.
14. Ms. Nykamp reiterated that she spoke with Kerry Graves only once, by telephone, which was her initial contact with his office. She has a record of three phone calls from her cell phone to Graves Investigations. The other calls were made from her home telephone.
15. Kerry Graves Investigations never conducted surveillance of her husband to determine his habits.
16. Ms. Nykamp wrote Kerry Graves on September 12, 2014 to express her frustration and displeasure. She also requested in writing a copy of the investigative report in her case. In response, Kerry Graves contends that she decided against surveillance and that she would have to provide proof of ownership of the vehicle before he could proceed with the tracking. He further stated that it was "unlawful" for him to track her husband's car without proof of ownership. His contention of the law is not correct.
17. Kerry Graves also stated in his letter that he had filed a police report against her for "stolen property" (i.e. the GPS tracking device.) This contention was false. Kerry Graves admitted that he did not file a police report as he stated in his letter to Ms. Nykamp.
18. Ms. Nykamp reiterated that she was never told that she had to provide proof of ownership prior to Graves Investigations activating the tracking device. Kerry Graves was not present when she went to the office and was initially given the tracking device.
19. Kerry Graves admitted to Investigator Odom that he talked by telephone with Ms. Nykamp sometime in June 2013, and that Ms. Nykamp wanted surveillance and a tracker on her husband since she was suspicious of him cheating on her.
20. Kerry Graves contends that he told Ms. Nykamp that they could do that and that she called back at the end of the week stating that she wanted to get started the following Monday. Kerry Graves further contends that he asked Ms. Nykamp whose name the vehicle was in and she stated that the vehicle was in her husband's name. He stated that he told her that he would be out of town when she came in, but he would have the contract ready. He again stated that he told Ms. Nykamp to bring paperwork to show dual ownership of the vehicle.

21. Kerry Graves contends that Ms. Nykamp called back later stating that she did not want them to do surveillance at this point, only the tracker.
22. Kerry Graves contends that he told Kobie Graves to tell Ms. Nykamp that they could not use the tracker unless they had the vehicle ownership paperwork. He says that he also told Kobie to let Ms. Nykamp know that it would take four to five days to turn the tracker on. He says that he told Kobie to tell her to be patient. If he did indeed tell Kobie all that, Kobie never told Ms. Nycamp. Kerry Graves told Investigator Turner that Kobie Graves should not have given her the tracker.
23. This Tribunal does not believe that Ms. Nycamp was ever told that she needed to provide evidence of ownership of the car or that she needed to produce any paperwork showing the ownership of the car to be tracked. Petitioner's contentions in that regard are not credible.
24. Kerry Graves contends that after he came back from being out of town he received a voice mail from Ms. Nykamp telling him she was going to the beach and would call back when she returned or would come by his office to return the tracking device since the battery had died. He stated that that was the last he heard from her.
25. Kerry Graves acknowledges that Ms. Nykamp paid him \$375.00, which is half of the \$750.00 amount quoted. He endorsed the check accepting that payment. He contends that it was a non-refundable retainer and that she still had his tracking device.
26. Kerry Graves was unaware that Kobie Graves went to the car with Ms. Nykamp and showed her how to install the tracking device or that Kobie gave her instruction on its use.
27. Kerry Graves was not in the office when Ms. Nykamp signed the contract. He stated that if he had been, he would have given her a copy of the contract.
28. The purported contract states that the client Ms. Nykamp must pay 75% of the total fee due to Graves prior to the commencement of any work. Ms. Nykamp paid half the fee, which was accepted by Kobie Graves, and he provided her with the tracker. Ms. Nycamp's signature is dated 6/4/13. Kobie Graves' signature is dated a week later, 6/11/13. Although the written document identified as the contract bears both parties signatures, there was never a meeting of the minds on the terms of the contract, and parts were filled in after Ms. Nycamp signed. That is not a valid contract. The contractual agreement between the parties is an oral contract based principally on what Kobie told Ms. Nycamp while acting in apparent authority on Petitioner's behalf. She tendered payment expecting that she was paying for five hours of surveillance which was half of what she was agreeing to. Payment was accepted and she was given a tracking device with the expectation that Graves would be tracking her husband's movement for two weeks—the life expectancy of the battery in the device.

29. The fact that the tracking device could not function since its codes had not been activated was not told to Ms. Nykamp by Kobie Graves.
30. Kerry Graves admitted he did not provide Ms. Nykamp a written report within 30 days as required by the Board's law and rules. He testified that the only "report" would be the tracking report from the GPS monitoring service and since he did not have the device turned on there would be no report.
31. It is specifically found that Ms. Nycamp's version of events is more credible than Petitioner's.
32. A copy of the contract for services in this matter was admitted into evidence as Petitioner's Ex. 1. It was not signed by Ms. Nykamp on the day of her only visit to Graves Investigations and the Court concludes it was created at a later date to substantiate Petitioner Kerry Graves' claims.
33. It is acknowledged that a primary problem for Petitioner is his brother Kobie who was actin with apparent authority in the conduct of business on Petitioner's behalf. There was no way for the general public to know that Kobie was not licensed to do the things that he was doing in the conduct of business. Petitioner remains responsible for what Kobie did on behalf of Petitioner's business.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(6) Respondent Board may deny, suspend or revoke a license for permitting any employee to engage in a private protective services profession when not lawfully in possession of a valid license issued under the provisions of this Chapter.
3. Kobie Graves, Petitioner's brother, provided unlicensed services to Ms. Nykamp by giving her the tracking device and showing her how it works. Kobie Graves led Ms. Nycamp to believe that the tracking device would be functioning. Kobie Graves was employed by Petitioner at the time that he, Kobie, provided the services to Ms. Nycamp. The only in person services she received from Petitioner was from Kobie Graves, Petitioner's representative.
4. Under G.S. §74C-12(7) Respondent Board may deny, suspend or revoke a license for willful failure to render to a client services as agreed between the parties and for which compensation has been paid or tendered.
5. Ms. Nycamp tendered payment to Petitioner which was received by Petitioner, and based on representations by both Kerry and Kobie Graves, she expected certain services to be provided for that payment. Petitioner provided no services to Ms. Nycamp at all.

6. Under G.S. §74C-12(20) Respondent Board may deny, suspend or revoke a license for failure or refusal to offer a report to a client within 30 days of the client's written request after the client has paid for services rendered.
7. Though perhaps tardy, Ms. Nycamp requested a written report, and received none. Petitioner's contract does not control or modify the statutory provisions. Petitioner never told Ms. Nycamp that he was not providing any service to her, and felt that he was entitled to keep the money without having provided any service, and thus not responsible for providing any written report or explanation.
8. The foregoing Findings of Fact show by a preponderance of evidence that Petitioner Kerry Graves' violated G.S. § 74C-12(a)(6),(7) and (20) in regards to his handling of Ms. Nykamp's case.

Based on the foregoing, the undersigned makes the following:

DECISION

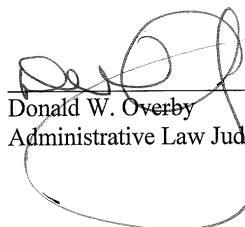
Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner's Private Investigator license be suspended for a period of 90 days, all of the period of suspension is suspended with the exception of 30 days, which shall be an active period of suspension wherein he is to offer no services. There should be an additional period of one year's probation.

NOTICE AND ORDER

The Private Protective Services Agency is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 22nd day of September, 2014.

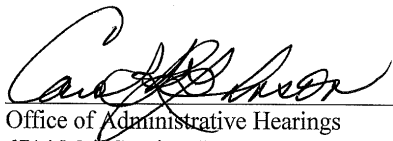

Donald W. Overby
Administrative Law Judge

A copy of the foregoing was mailed to:

Michael C. Byrne
Law Offices of Michael C. Byrne
Suite 1130
150 Fayetteville Street
Raleigh, NC 27601
Petitioner

Jeffrey P Gray
Bailey & Dixon, LLP
P.O. Box 1351
Raleigh NC 27602-
Attorney For Respondent

This the 22nd day of September, 2014.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6714
Phone: 919/431-3000
Fax: 919/431-3100

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
10/31/2014 11:21 AM

STATE OF NORTH CAROLINA

COUNTY OF HERTFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

14DOJ02721

Antwain Renae Smith Petitioner v. NC CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION Respondent	PROPOSED DECISION
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on August 19, 2014 in Raleigh, North Carolina, upon the Respondent's request, pursuant to N.C.G.S. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: James R. Theuer
Attorney at Law
555 E. Main Street, Ste. 801
Norfolk, Virginia 23510

Respondent: Matthew L. Boyatt
Assistant Attorney General
Department of Justice
Law Enforcement Liaison Section
9001 Mail Service Center
Raleigh, North Carolina 27699

ISSUE

Did Petitioner's conduct leading to his arrest on May 27, 2013 violate N.C. Gen. Stat. § 14-223, "Resisting officers," and if so, should his General Certification as a Correctional Officer be suspended, revoked, or made subject to probation?

STATUTES AND RULES AT ISSUE

N.C. Gen. Stat. §§ 150B-34(a); 150B-40(e); 14-223; and 150B-41(a). 12 NCAC 09G .0102; 12 NCAC 09G .0102(9)(cc); 12 NCAC 09G.0504(b)(3); and 12 NCAC 09G.0505(b)(1).

WITNESSES

For Petitioner: Petitioner Antwain R. Smith, Correctional Officer
 Jessica Boone
 Rodney Newsom
 Quinton Lashley
 Rickie Robinson, Assistant Superintendent for Custody and Operations;
 Richard Duke, Assistant Superintendent for Programs
 Donald Greene, Unit Manager
 Clarence Jones, Lieutenant and Officer-in-Charge
 Gregory Poythress, Lieutenant and Officer-in-Charge
 Ryan Aycock, Unit Manager
 Christopher Jones, Assistant Unit Manager
 E.S. Pittman, Sergeant
 Robert Harris, Processing Assistant III
 Takira Lowe, Correctional Officer
 David Hartsfield, Training Officer

For Respondent: Petitioner Antwain R. Smith, Correctional Officer (adverse)
 Sgt. Justin W. Farmer, Ahoskie Police Department

UPON DUE CONSIDERATION of the arguments of counsel; the documents and exhibits admitted; and, the sworn testimony of each witness, considering their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests the witness might have, and whether their testimony is reasonable, and consistent with other credible evidence; and assessing the greater weight of the evidence from the record as a whole, and in light of the applicable law, the undersigned Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent sent Petitioner its *Proposed Suspension of Correctional Officer Certification* on March 13, 2014, with the appropriate notice of his right to a hearing. Upon Petitioner's timely request for a contested case hearing, Respondent's request for designation of an Administrative Law Judge to preside at the contested case hearing, and the undersigned's assignment, the parties were given proper notice of hearing.
2. The North Carolina Criminal Justice Education and Training Standards Commission (hereinafter the "Commission" or "Respondent") has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09G, to certify corrections officers and to revoke, suspend, or deny such certification.
3. The Commission may suspend or revoke the certification of a corrections officer when the Commission finds that the certified officer has committed or been convicted of a misdemeanor defined in 12 NCAC 09G.0102, after the initial date of certification. 12 NCAC 09G.0504(b)(3).

4. When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G.0504, the period of sanction shall be not less than three (3) years. Following an administrative hearing, the Commission may, however, either reduce or suspend the period of sanction under this Rule or substitute a period of probation in lieu of suspension of certification, where the cause of sanction is commission or conviction of specified misdemeanors, including N.C. Gen. Stat. § 14-223, "Resisting officers." 12 NCAC 09G.0505(b)(1); 12 NCAC 09G.0102(9)(cc).
5. Petitioner Antwain R. Smith began work as a Correctional Officer at Caledonia Correctional Institution on September 27, 2010. He received his General Certification from Respondent Commission on September 27, 2011. Officer Smith is the primary caregiver for his wife, who was seriously disabled by a stroke approximately 7 years ago, and has had some problems with timely attendance, but otherwise has been an exemplary employee. In October 2012, his supervisor encouraged Petitioner to take the Sergeant's exam, and he passed it in July 2013.
6. Petitioner's managers, supervisors, and co-workers (listed above as his witnesses) testified without contradiction, from personal knowledge and observation, that Petitioner is a valued, competent, respected, and admired Correctional Officer at Caledonia Correctional Institution. This testimony is corroborated by Petitioner's performance records. (P. Ex. 1)
7. On May 27, 2013, during Memorial Day weekend, Officer Smith hosted family and friends -- approximately 15 to 20 people -- at a cook-out at his home, located at 907 Odom Street in Ahoskie. His car was parked in front of the house with its stereo system on loud enough for guests in the yard to enjoy the music. Petitioner estimated that he had between six and nine beers between noon and 10 p.m., along with water, Kool-Aid, punch, and food, while cooking and interacting with guests. The arresting officer described him as impaired. It is found as a fact that alcohol had an effect on Petitioner's judgment and ability to recognize social cues during the encounter that resulted in his arrest.
8. Between 2 and 4 p.m. on May 27, 2013, Officer Ashley of the Ahoskie Police Department came to Petitioner's residence in response to a noise complaint about the music from the car. Petitioner lowered the volume to a level that Officer Ashley agreed was acceptable. After declining the offer of some cookout food, Officer Ashley left the premises, and he did not return. The Police Department's protocol in such situations was to give the homeowner a description of the noise ordinance and a warning that another violation would result in a citation, but Petitioner does not recall hearing that. Officer Ashley did not write a report or testify at the hearing. In light of the tenor of his visit, and the fact that both men apparently felt the problem was resolved, it is found that Petitioner did not receive the standard warning.
9. After the fairly cordial encounter with Officer Ashley, Petitioner did not turn up the music volume during the rest of the day, nor did he perceive that anyone else had. In the

absence of any evidence to the contrary, it is found as a fact that the volume of the music remained the same for the rest of the day, at the level Officer Ashley agreed was acceptable. Petitioner was not aware of any other complaints until Officer Farmer arrived at about 10:00 p.m. When Petitioner's niece came into the house to inform him that another officer had arrived because of the music, Petitioner determined to resolve the problem and to demonstrate complete cooperation by turning off the music altogether. He went straight to the car, brushing by the officer, and turned off the music, believing that this would satisfy the officer.

10. Patrol Sgt. Justin W. Farmer of the Ahoskie Police Department arrived with a much different perspective. His "Incidents/Investigation Report" (R. Ex. 4) does not even mention that Officer Smith turned off the music when he went to his car. Sgt. Farmer was coming from an incident that was dispatched as "a large crowd about to fight." He had been informed that there had been two previous noise complaint calls about the Smith residence -- at 8:22 p.m. and 9:35 p.m. -- and thought that Officer Ashley had warned Mr. Smith in response to the earlier of those, less than two hours before his arrival. Another officer "rode by ... and ... did not hear anything," but "[d]ue to the pending fight call he did not stop." Consequently, Sgt. Farmer thought Petitioner had turned off the music in response to the Officer Ashley's warning, then turned it back on again when he left, resulting in another complaint. Sgt. Farmer stopped on the nearby street, out of the line-of-sight of the Odom Street residence, and "could hear the bass ... coming from the vehicle." He drove to Petitioner's home intending to give him a citation.
11. When Sgt. Farmer arrived at Petitioner's residence, a man there asked if the music needed to be turned down and complied when the officer said "yes." Sgt. Farmer was wary of an incident developing because of the number of people around. He was asking for the owner of the automobile when Petitioner came out the house, walking towards his car and saying, "I got this, I got this." Sgt. Farmer accosted Petitioner and began asking questions to prepare the noise citation. Petitioner responded that "it ain't that serious man, I'll take care of it." When asked his name, Petitioner said, "What does it matter, if the problem is being solved?" Sgt. Farmer put out his hand to stop Petitioner, but Petitioner brushed by him, proceeded to the car, and turned off the music. When Petitioner turned around, Sgt. Farmer was "in his face" again, demanding his name. Petitioner was stunned by this and testified that he "froze up" and did not respond. When he started to step away, Sgt. Farmer grabbed him. An observer testified that "as soon as [Petitioner] hesitated" to answer, Sgt. Farmer arrested him. Petitioner cooperated with being handcuffed. When Petitioner's son came over, protesting that "He ain't done nothing," Sgt. Farmer pointed his Taser at him, and another man pulled Petitioner's son away. Sgt. Farmer testified that Petitioner was not aggressive, but exhibited signs of having consumed alcohol, including red glassy eyes and slurred speech.
12. Petitioner was charged under N.C. Gen. Stat. § 14-223 for "failing to give officer identification information when requested several times." In custody, Petitioner asked to speak to the police chief and continued to withhold his name, hoping to put off booking until he had a chance to appeal to the chief to avoid the charge. However, when told that he would otherwise be booked as "John Doe," Petitioner gave his name and information.

13. No charges were added for Petitioner's actions after he was taken into custody, and no alleged misconduct then is cited in the Commission's *Proposed Suspension*. Petitioner's actions following arrest are found to be indicative of Petitioner's intention to seek to avoid sanctions through persuasion, rather than resistance to Sgt. Farmer's performance of his duty.
14. After speaking with Ahoskie's police chief, Sgt. Farmer, and Sgt. Farmer's Lieutenant, Petitioner wrote a letter of apology to Sgt. Farmer, and the resisting arrest charge was dismissed. Petitioner also paid a fine for the noise citation. He was not convicted of a crime.
15. North Carolina General Statute § 14-223, "Resisting officers," provides, "If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a Class 2 misdemeanor." By withholding his name, Petitioner intended to delay Sgt. Farmer from writing the noise citation, in the hope and expectation -- which was not unreasonable, from his point of view -- that turning off the music would "solve the problem," and avoid the ticket altogether. However,

The word wilful [*sic*], used in a statute creating a criminal offence, means something more than an intention to do a thing. It implies the doing the act purposely and deliberately, indicating a purpose to do it, without authority - careless whether he has the right or not - in violation of law, and it is this which makes the criminal intent, without which one cannot be brought within the meaning of a criminal statute." This definition has been quoted and approved in numerous cases since. Wilful means "without just cause, excuse, or justification[.]

(*Citations omitted.*) *State v. Dickens*, 215 N.C. 303, 1 S.E.2d 837, 838-39 (1939), quoting *State v. Whitener*, 93 N.C. 590 (1885). See also, *State v. Hales*, 256 N.C. 27, 33, 122 S.E.2d 768, 773 (1961): "'Willfully conceals' as used in the [shoplifting] statute means that the concealing is done ... voluntarily, intentionally, purposely and deliberately, indicating a purpose to do it without authority, and in violation of law...."

16. Based on his information and belief that Petitioner had deliberately violated the noise ordinance after being warned perhaps an hour before by Officer Ashley, followed by apparently defiant behavior in his presence, Sgt. Farmer was justified in arresting Petitioner. However, in light of the evidence adduced in this hearing and the criminal burden of proof, i.e., "beyond a reasonable doubt," it is not entirely clear that Petitioner would have been convicted of "purposely and deliberately" violating the law had his case gone to trial.
17. It is found by a preponderance of the evidence that Petitioner's conduct leading to his arrest on May 27, 2013 violated N.C. Gen. Stat. § 14-223, "Resisting officers," a Class 2 misdemeanor defined at 12 NCAC 09G .0102(9)(cc). Because Sgt. Farmer reiterated his

demand for Petitioner's name multiple times, and Petitioner was aware that the information was sought for the purpose of writing a citation, Petitioner knew he was defying the policeman's lawful order.

18. The Appraisal Process evaluation forms, or "TAPs sheets," prepared by Petitioner's supervisors included praise for his willingness to work during inclement weather and on his days off to help deal with staff shortages; for discovering contraband cigarettes and "prison made" shanks; and for catching a group of inmates taking illegal drugs. Among his 25 ratings are 10 "Good," 13 "Very Good," and two "Outstanding" marks.
19. An impressive number of Petitioner's superiors and colleagues at Caledonia Prison came to court to testify to his valuable service at that facility:
 - Rickie Robinson, Assistant Superintendent for Custody and Operations, spoke of Petitioner's productive and harmonious relationships with other members of the staff.
 - Richard Duke, Assistant Superintendent for Programs, praised Petitioner's willingness to volunteer when additional staff was needed.
 - Donald Greene, Unit Manager, noted that Petitioner was one of the few to pass all sections of the Sergeant's exam the first time he took the tests.
 - Clarence Jones, Lieutenant and Officer-in-Charge, said that Petitioner was very professional and reliable and that he wished he "had 10 more like him."
 - Gregory Poythress, Lieutenant and Officer-in-Charge, described Petitioner as an "asset" to the unit who "gets things done."
 - Ryan Aycock, Unit Manager, testified that he calls on Petitioner to help train other Correctional Officers.
 - Christopher Jones, Assistant Unit Manager, described Petitioner as an excellent officer and asset to the unit.
 - E.S. Pittman, Sergeant, referred to Petitioner as "one of my best officers."
 - Robert Harris, Processing Assistant III, praised Petitioner's demeanor and ability to work with others.
 - Takira Lowe, Correctional Officer, described Petitioner as trustworthy and reliable.
 - David Hartsfield, Training Officer, testified that Petitioner was the first man he called when he needed help.
20. The Division of Adult Correction, and the public it serves, would be best served by allowing Petitioner to remain in public service as a Correctional Officer.
21. 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.

Upon the foregoing Findings of Fact, the undersigned makes the following:

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 hearing are properly before the Office of Administrative Hearings. N.C. Gen. Stat. §150B-40(e).
3. The administrative law judge shall decide the case 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. N.C. Gen. Stat. § 150B-34(a).
4. The trial judge is not required to find all the facts shown by the evidence, but only enough material facts to support the judgment. *Green v. Green*, 284 S.E.2d 171,174, 54 N.C.App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844,847, 10 N.C.App. 545, 549 (1971).
5. Petitioner committed a violation of N.C. Gen. Stat. § 14-223 by recalcitrance, and not aggression, due to misjudgment while impaired by alcohol.
6. The North Carolina Criminal Justice Education and Training Standards Commission may, in its discretion, suspend or revoke the certification of a corrections officer when the Commission finds that the certified officer has committed a misdemeanor as defined in 12 NCAC 09G.0102, even if it does not result in a conviction. 12 NCAC 09G.0504 (b)(3).
7. The Commission may substitute a period of probation in lieu of suspension of certification, following an administrative hearing, where the cause of sanction is commission of certain misdemeanors, including N.C. Gen. Stat. § 14-223. 12 NCAC 09G.0505(b)(1); 12 NCAC 09G.0102(9)(cc).

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned respectfully recommends that the Commission allow Petitioner's General Certification to serve as a Correctional Officer to remain in force and effect, subject to a period of probation.

NOTICE AND ORDER

The North Carolina Criminal Justice Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 31st day of October, 2014.



J. Randolph Ward
Administrative Law Judge