

NORTH CAROLINA REGISTER

VOLUME 30 • ISSUE 17 • Pages 1857 - 1969

March 1, 2016

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Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

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

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215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

(919) 715-2893

amy.bason@ncacc.org

NC League of Municipalities

215 North Dawson Street

Raleigh, North Carolina 27603

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(919) 715-4000

scollins@nclm.org

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545 Legislative Office Building

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

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
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
31:04	08/15/16	07/25/16	08/30/16	10/14/16	10/20/16	12/01/16	01/2017	05/12/17
31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

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.

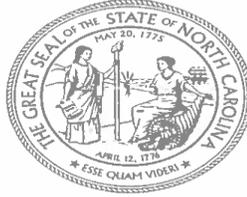
NOTICE OF TEXT

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



State of North Carolina

PAT McCRORY
GOVERNOR

January 29, 2016

EXECUTIVE ORDER 87

NOTICE OF TERMINATION OF EXECUTIVE ORDER 85 AND AMENDMENT OF EXECUTIVE ORDER 86

WHEREAS, Executive Order No. 85, issued on January 20, 2016, declared a state of emergency in North Carolina due to the potential impacts of a winter storm; and

WHEREAS, Executive Order No. 86, issued on January 20, 2016, waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials in commerce, and with the concurrence of the Council of State temporarily suspended size and weight restrictions on vehicles used for utility restoration and carrying essentials on the interstate and intrastate highways due to the potential impacts of a winter storm. In addition, the order also directed the Department of Public Safety to suspend weighing equipment used for movement of crops, transporting livestock and poultry and feed for livestock and poultry.

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

Section 1.

Pursuant to N.C.G.S § 166A-19.20(c) the state of emergency that was declared by Executive Order No. 85 is hereby terminated immediately.

Section 2.

Executive Order No. 86 will remain in effect until February 5, 2016. The order is amended to repeal the following clause:

WHEREAS, WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in North Carolina due to the likely impact of these winter storms; and

Replacing it with the following clause:

WHEREAS; although I have terminated Executive Order No. 85, issued on January 20, 2016, there continues to be a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) for the purposes of responding ongoing impacts from the storm in this state and the northeast region of the United States. The emergency area as defined in

N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the state of North Carolina and the impacted states in the northeast United States; and

Section 3.

Section 10 of Executive Order No. 86 is rewritten to read as follows:

This order will not trigger the prohibitions against excessive pricing in the emergency area in North Carolina, notwithstanding the provisions of N.C.G.S. § 166A-19.23.

Section 4.

The remaining provisions in Executive Order No. 86 remain in effect until the order terminates on February 5, 2016.

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


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State



NORTH CAROLINA
State Board of Elections

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 733-7173
Fax: (919) 715-0135

KIM WESTBROOK STRACH
Executive Director

December 29, 2015

Mr. Steve Long
301 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601

Re: Request for clarification regarding attendance at events hosted by the Connect NC Referendum Committee

Dear Steve:

You have requested guidance regarding the scope of my advisory opinion dated December 4, 2015 in which, I cited provisions in our law that limit a referendum committee's ability to coordinate with candidates in the production of communications that expressly advocate for the bond proposal and provide evidence of support for candidates.¹ Specifically, you ask whether "the Referendum Committee may invite candidates to promote the bonds at public events and in other ways that do not include direct expenditure of committee funds directly tied to the candidates' promotion of the bonds."

Candidates are free to associate with any group, irrespective of a group's filing status with our agency. Accordingly, candidates are free to attend and speak at events hosted by Connect NC, so long as the candidate or agent of the candidate is not coordinating with the Referendum Committee on how the appearance and/or remarks will be used in future expenditures by the Referendum Committee. As long as candidates are not coordinating with the Referendum Committee on communications that advocate passage of the Bond and include the names or statements of candidates showing support of the passage of the Bond, there are no issues with candidates attending events hosted by the Referendum Committee.

You have also asked if the Referendum Committee could interview candidates on the spot at their public events and use the video/audio of those interviews in communications without triggering a "coordinated expenditure" that would be a "contribution" to the candidates. It would be permissible for the Referendum Committee to interview candidates and use the footage for future

¹ See NCGS § 163-278.14A.

6400 Mail Service Center • Raleigh, NC 27699-6400
441 N. Harrington Street • Raleigh, NC 27611-7255

Steve Long request for Advisory Opinion
Page 2

communications without triggering a “coordinated expenditure” as long as the candidate is not provided a script, given approval of a script or comments, advised or provided any details regarding how the content of the interview will be used in communications by the Referendum Committee.

The content of this advisory opinion is issued under my authority found in G.S. § 163-278.23.

If you have questions, please feel free to let me know.

Sincerely,



Kim Westbrook Strach
Executive Director, State Board of Elections

cc: Mollie Masich, Codifier of Rules
Amy Strange, Deputy Director-Campaign Finance and Operations

North Carolina Department of Health and Human Services
Division of Health Service Regulation
Notice of Receipt of Periodic Report

In accordance with GS131E-192.9 Certificate of Public Advantage, Periodic Reports the Department of Health and Human Services does hereby give notice of receipt of the Periodic Report dated September 30, 2015 (the "Report"). The Report relates to the Third Amended Certificate of Public Advantage dated August 31, 2011, and corrected on January 3, 2012 as issued to Mission Health System.

In accordance with GS131E-192.9 the public has 30 days from the date of this notice March 1, 2016 to file written comments on the Report and on the benefits and disadvantages of continuing the Certificate of Public Advantage.

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

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

With a copy to:

KD Sturgis, Special Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, North Carolina 27602
ksturgis@ncdoj.gov

PUBLIC NOTICE

EXTENSION OF COMMENT PERIOD

Notice of Text for 15A NCAC 2H stormwater rules proposed by the Environmental Management Commission was published in the NC Register February 15, 2016, Volume 30, Issue 16, Pages 1730-1794. The comment period has been extended to April 18, 2016. The public hearings are being hosted by the N.C. Division of Energy, Mineral, and Land Resources on behalf of the Environmental Management Commission. The hearings start at 6 p.m. at the following locations:

March 7 – New Bern-Craven County Public Library, 400 Johnston St., New Bern

March 21 – Charles Mack Citizens Center, 215 N. Main St., Mooresville

March 23 – Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh

Written comments will be accepted at the hearings and may also be submitted until 5 p.m. April 18, 2016. Written comments should be sent to: Annette Lucas, Division of Energy, Mineral and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612. Written comments may also be sent by email to annette.lucas@ncdenr.gov.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 21 – OCCUPATIONAL LICENSING BOARD AND COMMISSION

CHAPTER 16 – DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16H .0102, .0104, and .0203.

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

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: March 17, 2016

Time: 6:30 p.m.

Location: 2000 Perimeter Park Drive, Ste. 160, Morrisville, NC 27560

Reason for Proposed Action: *The Board proposes to amend 16H .0102 and 16H .0104 to clarify that all dental assistants must maintain current CPR and may not take radiographs before completing training required by GS 90-29(c)(12). The Board also proposes to amend 16H .0104 to provide that an assistant may qualify as a DA II after working at least 3,000 hours for two years. The Board proposes to amend 16H .0203 to permit DA IIs to take impressions for study models and casts that may be used for temporary or permanent appliances and nightguards.*

Comments may be submitted to: Bobby D. White, 2000 Perimeter Park Drive, Ste. 160 Morrisville, NC 27560

Comment period ends: May 2, 2016

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

SUBCHAPTER 16H - DENTAL ASSISTANTS

SECTION .0100 - CLASSIFICATION AND TRAINING

21 NCAC 16H .0102 DENTAL ASSISTANT I

A Dental Assistant I is a dental assistant who does not qualify by training and experience for classification as a Dental Assistant II. All Dental Assistant Is must maintain current CPR certification at all times. No Dental Assistant I may take radiographs before completing radiology training consistent with G.S. 90-29(c)(12).

Authority G.S. 90-29(c)(9);

21 NCAC 16H .0104 APPROVED EDUCATION AND TRAINING PROGRAMS

To be classified as a Dental Assistant II, an assistant shall meet one of the following criteria:

- (1) completion of:
 - (a) an ADA-accredited dental assisting program and current certification in CPR; or
 - (b) one academic year or longer in an ADA-accredited dental hygiene program, and current certification in CPR; or
- (2) completion of the Dental Assistant certification examination(s) administered by the Dental Assisting National Board and current certification in CPR; or
- (3) completion of:
 - (a) after completing Sub-Items (3)(b) – (f) of this Rule and full-time employment as a chairside assistant for two years (3,000 hours) of the preceding five:
 - ~~(a)~~(b) a 3-hour course in sterilization and infection control;
 - ~~(b)~~(c) a 3-hour course in dental office emergencies; and
 - ~~(e)~~(d) current certification in CPR.
 - ~~(d)~~(e) after completing Sub-Items (3)(b), (c), and (d) of this Rule, and during the

two year (3,000 hours) time frame,
dental assistants may be trained in any dental delivery setting and allowed to perform the functions of a Dental Assistant II under the direct control and supervision of a licensed dentist, except as listed in Sub-Item ~~3(e)~~ 3(f) of this Rule.

~~(e)~~(f) dental assistants may take radiographs after completing radiology training consistent with G.S. 90-29(c)(12).

(4) All Dental Assistant IIs must maintain current CPR certification at all times.

(5) No Dental Assistant II may take radiographs before completing radiology training consistent with G.S. 90-29(c) (12).

Authority G.S. 90-29(c)(9).

SECTION .0200 – PERMITTED FUNCTIONS OF DENTAL ASSISTANT

21 NCAC 16H .0203 PERMITTED FUNCTIONS OF DENTAL ASSISTANT II

(a) A Dental Assistant II may perform all acts or procedures that may be performed by a Dental Assistant I. In addition, a Dental Assistant II may be delegated the following functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of such acts and functions, provided that the dentist first examined the patient and prescribed the procedure:

- (1) Take impressions for study models and opposing casts that ~~will not~~ may be used for the construction of temporary or permanent dental appliances, ~~but may be used for the fabrication of~~ adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) Apply sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) Insert matrix bands and wedges;
- (4) Place cavity bases and liners;
- (5) Place and remove rubber dams;

- (6) Cement temporary restorations using temporary cement;
- (7) Apply acid etch materials and rinses;
- (8) Apply bonding agents;
- (9) Remove periodontal dressings;
- (10) Remove sutures;
- (11) Place and remove gingival retraction cord;
- (12) Remove excess cement;
- (13) Flush, dry, and temporarily close root canals;
- (14) Place and remove temporary restorations;
- (15) Place and tie in or untie and remove orthodontic arch wires;
- (16) Insert interdental spacers;
- (17) Fit (size) orthodontic bands or brackets;
- (18) Apply dentin desensitizing solutions;
- (19) Perform extra-oral adjustments that affect function, fit or occlusion of any restoration or appliance;
- (20) Initially form and size orthodontic arch wires and place arch wires after final adjustment and approval by the dentist; and
- (21) Polish the clinical crown, pursuant to Paragraph (b) of this Rule using only:
 - (A) a hand-held brush and appropriate polishing agents; or
 - (B) a combination of a slow speed handpiece (not to exceed 10,000 rpm) with attached rubber cup or bristle brush, and appropriate polishing agents.

(b) A Dental Assistant II shall complete a course in coronal polishing identical to that taught in an ADA accredited dental assisting program, or by a licensed North Carolina hygienist or dentist lasting at least seven clock hours before using a slow speed handpiece with rubber cup or bristle brush attachment. The course shall include instruction on dental morphology, the periodontal complex, operation of handpieces, polish aids, and patient safety. A coronal polishing procedure shall not be represented to the patient as a prophylaxis and no coronal polishing procedure may be billed as a prophylaxis unless the dentist has performed an evaluation for calculus, deposits, or accretions and a dentist or dental hygienist has removed any substances detected.

Authority G.S. 90-29(c)(9); 90-41; 90-48.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on January 21, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

911 BOARD *Text of the 911 Board rules will be published in the April 1, 2016 NC Register.*

<u>Forms</u>	09	NCAC	06C	.0101*	29:24 NCR
<u>Physical Address of 911 Board</u>	09	NCAC	06C	.0102*	29:24 NCR
<u>Definitions</u>	09	NCAC	06C	.0103*	29:24 NCR
<u>Failure to Comply with Rules</u>	09	NCAC	06C	.0104*	29:24 NCR
<u>Waiver of Rules</u>	09	NCAC	06C	.0108*	29:24 NCR
<u>Hearings</u>	09	NCAC	06C	.0109*	29:24 NCR
<u>Declaratory Rulings</u>	09	NCAC	06C	.0110*	29:24 NCR
<u>PSAP Eligibility</u>	09	NCAC	06C	.0201*	29:24 NCR
<u>PSAP Eligible Expenses</u>	09	NCAC	06C	.0202*	29:24 NCR
<u>Effect of 911 Fund Distributions and Suspensions</u>	09	NCAC	06C	.0203*	29:24 NCR
<u>PSAP Reporting</u>	09	NCAC	06C	.0204*	29:24 NCR
<u>Back-up PSAPS</u>	09	NCAC	06C	.0206*	29:24 NCR
<u>PSAP Operations and Management</u>	09	NCAC	06C	.0207*	29:24 NCR
<u>Telecommunicator Qualifications, Training and</u>	09	NCAC	06C	.0208*	29:24 NCR
<u>PSAP Call Operating Procedures</u>	09	NCAC	06C	.0209*	29:24 NCR
<u>Public Safety Answering Point (PSAP) Facilities</u>	09	NCAC	06C	.0210*	29:24 NCR
<u>Telephones</u>	09	NCAC	06C	.0211*	29:24 NCR
<u>Dispatching Systems</u>	09	NCAC	06C	.0212*	29:24 NCR
<u>Computer Aided (CAD) Dispatching Systems</u>	09	NCAC	06C	.0213*	29:24 NCR
<u>Testing</u>	09	NCAC	06C	.0214*	29:24 NCR
<u>Records</u>	09	NCAC	06C	.0215*	29:24 NCR
<u>Registration of CMRS Service Providers</u>	09	NCAC	06C	.0301*	29:24 NCR
<u>Remittance of Service Charges</u>	09	NCAC	06C	.0305*	29:24 NCR
<u>Prepaid Wireless Service</u>	09	NCAC	06C	.0306*	29:24 NCR
<u>PSAP Grants</u>	09	NCAC	06C	.0401*	29:24 NCR
<u>Grants for Construction or Renovation</u>	09	NCAC	06C	.0402*	29:24 NCR
<u>Grant Agreements</u>	09	NCAC	06C	.0403*	29:24 NCR
<u>Grant Funds</u>	09	NCAC	06C	.0404*	29:24 NCR
<u>Grantee Reports</u>	09	NCAC	06C	.0405*	29:24 NCR

CHILD CARE COMMISSION

<u>Petitions for Rulemaking</u>	10A	NCAC	09	.2001*	n/a G.S. 150B-21.5(4)
<u>Rulemaking Procedures</u>	10A	NCAC	09	.2002*	n/a G.S. 150B-21.5(4)
<u>Declaratory Rulings</u>	10A	NCAC	09	.2003*	n/a G.S. 150B-21.5(4)
<u>Contested Cases: Definitions</u>	10A	NCAC	09	.2004*	n/a G.S. 150B-21.5(4)
<u>Contested Cases: Requests for Determination</u>	10A	NCAC	09	.2005*	n/a G.S. 150B-21.5(4)

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Information Required of Applicant</u>	10A NCAC 14C .1101	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1202	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1204	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1205	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1302	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1304	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1305	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1402	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1404	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1405	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1502	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1504	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1505	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1602	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1604	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1605	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1702	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1704	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1705	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1803	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1805	30:08 NCR
<u>Staffing and Staff Services</u>	10A NCAC 14C .1806	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .1902	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .1904	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .1905	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2002	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2005	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2102	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .2104	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2105	30:08 NCR
<u>Facility</u>	10A NCAC 14C .2106	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2202	30:08 NCR
<u>Scope of Services</u>	10A NCAC 14C .2204	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2205	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2302	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .2304	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2305	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2402	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2405	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2502	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2505	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2602	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2605	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2702	30:08 NCR

APPROVED RULES

<u>Support Services</u>	10A NCAC 14C .2704	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2705	30:08 NCR
<u>Information Required by Applicant</u>	10A NCAC 14C .2802	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2805	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .2902	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .2904	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .2905	30:08 NCR
<u>Definitions</u>	10A NCAC 14C .3001	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3002	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3003	30:08 NCR
<u>Additional Requirements for Heart, Heart/Lung or</u>	10A NCAC 14C .3004	30:08 NCR
<u>Additional Requirements for Liver Transplantation</u>	10A NCAC 14C .3005	30:08 NCR
<u>Additional Requirements for Pancreas</u>	10A NCAC 14C .3006	30:08 NCR
<u>Additional Requirements for Kidney</u>	10A NCAC 14C .3007	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3008	30:08 NCR
<u>Accessibility</u>	10A NCAC 14C .3009	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3103	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3105	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3106	30:08 NCR
<u>Information Requirement of Applicant</u>	10A NCAC 14C .3202	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3204	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3205	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3402	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3404	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3405	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3602	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3604	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3605	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3702	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3704	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3705	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3802	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3804	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3805	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .3902	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .3904	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .3905	30:08 NCR
<u>Facility</u>	10A NCAC 14C .3906	30:08 NCR
<u>Information Required of Applicant</u>	10A NCAC 14C .4002	30:08 NCR
<u>Support Services</u>	10A NCAC 14C .4004	30:08 NCR
<u>Staffing and Staff Training</u>	10A NCAC 14C .4005	30:08 NCR
<u>Facility</u>	10A NCAC 14C .4006	30:08 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Definitions</u>	12 NCAC 09A .0103*	30:03 NCR
<u>Summary Suspensions</u>	12 NCAC 09A .0206*	30:03 NCR

APPROVED RULES

<u>Documentation of Educational Requirements</u>	12	NCAC	09B	.0106*	30:03	NCR
<u>Admission of Trainees</u>	12	NCAC	09B	.0203*	30:03	NCR
<u>Specialized Subject Control Arrest Techniques</u>	12	NCAC	09B	.0232*	30:03	NCR
<u>Specialized Physical Fitness Instructor Training</u>	12	NCAC	09B	.0233*	30:03	NCR
<u>General Instructor Certification</u>	12	NCAC	09B	.0302*	30:03	NCR
<u>Certification of School Directors</u>	12	NCAC	09B	.0501*	30:03	NCR
<u>Terms and Conditions of School Director</u>	12	NCAC	09B	.0502*	30:03	NCR
<u>Certification of Criminal Justice Schools</u>	12	NCAC	09C	.0401*	30:03	NCR
<u>In-Service Training Coordinator Requirements</u>	12	NCAC	09E	.0109*	30:03	NCR
<u>Education</u>	12	NCAC	09G	.0204*	30:03	NCR
<u>General Instructor Certification</u>	12	NCAC	09G	.0308*	30:03	NCR
<u>Certification of School Directors</u>	12	NCAC	09G	.0405*	30:03	NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Minimum Training Requirements</u>	12	NCAC	10B	.2005*	30:05	NCR
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PRIVATE PROTECTIVE SERVICES BOARD

<u>Training Requirements for Armed Security Guards</u>	14B	NCAC	16	.0807*	30:07	NCR
<u>Authorized Firearms</u>	14B	NCAC	16	.0809*	30:07	NCR
<u>Requirements for Firearms Trainer Certificate</u>	14B	NCAC	16	.0901*	30:07	NCR
<u>Renewal of a Firearms Trainer Certificate</u>	14B	NCAC	16	.0904	30:07	NCR

MARINE FISHERIES COMMISSION

<u>Gill Nets, Seines, Identification, Restrictions</u>	15A	NCAC	03J	.0103*	30:03	NCR
<u>Mechanical Methods Prohibited to Take Oysters</u>	15A	NCAC	03R	.0108*	30:03	NCR
<u>Attended Gill Net Areas</u>	15A	NCAC	03R	.0112	30:03	NCR

COASTAL RESOURCES COMMISSION

<u>Authority</u>	15A	NCAC	07B	.0601*	30:06	NCR
<u>Planning Options</u>	15A	NCAC	07B	.0701*	30:06	NCR
<u>Elements of Cama Core and Advanced Core</u>	15A	NCAC	07B	.0702*	30:06	NCR
<u>State Review and Comment on Draft Plan</u>	15A	NCAC	07B	.0801*	30:06	NCR
<u>Public Hearing and Local Adoption Requirements</u>	15A	NCAC	07B	.0802*	30:06	NCR
<u>Certification and Use of the Plan</u>	15A	NCAC	07B	.0803*	30:06	NCR
<u>Required Periodic Implementation Status Reports</u>	15A	NCAC	07B	.0804*	30:06	NCR

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

<u>Definitions</u>	21	NCAC	08A	.0301*	30:07	NCR
<u>Public Practice of Accountancy or Accounting</u>	21	NCAC	08A	.0307*	30:07	NCR
<u>Holding Out to the Public</u>	21	NCAC	08A	.0308*	30:07	NCR
<u>Concentration in Accounting</u>	21	NCAC	08A	.0309*	30:07	NCR
<u>Requests for Informal Opinions</u>	21	NCAC	08B	.0508*	30:07	NCR
<u>Filing of Examination Applications and Fees</u>	21	NCAC	08F	.0103*	30:07	NCR
<u>Conditioning Requirements</u>	21	NCAC	08F	.0105*	30:07	NCR
<u>Ineligibility Due to Violation of Accountancy Act</u>	21	NCAC	08F	.0111*	30:07	NCR

APPROVED RULES

<u>Education and Work Experience Required Prior to</u>	21	NCAC	08F	.0302*	30:07	NCR
<u>Work Experience Required of Candidates for CPA</u>	21	NCAC	08F	.0401*	30:07	NCR
<u>Education Required of Candidates for CPA</u>	21	NCAC	08F	.0410*	30:07	NCR
<u>Application for CPA Certificate</u>	21	NCAC	08F	.0502*	30:07	NCR
<u>CPE Requirements for CPAS</u>	21	NCAC	08G	.0401*	30:07	NCR
<u>Qualification of CPE Sponsors</u>	21	NCAC	08G	.0403*	30:07	NCR
<u>Requirements for CPE Credit</u>	21	NCAC	08G	.0404*	30:07	NCR
<u>Compliance with CPE Requirements</u>	21	NCAC	08G	.0406*	30:07	NCR
<u>Professional Ethics and Conduct CPE</u>	21	NCAC	08G	.0410*	30:07	NCR
<u>Modification of Discipline</u>	21	NCAC	08I	.0104*	30:07	NCR
<u>Annual Renewal of Certificate, Forfeiture, and</u>	21	NCAC	08J	.0101*	30:07	NCR
<u>Inactive Status; Change of Status</u>	21	NCAC	08J	.0105*	30:07	NCR
<u>Mailing Addresses of Certificate Holders and CPA</u>	21	NCAC	08J	.0107	30:07	NCR
<u>Compliance with CPA Firm Registration</u>	21	NCAC	08J	.0111*	30:07	NCR
<u>Peer Review Requirements</u>	21	NCAC	08M	.0105*	30:07	NCR
<u>Compliance</u>	21	NCAC	08M	.0106*	30:07	NCR
<u>Scope of These Rules</u>	21	NCAC	08N	.0101*	30:07	NCR
<u>Applicability and Organization of Rules</u>	21	NCAC	08N	.0102*	30:07	NCR
<u>Responsibility for Compliance by Others</u>	21	NCAC	08N	.0103*	30:07	NCR
<u>Integrity</u>	21	NCAC	08N	.0201*	30:07	NCR
<u>Deceptive Conduct Prohibited</u>	21	NCAC	08N	.0202*	30:07	NCR
<u>Discreditable Conduct Prohibited</u>	21	NCAC	08N	.0203*	30:07	NCR
<u>Discipline by Federal and State Authorities</u>	21	NCAC	08N	.0204*	30:07	NCR
<u>Confidentiality</u>	21	NCAC	08N	.0205*	30:07	NCR
<u>Cooperation with Board Inquiry</u>	21	NCAC	08N	.0206*	30:07	NCR
<u>Violation of Tax Laws</u>	21	NCAC	08N	.0207*	30:07	NCR
<u>Reporting Convictions, Judgements, and</u>	21	NCAC	08N	.0208*	30:07	NCR
<u>Accounting Principles</u>	21	NCAC	08N	.0209*	30:07	NCR
<u>Responsibilities in Tax Practice</u>	21	NCAC	08N	.0211*	30:07	NCR
<u>Competence</u>	21	NCAC	08N	.0212*	30:07	NCR
<u>Other Rules</u>	21	NCAC	08N	.0213*	30:07	NCR
<u>Outsourcing to Third-Party Service Providers</u>	21	NCAC	08N	.0214*	30:07	NCR
<u>International Financial Accounting Standards</u>	21	NCAC	08N	.0215*	30:07	NCR
<u>Professional Judgement</u>	21	NCAC	08N	.0301	30:07	NCR
<u>Forms of Practice</u>	21	NCAC	08N	.0302*	30:07	NCR
<u>Objectivity and Conflicts of Interest</u>	21	NCAC	08N	.0303*	30:07	NCR
<u>Consulting Services Standards</u>	21	NCAC	08N	.0304*	30:07	NCR
<u>Retention of Client Records</u>	21	NCAC	08N	.0305*	30:07	NCR
<u>Advertising or Other Forms of Solicitation</u>	21	NCAC	08N	.0306*	30:07	NCR
<u>CPA Firm Names</u>	21	NCAC	08N	.0307*	30:07	NCR
<u>Valuation Services Standards</u>	21	NCAC	08N	.0308*	30:07	NCR
<u>Personal Financial Planning Services</u>	21	NCAC	08N	.0309*	30:07	NCR
<u>Public Reliance</u>	21	NCAC	08N	.0401*	30:07	NCR
<u>Independence</u>	21	NCAC	08N	.0402*	30:07	NCR
<u>Auditing Standards</u>	21	NCAC	08N	.0403*	30:07	NCR
<u>Accounting and Review Services Standards</u>	21	NCAC	08N	.0404*	30:07	NCR
<u>Governmental Accounting Standards</u>	21	NCAC	08N	.0405*	30:07	NCR

APPROVED RULES

<u>Attestation Standards</u>	21	NCAC	08N	.0406*	30:07 NCR
<u>Peer Review Standards</u>	21	NCAC	08N	.0408	30:07 NCR
<u>Government Auditing Standards</u>	21	NCAC	08N	.0409*	30:07 NCR
<u>International Standards on Auditing</u>	21	NCAC	08N	.0410*	30:07 NCR

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

<u>Principal Office: Mailing Address: Office Hours</u>	21	NCAC	18B	.0101*	n/a G.S. 150B-21.5(a)(4)
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INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Contact Information</u>	21	NCAC	25	.0103*	n/a G.S. 150B-21.5(a)(4)
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EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS, BOARD OF

<u>Address</u>	21	NCAC	45	.0101*	n/a G.S. 150B-21.5(a)(4)
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STATE HUMAN RESOURCES COMMISSION

<u>Severance Salary Continuation Policy</u>	25	NCAC	01D	.2701*	30:04 NCR
<u>Severance Salary Continuation Eligibility</u>	25	NCAC	01D	.2702*	30:04 NCR
<u>Effects of Reemployment on Severance Pay</u>	25	NCAC	01D	.2703*	30:04 NCR
<u>Amount and Method of Payment for Severance</u>	25	NCAC	01D	.2704*	30:04 NCR
<u>Promotional Priority Consideration for Current</u>	25	NCAC	01H	.0801*	30:04 NCR
<u>Relationship to Other Employment Priority</u>	25	NCAC	01H	.0802	30:04 NCR
<u>Requirements for Reduction in Force Priority</u>	25	NCAC	01H	.0902*	30:04 NCR

TITLE 02 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .2001 PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule made by the Child Care Commission (hereinafter referred to as the Commission) shall make the request in a written petition to:

Rulemaking Coordinator
Division of Child Development and Early Education
2201 Mail Service Center
Raleigh, North Carolina 27699-2200

(b) Petitions for adoption or amendment of a rule shall include a draft of the proposed rule, and the name and address of the petitioner. The petition may also include any of the following items known to the petitioner:

- (1) the statutory authority for the Commission to promulgate the rule;
- (2) the effect on existing rules;
- (3) any data supporting the proposal;
- (4) the effect of the proposed rule on existing practices in the area involved, including cost factors;
- (5) the names and addresses of those most likely to be affected by the proposed; and

(6) the reasons for the proposal.

(c) The Division Director or designee shall present the petition to the Commission to determine whether the Commission has statutory authority to grant the petition.

(d) The Commission shall render a decision as to whether to deny or approve the petition at its next scheduled meeting, which may be no later than 120 days after submission of the petition. If the decision is to deny the petition, the Division Director or designee shall notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Commission shall initiate rulemaking in accordance with G.S. 150B-21.2.

History Note: Authority G.S. 110-85; 143B-168.3; 150B-20; Eff. November 1, 1989;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;

Amended Eff. February 1, 2016.

10A NCAC 09 .2002 RULEMAKING PROCEDURES

(a) The rulemaking procedures for the Secretary of the Department of Health and Human Services codified in 10A NCAC 01A .0104 are hereby incorporated by reference including subsequent amendments and editions, with the following modifications:

- (1) Correspondence related to the Commission's rulemaking actions shall be submitted to:
Rulemaking Coordinator

Division of Child Development and Early Education
2201 Mail Service Center
Raleigh, North Carolina 27699-2200
(2) "Hearing officer" shall mean the Chairman of the Child Care Commission or the Chairman's designee.

- (3) all written memoranda and information submitted;
- (4) any written minutes or audio tape or other record of the oral hearing; and
- (5) a statement of the ruling.

(b) Copies of 10A NCAC 01A .0104 may be inspected in the Division at the address given in Subparagraph (a)(1) of this Rule. A copy of this Rule may be found on the Office of Administrative Hearings website at <http://reports.oah.state.nc.us/ncac.asp>.

History Note: Authority G.S. 110-85; 143B-168.3; 150B-20; Eff. November 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. February 1, 2016.

10A NCAC 09 .2003 DECLARATORY RULINGS

(a) All requests for declaratory rulings shall be by written petition as described in Paragraph (b) of this Rule and shall be submitted to:

Rulemaking Coordinator
Division of Child Development and Early Education
2201 Mail Service Center
Raleigh, North Carolina 27699-2200

(b) Every request for a declaratory ruling shall include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him or her; and
- (4) the consequences for the petitioner of a failure to issue a declaratory ruling.

(c) When a request for a declaratory ruling meets the requirements of Paragraph (b) of this Rule, the Commission shall determine whether it has the statutory authority to grant the declaratory ruling and if so, grant the request for a declaratory ruling within 30 days of the receipt of the petition.

(d) A declaratory ruling procedure shall consist of written submissions, oral hearings, and such other procedures as the Commission deems necessary to understand the issues involved in the particular case.

(e) If the Commission grants the declaratory ruling request, the Commission shall issue notice by posting on the Division's website at <http://ncchildcare.dhhs.state.nc.us/general/whatsnew.asp> that written comments may be submitted or oral presentations received at a scheduled hearing.

(f) A record of all declaratory ruling proceedings shall be maintained by the Division and shall be available for public inspection during regular business hours. This record shall contain:

- (1) the original request;
- (2) the reasons for refusing to issue a ruling;

History Note: Authority G.S. 110-85; 143B-168.3; 150B-4; Eff. November 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. February 1, 2016.

10A NCAC 09 .2004 CONTESTED CASES: DEFINITIONS

The following terms shall have the following meaning for this Section:

- (1) "Department" means the Department of Health and Human Services;
- (2) "Hearing" means a contested case hearing as provided in G.S. 150B-2(2) and 150B-23;
- (3) "OAH" means the Office of Administrative Hearings.

History Note: Authority G.S. 110-85; 110-94; 150B-23; Eff. November 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. February 1, 2016.

10A NCAC 09 .2005 CONTESTED CASES: REQUEST FOR DETERMINATION

(a) In accordance with G.S. 150B-22, any person may request a determination of his or her legal rights, privileges, or duties as they relate to laws or rules administered by the Department.

(b) All petitions for hearings regarding matters under the control of the Department shall be filed with the OAH in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the Department. A list of registered agents may be obtained from the Office of General Counsel, 2001 Mail Service Center, Raleigh, NC 27699-2001.

History Note: Authority G.S. 150B-22; 150B-23; Eff. November 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015; Amended Eff. February 1, 2016.

10A NCAC 14C .1101 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2003; January 1, 2002; Amended Eff. August 1, 2004; April 1, 2003; Repealed Eff. February 1, 2016.

10A NCAC 14C .1202 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1204 SUPPORT SERVICES
10A NCAC 14C .1205 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183; 131E-183(b);
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1302 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1304 SUPPORT SERVICES
10A NCAC 14C .1305 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1402 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. March 15, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1404 SUPPORT SERVICES
10A NCAC 14C .1405 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183(b);

Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. January 4, 1994;
Temporary Amendment Eff. March 15, 2002;
Amended Eff. April 1, 2003;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1502 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. July 1, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1504 SUPPORT SERVICES
10A NCAC 14C .1505 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. July 1, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1602 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 1, 1987;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. November 1, 1996; February 1, 1994;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1604 SUPPORT SERVICES
10A NCAC 14C .1605 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. January 1, 1987;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. February 1, 1994;
Temporary Amendment Eff. February 2, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;

Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1702 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. January 1, 1987;
Amended Eff. November 1, 1989;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. November 1, 1996; January 4, 1994;
Temporary Amendment January 1, 1999;
Temporary Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Amended Eff. January 1, 2013; April 1, 2001;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1704 SUPPORT SERVICES
10A NCAC 14C .1705 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. January 1, 1987;
Amended Eff. November 1, 1989;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 1, 2013; January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1803 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1805 SUPPORT SERVICES
10A NCAC 14C .1806 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .1902 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177; 131E-183; NC 2009 State Medical Facilities Plan, Chapter 9: Radiation Therapy Services – Linear Accelerator;
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. January 1, 1999;
Temporary Amendment Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2009;
Amended Eff. November 1, 2009;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .1904 SUPPORT SERVICES
10A NCAC 14C .1905 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183; 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. February 1, 2009;
Amended Eff. November 1, 2009;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2002 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. March 1, 1996;
Temporary Amendment Eff. February 1, 2009;
Amended Eff. November 1, 2009;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2005 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. March 1, 1996;

Repealed Eff. February 1, 2016.

10A NCAC 14C .2102 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .2104 SUPPORT SERVICES
 10A NCAC 14C .2105 STAFFING AND STAFF TRAINING
 10A NCAC 14C .2106 FACILITY**

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2202 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. March 1, 1989;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2010;
Amended Eff. November 1, 2010;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .2204 SCOPE OF SERVICES
 10A NCAC 14C .2205 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. March 1, 1989;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2302 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Amended Eff. February 1, 2008;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .2304 SUPPORT SERVICES
 10A NCAC 14C .2305 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Amended Eff. February 1, 2008;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2402 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1), (5); 131E-183; Eff. December 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2405 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1), (5); 131E-183; Eff. December 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2502 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. December 1, 1996;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

10A NCAC 14C .2505 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. December 1, 1996;

*Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.*

10A NCAC 14C .2602 INFORMATION REQUIRED OF APPLICANT

*History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. December 1, 1996;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. August 1, 2009; November 1, 2006;
Repealed Eff. February 1, 2016.*

10A NCAC 14C .2605 STAFFING AND STAFF TRAINING

*History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. May 1, 1983;
Amended Eff. November 1, 1989;
Repealed Eff. February 1, 2016.*

10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT

*History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Amendment Eff. January 1, 2003; January 1, 2002;
Amended Eff. August 1, 2004; April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Repealed Eff. February 1, 2016.*

**10A NCAC 14C .2704 SUPPORT SERVICES
10A NCAC 14C .2705 STAFFING AND STAFF TRAINING**

*History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. February 1, 1994;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.*

10A NCAC 14C .2802 INFORMATION REQUIRED BY APPLICANT

*History Note: Authority G.S. 131E-177; 131E-183(b);
Eff. May 1, 1991;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.*

10A NCAC 14C .2805 STAFFING AND STAFF TRAINING

*History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. May 1, 1991;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.*

10A NCAC 14C .2902 INFORMATION REQUIRED OF APPLICANT

*History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.*

**10A NCAC 14C .2904 SUPPORT SERVICES
10A NCAC 14C .2905 STAFFING AND STAFF TRAINING**

*History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.*

**10A NCAC 14C .3001 DEFINITIONS
10A NCAC 14C .3002 INFORMATION REQUIRED OF APPLICANT
10A NCAC 14C .3003 SUPPORT SERVICES
10A NCAC 14C .3004 ADDITIONAL REQUIREMENTS FOR HEART, HEART/LUNG OR LUNG TRANSPLANTATION SERVICES
10A NCAC 14C .3005 ADDITIONAL REQUIREMENTS FOR LIVER TRANSPLANTATION SERVICES
10A NCAC 14C .3006 ADDITIONAL REQUIREMENTS FOR PANCREAS TRANSPLANTATION SERVICES
10A NCAC 14C .3007 ADDITIONAL REQUIREMENTS FOR KIDNEY TRANSPLANTATION SERVICES
10A NCAC 14C .3008 STAFFING AND STAFF TRAINING
10A NCAC 14C .3009 ACCESSIBILITY**

*History Note: Authority G.S. 131E-177(1); 131E-183; 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*

Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3103 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. January 1, 1997; November 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3105 SUPPORT SERVICES
10A NCAC 14C .3106 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3202 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3204 SUPPORT SERVICES
10A NCAC 14C .3205 STAFFING AND STAFF TRAINING

History Note: Eff. January 4, 1994;
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. November 1, 1996;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3402 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3404 SUPPORT SERVICES
10A NCAC 14C .3405 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3602 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3604 SUPPORT SERVICES
10A NCAC 14C .3605 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3702 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Temporary Amendment Eff. January 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces a permanent rulemaking originally proposed to be effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3704 SUPPORT SERVICES
10A NCAC 14C .3705 STAFFING AND STAFF TRAINING

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. January 4, 1994;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. February 1, 2006;
Amended Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3802 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. January 1, 2004;
Eff. August 1, 2004;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .3804 SUPPORT SERVICES
10A NCAC 14C .3805 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. January 1, 2004;
Eff. August 1, 2004;
Repealed Eff. February 1, 2016.

10A NCAC 14C .3902 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177; 131E-183(b);
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .3904 SUPPORT SERVICES
10A NCAC 14C .3905 STAFFING AND STAFF TRAINING
10A NCAC 14C .3906 FACILITY**

History Note: Authority G.S. 131E-177; 131E-183(b);
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

10A NCAC 14C .4002 INFORMATION REQUIRED OF APPLICANT

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Temporary Amendment Eff. February 1, 2008;
Amended Eff. November 1, 2008;
Repealed Eff. February 1, 2016.

**10A NCAC 14C .4004 SUPPORT SERVICES
10A NCAC 14C .4005 STAFFING AND STAFF TRAINING**

History Note: Authority G.S. 131E-177(1); 131E-183;

Temporary Adoption Eff. February 1, 2006;
Eff. November 1, 2006;
Repealed Eff. February 1, 2016.

10A NCAC 14C .4006 FACILITY

History Note: Authority G.S. 131E-177(1); 131E-183;
Temporary Adoption Eff. February 1, 2008;
Eff. November 1, 2008;
Repealed Eff. February 1, 2016.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Active Duty Military" means, for the purpose of determining eligibility for certification pursuant to 12 NCAC 09B .0401 and 12 NCAC 09B .0403, full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance while in the active military, service at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.
- (2) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).
- (3) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of the Department of Public Safety as authorized by G.S. 18B-500.
- (4) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (5) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (6) "Convicted" or "Conviction" means, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or

- (c) a plea of no contest, nolo contendere, or the equivalent.
- (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3), and excluding Correctional officers and probation/parole officers.
- (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (2) of this Rule.
- (9) "Department Head" means the chief administrator of any criminal justice agency, and specifically includes any chief of police or agency director. "Department Head" also includes a designee appointed in writing by the Department Head.
- (10) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (11) "Educational Points" means points earned toward the Professional Certificate Programs for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally accredited institution of higher learning. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (12) "Enrolled" means that an individual is currently actively participating in an on-going presentation of a Commission-certified basic training course that has not concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
- (a) for law enforcement officers, that the officer is attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
- (b) for Department of Public Safety, Division of Adult Correction and Juvenile Justice personnel, that the officer is attending the last or final phase of the approved training course necessary for satisfying the total course completion requirements.
- (13) "High School" means graduation from an educational program that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (14) "In-Service Training" means all training prescribed in 12 NCAC 09E .0105 that must be completed, with passing scores achieved, by all certified law enforcement officers during each full calendar year of certification.
- (15) "In-Service Training Coordinator" means the person designated by a law enforcement agency head to administer the agency's In-Service Training program.
- (16) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a Criminal Justice Agency based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (17) "Law Enforcement Code of Ethics" means the code adopted by the Commission on September 19, 1973, that reads as follows:
As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.
I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.
I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.
I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

- (18) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.
- (19) "Juvenile Justice Officer" means a person designated by the Secretary of the Department of Public Safety, Division of Adult Correction and Juvenile Justice to provide for the care and supervision of juveniles placed in the physical custody of the Department.
- (20) "Law Enforcement Officer" means an appointee of a Criminal Justice Agency, or agency of the State, or of any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title of "Law Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.
- (21) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.
- (22) "LIDAR" is an acronym for "Light Detection and Ranging" and means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (23) "Local Confinement Personnel" means any officer, supervisor, or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor, or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or any officer, supervisor, or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (24) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
 - (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly-enacted ordinance, or criminal statute of this State that is not classified as a Class B Misdemeanor pursuant to Sub-item (24)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal

traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Excluded from "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions or duly enacted ordinances of an authorized governmental entity, with the exception of the offense of impaired driving that is included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three G.S. 20-179(i), level four G.S. 20-179(j), or level five G.S. 20-179(k). Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, or criminal statute of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice, incorporated herein by reference, and shall include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. The publication is available from the Commission's website:
<http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-Misdemeanor-Manual-2005.aspx>.
 Class B Misdemeanor also includes any act committed or omitted in

violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor includes the following:

- (i) either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years;
 - (ii) driving while license permanently revoked or permanently suspended;
 - (iii) those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual; and
 - (iv) an act committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.
- (25) "Qualified Assistant" means an additional staff person designated by the School Director to assist in the administration of a course when an institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.
- (26) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500

to 10,550 MHZ frequency (X) band, the 24,050 to 24,250 MHZ frequency (K) band, or the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.

- (27) "Resident" means any youth committed to a facility operated by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (28) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (29) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (30) "Speed-Measuring Instruments" (SMI) means those devices or systems, including RADAR, Time-Distance and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all devices or systems described or referenced in 12 NCAC 09C .0601.
- (31) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (32) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217; Eff. January 1, 1981; Amended Eff. November 1, 1981; August 15, 1981; Readopted Eff. July 1, 1982; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989; Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995; Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002; April 1, 2001; Temporary Amendment Eff. April 15, 2003; Amended Eff. February 1, 2016; January 1, 2015; January 1, 2006; June 1, 2005; April 1, 2004.

12 NCAC 09A .0206 SUMMARY SUSPENSIONS

(a) The Commission, by and through the Probable Cause Committee, may summarily suspend the certification of a criminal justice officer or instructor before the commencement of proceedings for suspension or revocation of the certification when the public health, safety, or welfare requires action pursuant to

G.S. 150B-3. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Probable Cause Committee, may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification;
- (2) the certified officer fails to satisfactorily complete the in-service training requirements as prescribed in 12 NCAC 09E; or
- (3) the certified officer has produced a positive result on a urinalysis test, conducted in accordance with 12 NCAC 09B .0101(5).

(b) For the purpose of considering a summary suspension of certification, the Probable Cause Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.

(d) The Director, upon receipt of information showing the existence of a basis for summary suspension provided for in Subparagraph (a)(1), (2), or (3) of this Rule, shall coordinate the meeting described in Paragraph (b) of this Rule. Any affected person shall be notified, if feasible, that the person may submit any pertinent matters to the Probable Cause Committee for its consideration before the Committee acts on the summary suspension issue. No person shall be allowed more than 48 hours to submit information to the Probable Cause Committee.

(e) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the Department Head of the Criminal Justice Agency or the executive officer of the institution shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the Commission.

(f) The Commission, by and through the Director, upon determining that a Commission-certified Concealed Carry Handgun Instructor has conducted a concealed carry handgun training course as mandated by G.S. 14-415(a)(4) that is not in compliance with 12 NCAC 09F .0102 and negatively affects the public safety and welfare may summarily suspend the instructor's Concealed Carry Handgun Instructor certification until such time as the training course has been brought into compliance or reported to the Probable Cause Committee for action. For each instance the Director shall:

- (1) summarily suspend the Concealed Carry Handgun Instructor certification, prohibiting him or her from delivering concealed carry handgun training until the Director determines the training program is brought into compliance with 12 NCAC 09F .0102 and 12 NCAC 09F .0105; of this Chapter; and
- (2) inform the instructor that he or she may appeal the Director's suspension by requesting, in writing, a formal hearing before the Probable

Cause Committee at the next scheduled Commission meeting.

History Note: Authority G.S. 17C-6; 17C-10; 150B-3; Eff. January 1, 1981; Amended Eff. February 1, 2016; December 1, 2007; March 1, 2004; July 1, 1990; July 1, 1989; October 1, 1985; August 15, 1981.

12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS

(a) Each applicant for employment as a criminal justice officer shall furnish to the employing agency documentary evidence that the applicant has met the educational requirements for the criminal justice field of expected employment.

(b) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school which meets the approval guidelines of either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out-of-state agency. Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited by the Department of Education of the state in which the institution is located, from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education Accreditation, or from the state university of the state in which the institution is located. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.

(c) Documentary evidence of having received a high school equivalency credential from the issuing state shall be satisfied by a certified copy of a high school equivalency credential from the issuing state.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. February 1, 2016; November 1, 2015; June 1, 2012; August 1, 2000.

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within

60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014, (<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold, or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.
- (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school, college, or university graduate or has received a high school equivalency credential recognized by the issuing state. High school diplomas earned through correspondence enrollment are not recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;

- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;
- (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as Class B Misdemeanors, except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
- (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the

Domestic Violence Order (G.S. 50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. February 1, 2016; November 1, 2015; March 1, 2015; January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

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 75 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 is qualified 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' Annual 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) Pre-Qualification Testing 4 Hours
- (2) Orientation 1 Hour
- (3) Response to Injury 4 Hours
- (4) Combat Conditioning 4 Hours
- (5) Safety Guidelines/Rules 2 Hours

- (6) SC/AT Techniques and Instructional Methods 42 Hours
- (7) Fundamentals of Professional Liability 4 Hours
- (8) Practical Skills Enhancement 4 Hours
- (9) Student Instructional Practicum 6 Hours
- (10) BLET Lesson Plan Review 4 Hours
- TOTAL 75 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. February 1, 2016; 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 certified 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) Pre-Qualification Testing	5 Hours
(2) Orientation	1 Hour
(3) Physical Fitness Sessions	6 Hours
(4) Physical Fitness Assessments, Exercise Programs, and Instructional Methods	20 Hours
(5) Injury Care and Prevention	4 Hours
(6) Nutrition	7 Hours
(7) Civil Liability	3 Hours
(8) CVD Risk Factors	3 Hours
(9) Developing In-Service Wellness Programs and Validating Fitness Standards	4 Hours
(10) Lesson Plan Review	2 Hours
(11) Exercise Leadership	3 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
 Salemburg, 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. February 1, 2016; 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 Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized 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. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school, college or university graduate, received a high school equivalency credential as recognized by the issuing state; 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 by 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 or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise 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. February 1, 2016; November 1, 2015; 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 .0501 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a School Director in the delivery or presentation of a Commission-certified criminal justice training course shall be and continuously remain certified by the Commission as a school director.

(b) To qualify for initial certification as a School Director, an applicant shall:

- (1) Attend and complete a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission (if certified after July 1, 2004);
- (2) Present documentary evidence showing that the applicant:
 - (A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state and has acquired five 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. At least one year of the required five years experience must have been while actively participating in criminal justice training as a Commission-certified instructor; or
 - (B) has been awarded an associate degree and 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. At least one year of the required four years experience must have been while directly participating in criminal justice training as a Commission-certified instructor; or
 - (C) has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
- (3) Attend or must have attended the most current offering of the School Director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member shall be required; and
- (4) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently certified, or which may be seeking certification, by the Commission to make presentation of certified training programs and for whom the applicant will be the designated School Director.

(c) To qualify for certification as a School Director in the presentation of the Criminal Justice Instructor Training Course, an applicant shall:

- (1) Document that he or she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
- (2) Present evidence showing completion of 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;
- (3) Be currently certified as a criminal justice instructor by the Commission; and
- (4) Document completion of a special program presented by the North Carolina Justice Academy on delivery of the instructor training course and trainee evaluation.

History Note: Authority G.S. 17C-6; Eff. January 1, 1985; Amended Eff. February 1, 2016; November 1, 2015; July 1, 2004.

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

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

(b) To retain certification as a Basic Law Enforcement Training School Director, the School Director shall:

- (1) Participate in annual training conducted by commission staff;
- (2) Maintain and comply with the current version of the "Basic Law Enforcement Training Course Management Guide";
- (3) Maintain and ensure compliance with the current version of the "Basic Law Enforcement Training Instructor Notebook" assigned to each certified school; and
- (4) Perform the duties and responsibilities of a School Director as specifically required in Rule .0202 of this Subchapter.

(c) To retain certification as a Speed Measuring Instrument, Instructor Training, or Specialized Instructor Training School Director, the school director shall:

- (1) Participate in annual training conducted by commission staff;
- (2) Maintain and ensure compliance with the current version of the specific speed measuring instrument or Instructor Training notebook assigned to each certified school; and
- (3) Perform the duties and responsibilities of a School Director as specifically required in Rule .0202 of this Subchapter.

History Note: Authority G.S. 17C-6; Eff. January 1, 1985;

Amended Eff. February 1, 2016; May 1, 2014; April 1, 2009.

12 NCAC 09C .0401 ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS

(a) Any school requesting accreditation, pursuant to the Commission's authority to certify criminal justice training schools in G.S. 17C-6, as meeting the requirements contained in 12 NCAC 09B .0200 must submit a completed Form F-10(SA) Request for School Accreditation. The Form F-10(SA) is available on the agency's website: [http://www.ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10\(SA\)-6-11.aspx](http://www.ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10(SA)-6-11.aspx). Upon receipt of a completed Request for School Accreditation application:

- (1) The Standards Division staff reviews the application and conducts a site visit to tour facilities, confirm information on the application, and determine if and where deficiencies exist;
- (2) The Standards Division Staff contacts the applying institution or agency concerning deficiencies and provides assistance on correcting problem areas;
- (3) The Standards Division staff recommends to the Education and Training Committee when the accredited institution has satisfied the requirements outlined in 12 NCAC 09B .0200; and
- (4) The Education and Training Committee recommends to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation for the applicant institution or agency.

(b) Accreditation of a school shall remain effective for five years from issuance unless earlier suspended or revoked for failure to maintain compliance with the requirements set forth in 12 NCAC 09B .0200, Minimum Standards for Criminal Justice Schools and Criminal Justice Training Programs or Courses of Instruction.

(c) The identity of those schools accredited under this Rule are published and distributed by the Standards Division, via the agency's website: <http://www.ncdoj.gov/CMSPages/GetFile.aspx?nodeguid=6cb7e157-87f7-40a3-b281-d95a36807bb9> and the schedule of criminal justice training courses planned for delivery during the succeeding year.

(d) A school may request reaccreditation from the Commission by submitting a completed Form F-10(SA) Request for School Accreditation form, located on the agency's website: [http://ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10\(SA\)-6-11.aspx](http://ncdoj.gov/getdoc/9134b822-24a7-4d70-8a3b-b2bd807100c4/F-10(SA)-6-11.aspx). The Form F-10(SA) shall contain information on changes in facilities, equipment, and staffing. Upon receipt of a completed application:

- (1) The Standards Division staff reviews the request for reaccreditation, conducts a site visit to tour facilities, confirms information on the application, determines if and where deficiencies exist, and attaches copies of the reports of site visits to the application;

- (2) The Standards Division staff submits the application and staff reports to the Education and Training Committee for review; and
- (3) The Education and Training Committee recommends to the full Commission at its next regularly scheduled meeting the approval or denial of accreditation of the applicant institution or agency.

(e) In instances where certified schools have been found to be in compliance with 12 NCAC 09B .0200 through favorable site visit reports, Standards Division staff shall reaccredit on behalf of the Commission. Such action shall be reported to the Education and Training Committee at its next scheduled meeting.

(f) In instances where the Education and Training Committee determines the school seeking accreditation or reaccreditation is not in compliance with 12 NCAC 09B .0200, the school application and staff reports shall be reviewed by the Probable Cause Committee, as specified in 12 NCAC 09A .0201.

(g) The Commission may suspend or revoke a school's accreditation when it finds that the school has failed to meet or continuously maintain any requirement, standard, or procedure for school or course accreditation.

(h) The Accreditation of a school whose accreditation is scheduled to expire in calendar year 2015 and who has submitted a request for recertification shall be extended for a maximum of two years under the following conditions:

- (1) accreditation has not expired;
- (2) the school has submitted a request for reaccreditation along with the required documentation by December 31, 2015.
- (3) the Standards Division staff was unable to complete the recertification process by December 31, 2014; and
- (4) the school is not denied reaccreditation prior to the expiration of the current accreditation. Accreditation or accreditation extension according to this Paragraph expires when reaccreditation is denied or revoked or the Standards Division staff is able to complete the reaccreditation process and it is determined that the school is in compliance with the Rules for Reaccreditation. If the school reaccreditation is denied or revoked, the school shall not deliver Commission accredited criminal justice courses until such reaccreditation has been granted or reinstated by the Commission.

History Note: Authority G.S. 17C-6; 17C-11; Eff. January 1, 1981; Amended Eff. August 1, 2004, January 1, 1996; Temporary Amendment Eff. January 1, 2007; Temporary Amendment Expired October 13, 2007; Amended Eff. February 1, 2016; April 1, 2008.

12 NCAC 09E .0109 IN-SERVICE TRAINING COORDINATOR REQUIREMENTS

(a) Any persons designated by an agency head to act as, or who perform the duties of, an In-Service Training Coordinator in the delivery or presentation of a Commission-mandated or

Commission-recognized in-service training course shall have on file confirmation from the Commission acknowledging designation as In-Service Training Coordinator prior to acting in an official capacity as an In-Service Training Coordinator.

(b) To be eligible to serve as an In-Service Training Coordinator, an applicant shall:

- (1) have 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) be certified by the Commission as a General Instructor; and
- (3) have completed the "Coordinating In-Service Training" course presented by the North Carolina Justice Academy for the purpose of familiarization with trainee and instructor evaluation.

(c) The agency head shall submit to the Criminal Justice Standards Division a Form F-18 Commission In-Service Training Coordinator Request form containing the names and other requested information for the persons selected to act as In-Service Training Coordinators for the agency. The Form F-18 is located on the agency's website: [http://ncdoj.gov/getdoc/feb459d2-6db1-45be-94c8-a2e5305b350b/F-18\(ITC\)-6-11.aspx](http://ncdoj.gov/getdoc/feb459d2-6db1-45be-94c8-a2e5305b350b/F-18(ITC)-6-11.aspx). The agency head shall ensure that the persons selected meet the requirements set forth in Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 17C-6; Eff. January 1, 2006; Amended Eff. February 1, 2016.

12 NCAC 09G .0204 EDUCATION

(a) Every person employed as a correctional officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a high school, college, or university graduate or have received a high school equivalency credential as recognized by the issuing state.

(b) Every person employed as a probation and parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall be a graduate of a regionally accredited college or university and have attained the baccalaureate degree.

(c) Each applicant for employment as a corrections officer shall furnish to the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice documentary evidence that the applicant has met the educational requirements for the corrections field of expected employment.

- (1) Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the requirements of the Division of Non-Public Instruction of the North Carolina Department of Public Instruction, a comparable out-of-state agency, or is a regionally accredited college or university. High school diplomas earned through correspondence enrollment are not recognized toward these minimum educational requirements.

- (2) Documentary evidence of high school equivalency shall be satisfied by a certified copy of a high school equivalency credential as recognized by the issuing state.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. February 1, 2016; November 1, 2015; January 1, 2015; August 1, 2004.

12 NCAC 09G .0308 GENERAL INSTRUCTOR CERTIFICATION

(a) General Instructor Certifications issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category, specified in Rule .0310 of this Section. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule .0310 of this Section, entitled "Specialized 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 by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state; 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), 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 passed the state 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. February 1, 2016; November 1, 2015; January 1, 2015; January 1, 2006.

12 NCAC 09G .0405 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a School Director in the delivery or presentation of a Commission-certified corrections training course shall be and continuously remain certified by the Commission as a School Director.

(b) To qualify for initial certification as a corrections School Director, an applicant shall:

- (1) Attend and successfully complete a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission (if certified after January 1, 2006);
- (2) present documentary evidence showing that the applicant:
 - (A) is a high school graduate or has received a high school equivalency credential as recognized by the issuing state and has acquired five years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required five years experience must have been while actively participating in corrections training as a Commission-certified instructor;
 - (B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required four years experience must have been while directly participating in corrections training as a Commission-certified instructor; or
 - (C) has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
- (3) attend or have attended the most current offering of the School Director's orientation as developed and presented by the Commission

(4) staff, otherwise an individual orientation with a staff member shall be required; and submit a completed Form F-10(SD), Request for School Director Certification to the Commission for the issuance of such certification. This request shall be executed by the executive officer of the Office of Staff Development and Training of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice. The Form F-10(SD) is located on the agency's website: [http://ncdoj.gov/getdoc/f23e5e4d-d56d-4aba-af1e-44712690d5d5/F-10\(SD\)-6-11.aspx](http://ncdoj.gov/getdoc/f23e5e4d-d56d-4aba-af1e-44712690d5d5/F-10(SD)-6-11.aspx).

(c) To qualify for certification as a School Director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:

- (1) document that he or she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
- (2) present evidence showing successful completion of a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission;
- (3) be currently certified as a criminal justice instructor by the Commission; and
- (4) document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004; Amended Eff. February 1, 2016; January 1, 2006.

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four

hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The 2015 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: What does it have to do with me?;
- (3) Domestic Violence: Teen Dating Violence;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

(c) The 2015 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Documenting the Incident;
- (3) Emotional Survival for Detention Officers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(d) The 2015 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Crisis Negotiation;
- (2) Interpersonal Communications: Team Building;
- (3) Emotional Survival;
- (4) Tactical Dispatch; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2016 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: The Color of Justice;
- (3) Human Trafficking Awareness;
- (4) NC Firearms Laws: Citizens with Guns;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(f) The 2016 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Career Survival: Stop! Think About What You Are Doing;
- (2) Communicable Diseases;

- (3) Detention Intelligence Update;
- (4) Understanding PREA; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2016 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Communicating Effectively with Crisis Callers;
- (2) Becoming a Leader in the Communications Center;
- (3) Handling Suicidal Callers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2016; January 1, 2015; February 1, 2014; January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private investigator licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter and all additional training requirements set forth in that Rule.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(d) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office. For rifle qualification all shots shall be located on the target. Should a student fail to attain a score of 80 percent accuracy, the student will be given three additional attempts to qualify on the course of fire the student did not pass. Failure to meet the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed Security

Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour course.

(e) All armed security guard training required by this Chapter shall be administered by a certified trainer and shall be completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(f) All applicants for an armed security guard firearm registration permit shall obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(g) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(h) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard currently registered with one company may be registered with a second company. Such registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required, along with the digital photograph, updated criminal records checks, and a forty dollar (\$40.00) registration fee. If the guard will be carrying a firearm of the same make, model and caliber, then no additional firearms training is required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, six hours of classroom training that shall include the following:

- (1) legal limitations on the use of shotgun (minimum of one hour);
- (2) shotgun safety, including range firing procedures (minimum of one hour);
- (3) shotgun operation and maintenance (minimum of one hour);
- (4) shotgun fundamentals (minimum of two hours); and
- (5) night firing (minimum of one hour).

(k) An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the

requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete one hour of classroom training covering the topics set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, 16 hours of classroom training which shall include the following:

- (1) legal limitations on the use of rifles (minimum of one hour);
- (2) rifle safety, including range firing procedures (minimum of one hour);
- (3) rifle operation and maintenance (minimum of two hours);
- (4) rifle fundamentals (minimum of ten hours); and
- (5) night firing (minimum two hours).

(n) The applicant shall pass a skills course that tests each basic rifle skill and the test of each skill shall be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(q) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty firearms as set forth in Paragraph (d) of this Rule.

(r) The armed security officer is required to qualify annually both for day and night firing with his or her duty handgun, shotgun and rifle, if applicable. If the security officer fails to qualify on either course of fire, the security officer cannot carry the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the security officer that he or she is no longer authorized to carry the firearm and the firearm instructor shall notify the employer and the Private Protective Services Board staff on the next business day.

History Note: Authority G.S. 74C-5; 74C-9; 74C-13;

Eff. June 1, 1984;

Amended Eff. November 1, 1991; February 1, 1990; July 1, 1987;

Temporary Amendment Eff. January 14, 2002;
Amended Eff. October 1, 2013; October 1, 2010; June 1, 2009;
February 1, 2006; August 1, 2002;

*Transferred and Recodified from 12 NCAC 07D .0807 Eff. July 1, 2015;
Amended Eff. February 1, 2016; October 1, 2015.*

14B NCAC 16 .0809 AUTHORIZED FIREARMS

Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard revolver from .32 caliber to .357 caliber, a standard semi-automatic pistol from .354 caliber to .45 caliber, any standard 12 gauge shotgun, or any standard semi-automatic or bolt action .223 or 5.56 X 45 mm NATO caliber rifle as long as the licensee or registrant has been trained pursuant to Rule .0807 of this Section. For purposes of this Section, a "standard" firearm means a firearm that has not been modified or altered from its original manufactured design.

*History Note: Authority G.S. 74C-5; 74C-13;
Eff. June 1, 1984;
Amended Eff. January 1, 2015; June 1, 1993; November 1, 1991;
July 1, 1987;
Transferred and Recodified from 12 NCAC 07D .0809 Eff. July 1, 2015;
Amended Eff. February 1, 2016.*

14B NCAC 16 .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

- (a) Firearms trainer applicants shall:
- (1) meet the minimum standards established by Rule .0703 of this Chapter;
 - (2) have a minimum of one year of supervisory experience in security with a contract security company or proprietary security organization, or one year of experience with any federal, state, county or municipal law enforcement agency;
 - (3) attain a 90 percent score on a firearm's prequalification course approved by the Board and the Secretary of Public Safety, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
 - (4) to teach handgun qualification, complete a training course approved by the Board and the Secretary of Public Safety that shall consist of a minimum of 32 hours of classroom and practical range training in safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun firing;
 - (5) to teach shotgun or rifle qualification, complete a training course approved by the Board and the Secretary of Public Safety that shall consist of a minimum of 24 hours of classroom and practical range training in shotgun and rifle safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of shotgun and rifle firing;
 - (6) pay the certified trainer application fee established in Rule .0903(a)(1) of this Section; and

- (7) successfully complete the requirements of the Unarmed Trainer Certificate set forth in Rule .0909 of this Section.

(b) The applicant's score on the prequalification course set forth in Subparagraph (a)(3) of this Rule is valid for 180 days after completion of the course.

(c) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from the North Carolina Criminal Justice Education and Training Standards Commission.

(d) In lieu of Subparagraphs (a)(2) and (4) of this Rule, an applicant may establish that the applicant satisfies the conditions set forth in G.S. 93B-15.1(a) for firearm instruction and two years of verifiable experience within the past five years in the U.S. Armed Forces as a firearms instructor.

(e) All applicants subject to Paragraphs (c) and (d) of this Rule shall comply with the provisions of Subparagraph (a)(3), pay the application fee amount as set forth in Rule .0903 of this Section, and complete the eight-hour course given by the Board on rules and regulations.

(f) In addition to the requirement of Section .0200 of this Chapter, an applicant for a firearms trainer certificate who is the spouse of an active duty member of the U.S. Armed Forces shall establish that the application satisfies the conditions set forth in G.S. 93B-15.1(b).

(g) A Firearms Trainer Certificate expires two years after the date of issuance.

*History Note: Authority G.S. 74C-5; 74C-9; 74C-13; 93B-15.1;
Eff. June 1, 1984;
Amended Eff. July 1, 2014; October 1, 2013; December 1, 2008;
January 1, 2008; August 1, 2004; November 1, 1991;
Transferred and Recodified from 12 NCAC 07D .0901 Eff. July 1, 2015;
Amended Eff. February 1, 2016; October 1, 2015.*

14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

(a) Each applicant for renewal of a firearms trainer certificate shall complete a renewal form provided by the Board and available on its website at www.ncdps.gov/PPS. This form shall be submitted not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) certification of the successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun or rifle), range operations, control and safety procedures, and methods of firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a certified statement of the result of a criminal records search from the appropriate governmental authority housing criminal

record information or clerk of superior court in each county where the applicant has resided within the immediately preceding 48 months, and if any address history contains an out of state address, a criminal record check from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a);

- (3) the applicant's renewal fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected by the Private Protective Services Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-13; Eff. June 1, 1984; Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009; December 1, 1995; December 1, 1985; Transferred and Recodified from 12 NCAC 07D .0904 Eff. July 1, 2015; Amended Eff. February 1, 2016; October 1, 2015.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

- (a) It is unlawful to use gill nets:
 - (1) with a mesh length less than two and one-half inches; and
 - (2) in Internal Coastal Waters from April 15 through December 15, with a mesh length five inches or greater and less than five and one-half inches.
- (b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in Coastal Fishing Waters, or any portion thereof, or impose any or all of the following restrictions on gill net or seine fishing operations:
 - (1) specify time;
 - (2) specify area;
 - (3) specify means and methods, including:
 - (A) gill net mesh length, but the maximum length specified shall not exceed six and one-half inches in Internal Coastal Waters; and
 - (B) net number and length, but for gill nets with a mesh length four inches or greater, the maximum length specified shall not exceed 2,000 yards per vessel

in Internal Coastal Waters regardless of the number of individuals involved; and

- (4) specify season.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in Internal Coastal Waters unless nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets that are not connected together at the top line are considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line are considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in this Paragraph, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

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

(d) It is unlawful to use gill nets:

- (1) within 200 yards of any flounder or other finfish pound net set with lead and either pound or heart in use, except from August 15 through December 31 in all Coastal Fishing Waters of the Albemarle Sound, including its tributaries to the boundaries between Coastal and Joint Fishing Waters, west of a line beginning at a point 36° 04.5184' N - 75° 47.9095' W on Powell Point; running southerly to a point 35° 57.2681' N - 75° 48.3999' W on Caroon Point, it is unlawful to use gill nets within 500 yards of any pound net set with lead and either pound or heart in use; and
- (2) from March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South Carolina line, unless such net is used in accordance with the following conditions:

- (1) no more than two gill nets per vessel may be used at any one time;
- (2) any net used must be attended by the fisherman from a vessel who shall at no time be more than 100 yards from either net; and
- (3) any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted vessel navigation.

(f) It is unlawful to use runaround, drift, or other non-stationary gill nets, except as provided in Paragraph (e) of this Rule:

- (1) to block more than two-thirds of any natural or manmade waterway, sound, bay, creek, inlet, or any other body of water; or
- (2) in a location where it will interfere with navigation.

(g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R .0112(a).

(h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through November 30 in the Internal Coastal Waters and Joint Fishing Waters of the state designated in 15A NCAC 03R .0112(b).

(i) It is unlawful for any portion of a gill net with a mesh length five inches or greater to be within 10 feet of any point on the shoreline while set or deployed, unless the net is attended from June through October in Internal Coastal Waters.

(j) For the purpose of this Rule and 15A NCAC 03R .0112, "shoreline" is defined as the mean high water line or marsh line, whichever is more seaward.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221.1; 143B-289.52; Eff. January 1, 1991; Amended Eff. August 1, 1998; March 1, 1996; March 1, 1994; July 1, 1993; September 1, 1991; Temporary Amendment Eff. October 2, 1999; July 1, 1999; October 22, 1998; Amended Eff. April 1, 2001; Temporary Amendment Eff. May 1, 2001; Amended Eff. April 1, 2016; April 1, 2009; December 1, 2007; September 1, 2005; August 1, 2004; August 1, 2002.

15A NCAC 03R .0108 MECHANICAL METHODS PROHIBITED TO TAKE OYSTERS

The dredges and mechanical methods prohibited areas to take oysters referenced in 15A NCAC 03K .0204 are delineated in the following Internal Coastal Waters:

- (1) In Roanoke Sound and tributaries, south of a line beginning at a point 35° 55.1461' N - 75° 39.5618' W on Baum Point, running easterly to a point 35° 55.9795' N - 75° 37.2072' W and north and east of a line beginning at a point 35° 50.8315' N - 75° 37.1909' W on the west side of the mouth of Broad Creek, running easterly to a point 35° 51.0097' N - 75° 36.6910' W near Beacon "17", running southerly to a point 35° 48.6145' N - 75° 35.3760' W near Beacon "7", running easterly to a point 35° 49.0348' N - 75° 34.3161' W on Cedar Point.
- (2) In Pamlico Sound and tributaries:
 - (a) Outer Banks area, within the area described by a line beginning at a point 35° 46.0638' N - 75° 31.4385' W on the shore of Pea Island; running southwestly to a point 35° 42.9500' N - 75° 34.1500' W; running southerly

to a point 35° 39.3500' N - 75° 34.4000' W; running southeasterly to a point 35° 35.8931' N - 75° 31.1514' W in Chicamacomico Channel near Beacon "ICC"; running southerly to a point 35° 28.5610' N - 75° 31.5825' W on Gull Island; running southerly to a point 35° 22.8671' N - 75° 33.5851' W in Avon Channel near Beacon "1"; running southwestly to a point 35° 18.9603' N - 75° 36.0817' W in Cape Channel near Beacon "2"; running westerly to a point 35° 16.7588' N - 75° 44.2554' W in Rollinson Channel near Beacon "42RC"; running southwestly to a point 35° 14.0337' N - 75° 45.9643' W southwest of Oliver Reef near the quick-flashing beacon; running westerly to a point 35° 09.3650' N - 76° 00.6377' W in Big Foot Slough Channel near Beacon "14BF"; running southwestly to a point 35° 08.4523' N - 76° 02.6651' W in Nine Foot Shoal Channel near Beacon "9"; running westerly to a point 35° 07.1000' N - 76° 06.9000; running southwestly to a point 35° 01.4985' N - 76° 11.4353' W near Beacon "HL"; running southwestly to a point 35° 00.2728' N - 76° 12.1903' W near Beacon "2CS"; running southerly to a point 34° 59.4383' N - 76° 12.3541' W in Wainwright Channel immediately east of the northern tip of Wainwright Island; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;

- (b) Stumpy Point Bay, north of a line beginning at a point 35° 40.9719' N - 75° 44.4213' W on Drain Point; running westerly to a point 35° 40.6550' N - 75° 45.6869' W on Kazer Point;
- (c) Pains Bay, east of a line beginning at a point 35° 35.0666' N - 75° 51.2000' W on Pains Point, running southerly to a point 35° 34.4666' N - 75° 50.9666' W on Rawls Island; running easterly to a point 35° 34.2309' N - 75° 50.2695' W on the east shore;
- (d) Long Shoal River, north of a line beginning at a point 35° 35.2120' N - 75° 53.2232' W at the 5th Avenue Canal, running easterly to a point 35°

- 35.0666' N - 75° 51.2000' W on the east shore on Pains Point;
- (e) Wysocking Bay:
- (i) Wysocking Bay, north of a line beginning at a point 35° 25.2741' N - 76° 03.1169' W on Mackey Point, running easterly to a point 35° 25.1189' N - 76° 02.0499' W at the mouth of Lone Tree Creek;
- (ii) Mount Pleasant Bay, west of a line beginning at a point 35° 23.8652' N - 76° 04.1270' W on Browns Island, running southerly to a point 35° 22.9684' N - 76° 03.7129' W on Bensons Point;
- (f) Juniper Bay, north of a line beginning at a point 35° 22.1384' N - 76° 15.5991' W near the Caffee Bay ditch, running easterly to a point 35° 22.0598' N - 76° 15.0095' W on the east shore;
- (g) Swan Quarter Bay:
- (i) Caffee Bay, east of a line beginning at a point 35° 22.1944' N - 76° 19.1722' W on the north shore, running southerly to a point 35° 21.5959' N - 76° 18.3580' W on Drum Point;
- (ii) Oyster Creek, east of a line beginning at a point 35° 23.3278' N - 76° 19.9476' W on the north shore, running southerly to a point 35° 22.7018' N - 76° 19.3773' W on the south shore;
- (h) Rose Bay:
- (i) Rose Bay, north of a line beginning at a point 35° 25.7729' N - 76° 24.5336' W on Island Point, running southeasterly and passing near Beacon "5" to a point 35° 25.1854' N - 76° 23.2333' W on the east shore;
- (ii) Tooleys Creek, west of a line beginning at a point 35° 25.7729' N - 76° 24.5336' W on Island Point, running southwesterly to a point 35° 25.1435' N - 76° 25.1646' W on Ranger Point;
- (i) Spencer Bay:
- (i) Striking Bay, north of a line beginning at a point 35° 23.4106' N - 76° 26.9629' W on Short Point, running easterly to a point 35° 23.3404' N - 76° 26.2491' W on Long Point;
- (ii) Germantown Bay, north of a line beginning at a point 35° 24.0937' N - 76° 27.9348' W; on the west shore, running easterly to a point 35° 23.8598' N - 76° 27.4037' W on the east shore;
- (j) Abel Bay, northeast of a line beginning at a point 35° 23.6463' N - 76° 31.0003' W on the west shore, running southeasterly to a point 35° 22.9353' N - 76° 29.7215' W on the east shore;
- (k) Pungo River, Fortescue Creek, east of a line beginning at a point 35° 25.9213' N - 76° 31.9135' W on Pasture Point; running southerly to a point 35° 25.6012' N - 76° 31.9641' W on Lupton Point;
- (l) Pamlico River:
- (i) North Creek, north of a line beginning at a point 35° 25.3988' N - 76° 40.0455' W on the west shore, running southeasterly to a point 35° 25.1384' N - 76° 39.6712' W on the east shore;
- (ii) Campbell Creek (off of Goose Creek), west of a line beginning at a point 35° 17.3600' N - 76° 37.1096' W on the north shore; running southerly to a point 35° 16.9876' N - 76° 37.0965' W on the south shore;
- (iii) Eastham Creek (off of Goose Creek), east of a line beginning at a point 35° 17.7423' N - 76° 36.5164' W on the north shore; running southeasterly to a point 35° 17.5444' N - 76° 36.3963' W on the south shore;
- (iv) Oyster Creek-Middle Prong, southwest of a line beginning at a point 35° 19.4921' N - 76° 32.2590' W on Cedar Island; running southeasterly to a point 35° 19.1265' N - 76° 31.7226' W on Beard Island Point; and southwest of a line beginning at a point 35° 19.5586' N - 76° 32.8830' W on the west shore, running easterly to a point 35°

- 19.5490' N - 76° 32.7365' W
on the east shore;
- (m) Mouse Harbor, west of a line beginning at a point 35° 18.3915' N - 76° 29.0454' W on Persimmon Tree Point, running southerly to a point 35° 17.1825' N - 76° 28.8713' W on Yaupon Hammock Point;
 - (n) Big Porpoise Bay, northwest of a line beginning at a point 35° 15.6993' N - 76° 28.2041' W on Big Porpoise Point, running southwesterly to a point 35° 14.9276' N - 76° 28.8658' W on Middle Bay Point;
 - (o) Middle Bay, west of a line beginning at a point 35° 14.8003' N - 76° 29.1923' W on Deep Point, running southerly to a point 35° 13.5419' N - 76° 29.6123' W on Little Fishing Point;
 - (p) Jones Bay, west of a line beginning at a point 35° 14.0406' N - 76° 33.3312' W on Drum Creek Point, running southerly to a point 35° 13.3609' N - 76° 33.6539' W on Ditch Creek Point;
 - (q) Bay River:
 - (i) Gales Creek-Bear Creek, north and west of a line beginning at a point 35° 11.2833' N - 76° 35.9000' W on Sanders Point, running northeasterly to a point 35° 11.9000' N - 76° 34.2833' W on the east shore;
 - (ii) Bonner Bay, southeast of a line beginning at a point 35° 09.6281' N - 76° 36.2185' W on the west shore; running northeasterly to a point 35° 10.0888' N - 76° 35.2587' W on Davis Island Point;
 - (r) Neuse River:
 - (i) Lower Broad Creek, west of a line beginning at a point 35° 05.8314' N - 76° 35.3845' W on the north shore; running southwesterly to a point 35° 05.5505' N - 76° 35.7249' W on the south shore;
 - (ii) Greens Creek - north of a line beginning at a point 35° 01.3476' N - 76° 42.1740' W on the west shore of Greens Creek; running northeasterly to a point 35° 01.4899' N - 76° 41.9961' W on the east shore;
 - (iii) Dawson Creek, north of a line beginning at a point 34°
- (iv) Clubfoot Creek, south of a line beginning at a point 34° 54.5424' N - 76° 45.7252' W on the west shore, running easterly to a point 34° 54.4853' N - 76° 45.4022' W on the east shore;
 - (v) Turnagain Bay, south of a line beginning at a point 34° 59.4065' N - 76° 30.1906' W on the west shore; running easterly to a point 34° 59.5668' N - 76° 29.3557' W on the east shore;
- (s) West Bay:
 - (i) Long Bay-Ditch Bay, west of a line beginning at a point 34° 57.9388' N - 76° 27.0781' W on the north shore of Ditch Bay; running southwesterly to a point 34° 57.2120' N - 76° 27.2185' W on the south shore of Ditch Bay; then south of a line running southeasterly to a point 34° 56.7633' N - 76° 26.3927' W on the east shore of Long Bay;
 - (ii) West Thorofare Bay, south of a line beginning at a point 34° 57.2199' N - 76° 24.0947' W on the west shore; running easterly to a point 34° 57.4871' N - 76° 23.0737' W on the east shore;
 - (iii) Merkle Bay, east of a line beginning at a point 34° 58.2286' N - 76° 22.8374' W on the north shore, running southerly to a point 34° 57.5920' N - 76° 23.0704' W on Merkle Bay Point;
 - (iv) North Bay, east of a line beginning at a point 35° 01.8982' N - 76° 21.7135' W on Point of Grass, running southeasterly to a point 35° 01.3320' N - 76° 21.3353' W on Western Point.
- (3) In Core Sound and its tributaries, southwest of a line beginning at a point 35° 00.1000' N - 76° 14.8667' W near Hog Island Reef; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; and in the following

waterbodies and their tributaries: Back Bay, the Straits, Back Sound, North River, Newport River, Bogue Sound, and White Oak River.

- (4) In Onslow, Pender, New Hanover, and Brunswick counties.

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

Eff. January 1, 1991;

Amended Eff. July 1, 1993; October 1, 1992; September 1, 1991;

Recodified from 15A NCAC 03R .0008 Eff. December 17, 1996;

Amended Eff. April 1, 2016; October 1, 2004.

15A NCAC 03R .0112 ATTENDED GILL NET AREAS

(a) The attended gill net areas referenced in 15A NCAC 03J .0103(g) are delineated in the following areas:

- (1) Pamlico River, west of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Mauls Point;
- (2) Within 200 yards of any shoreline in Pamlico River and its tributaries east of a line beginning at a point 35° 27.5768' N - 76° 54.3612' W on Ragged Point; running southwesterly to a point 35° 26.9176' N - 76° 55.5253' W on Mauls Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (3) Pungo River, east of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point;
- (4) Within 200 yards of any shoreline in Pungo River and its tributaries west of the northern portion of the Pantego Creek breakwater and a line beginning at a point 35° 31.7198' N - 76° 36.9195' W on the northern side of the breakwater near Tooleys Point; running southeasterly to a point 35° 30.5312' N - 76° 35.1594' W on Durants Point; and west of a line beginning at a point 35° 22.3622' N - 76° 28.2032' W on Roos Point; running southerly to a point at 35° 18.5906' N - 76° 28.9530' W on Pamlico Point;
- (5) Neuse River and its tributaries northwest of the Highway 17 highrise bridge;
- (6) Trent River and its tributaries; and
- (7) Within 200 yards of any shoreline in Neuse River and its tributaries east of the Highway 17 highrise bridge and south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N - 76° 30.8532' W; running

southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southerly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the attendance boundary.

(b) The attended gill net areas referenced in 15A NCAC 03J .0103(h) are delineated in the following Internal Coastal Waters and Joint Fishing Waters of the state south of a line beginning on Roanoke Marshes Point at a point 35° 48.3693' N - 75° 43.7232' W; running southeasterly to a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay to the South Carolina State line:

- (1) All primary nursery areas described in 15A NCAC 03R .0103, all permanent secondary nursery areas described in 15A NCAC 03R .0104, and no-trawl areas described in 15A NCAC 03R .0106(2), (4), (5), (8), (10), (11), and (12);
- (2) In the area along the Outer Banks, beginning at a point 35° 44.1710' N - 75° 31.0520' W on Eagles Nest Bay; running northwesterly to a point 35° 45.1833' N - 75° 34.1000' W west of Pea Island; running southerly to a point 35° 40.0000' N - 75° 32.8666' W west of Beach Slough; running southeasterly and passing near Beacon "2" in Chicamicomico Channel to a point 35° 35.0000' N - 75° 29.8833' W west of the Rodanthe Pier; running southwesterly to a point 35° 28.4500' N - 75° 31.3500' W on Gull Island; running southerly to a point 35° 22.3000' N - 75° 33.2000' W near Beacon "2" in Avon Channel ; running southwesterly to a point 35° 19.0333' N - 75° 36.3166' W near Beacon "2" in Cape Channel; running southwesterly to a point 35° 15.5000' N - 75° 43.4000' W near Beacon "36" in Rollinson Channel; running southeasterly to a point 35° 14.9386' N - 75° 42.9968' W near Beacon "35" in Rollinson Channel; running southwesterly to a point 35° 14.0377' N - 75° 45.9644' W near a "Danger" Beacon northwest of Austin Reef; running southwesterly to a point 35° 11.4833' N - 75° 51.0833' W on Legged Lump; running southeasterly to a point 35° 10.9666' N - 75° 49.7166' W south of Legged Lump; running southwesterly to a point 35° 09.3000' N - 75° 54.8166' W near the west end of Clarks Reef; running westerly to a point 35° 08.4333' N - 76° 02.5000' W near Nine Foot Shoal Channel; running southerly to a point 35° 06.4000' N - 76° 04.3333' W near North Rock; running southwesterly to a point 35° 01.5833' N - 76° 11.4500' W near Beacon "HL"; running southerly to a point 35° 00.2666' N - 76° 12.2000' W; running southerly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright

- Island; running easterly to a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northerly along the shoreline and across the inlets following the COLREGS Demarcation Line to the point of beginning;
- (3) In Core and Back sounds, beginning at a point 34° 58.7853' N - 76° 09.8922' W on Core Banks; running northwesterly to a point 34° 59.4664' N - 76° 12.4859' W on Wainwright Island; running southerly to a point 34° 58.8000' N - 76° 12.5166' W; running southeasterly to a point 34° 58.1833' N - 76° 12.3000' W; running southwesterly to a point 34° 56.4833' N - 76° 13.2833' W; running westerly to a point 34° 56.5500' N - 76° 13.6166' W; running southwesterly to a point 34° 53.5500' N - 76° 16.4166' W; running northwesterly to a point 34° 53.9166' N - 76° 17.1166' W; running southerly to a point 34° 53.4166' N - 76° 17.3500' W; running southwesterly to a point 34° 51.0617' N - 76° 21.0449' W; running southwesterly to a point 34° 48.3137' N - 76° 24.3717' W; running southwesterly to a point 34° 46.3739' N - 76° 26.1526' W; running southwesterly to a point 34° 44.5795' N - 76° 27.5136' W; running southwesterly to a point 34° 43.4895' N - 76° 28.9411' W near Beacon "37A"; running southwesterly to a point 34° 40.4500' N - 76° 30.6833' W; running westerly to a point 34° 40.7061' N - 76° 31.5893' W near Beacon "35" in Back Sound; running westerly to a point 34° 41.3178' N - 76° 33.8092' W near Buoy "3"; running southwesterly to a point 34° 39.6601' N - 76° 34.4078' W on Shackelford Banks; running easterly and northeasterly along the shoreline and across the inlets following the COLREGS Demarcation lines to the point of beginning;
- (4) Within 200 yards of any shoreline in the area upstream of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River; and
- (5) Within 50 yards of any shoreline east of the 76° 28.0000' W longitude line beginning at a point 35° 22.3752' N - 76° 28.0000' W near Roos Point in Pamlico River; running southeasterly to a point 35° 04.4833' N - 76° 28.0000' W near Point of Marsh in Neuse River, except from October 1 through November 30, south and east of Highway 12 in Carteret County and south of a line from a point 34° 59.7942' N - 76° 14.6514' W on Camp Point; running easterly to a point at 34° 58.7853' N - 76° 09.8922' W on Core Banks; to the South Carolina State Line.

History Note: Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52;
Eff. August 1, 2004;
Amended Eff. April 1, 2016; June 1, 2013; April 1, 2011; April 1, 2009.

15A NCAC 07B .0601 AUTHORITY

This Subchapter establishes the rules that local governments shall follow in developing and adopting a land use plan or comprehensive plan, hereinafter referred to as "the plan", that meets the Coastal Resources Commission's (CRC) planning requirements.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;
Amended Eff. February 1, 2016.

15A NCAC 07B .0701 PLANNING OPTIONS

(a) Each county within the coastal area may prepare and adopt a land use plan or comprehensive plan, hereinafter referred to as "the plan", that meets the planning requirements adopted by the Coastal Resources Commission (CRC). The CRC shall prepare and adopt a plan that meets the CRC's planning requirements as set forth in Rule .0702 of this Section for each county that chooses not to prepare and adopt a plan. Municipalities may develop individual plans that meet the CRC's requirements if:

- (1) the county delegates this authority to the municipality; or
- (2) the CRC grants this authority upon written request from a municipality that is enforcing its zoning ordinance, its subdivision regulations and the State Building Code within its jurisdiction.

(b) A county shall accept a municipality's locally adopted policies and implementation actions for inclusion in the county plan for the municipality's jurisdiction if requested to do so by any municipality not preparing its own plan. Inclusion of a municipality's adopted policies and implementation actions shall occur either at the time of county plan preparation or a subsequent county plan amendment. The municipality's policies and implementation actions are limited to its jurisdiction and may differ from the county's policies and implementation actions.

(c) Municipalities may seek certification as set forth in Rule .0803 of this Subchapter for these plans if all requirements found in this Subchapter and G.S. 113A-110 are met.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002;
Readopted Eff. February 1, 2016.

15A NCAC 07B .0702 LAND USE PLAN ELEMENTS

(a) Organization of the Plan. The land use plan or comprehensive plan, hereinafter referred to as "the plan", shall include a matrix that shows the location of the required elements as set forth in this Rule.

(b) Community Concerns and Aspirations. The purpose of this element is to provide an understanding of the underlying planning needs and desires of the community to support the land use and development policies included in the plan. This element shall include:

- (1) Significant existing and emerging conditions: The plan shall describe the dominant growth-related conditions that influence land use, development, water quality, and other environmental concerns in the planning area.
- (2) Key issues: The plan shall describe the land use and development topics most important to the future of the planning area. This description shall include public access, land use compatibility, infrastructure carrying capacity, natural hazard areas, water quality, and may also include local areas of concern as described in Subparagraph (d)(2) (Land Use Plan Management Topics) of this Rule.
- (3) A community vision: The vision shall describe the general physical appearance and form that represents the local government's plan for the future. It shall include objectives to be achieved by the plan and identify changes that may be needed to achieve the planning vision as determined by the local government.

(c) Existing and Emerging Conditions. The purpose of this element is to provide a sound factual basis necessary to support the land use and development policies included in the plan. It shall describe the following:

- (1) Population, Housing, and Economy. The plan shall include discussion of the following data and trends:
 - (A) Population:
 - (i) Permanent population growth trends using data from the two most recent decennial Censuses;
 - (ii) Current permanent and seasonal population estimates;
 - (iii) Key population characteristics, including age and income, and
 - (iv) Thirty year projections of permanent and seasonal population in five-year increments.
 - (B) Housing stock: The plan shall include an estimate of current housing stock, including permanent and seasonal units, tenure, and types of units (single-family, multifamily, and manufactured).

(C) Local economy: The plan shall describe employment by major sectors and community economic activity.

(2) Natural systems. The plan shall describe the natural features and discuss the environmental conditions of the planning jurisdiction to include:

- (A) Natural features as follows.
 - (i) Areas of Environmental Concern (AECs) as set forth in 15A NCAC 07H;
 - (ii) Soil characteristics, including limitations for septic tanks, erodibility, and other factors related to development;
 - (iii) Environmental Management Commission (EMC) water quality classifications (SC, SB, SA, HQW, and ORW) and related use support designations located at <http://portal.ncdenr.org/web/q/ps/csu/classifications> and provided at no fee; and Division of Marine Fisheries (DMF) shellfish growing areas and water quality conditions located at <http://portal.ncdenr.org/web/mf/shellfish-sanitation-and-recreational-water-quality> and provided at no fee;
 - (iv) Flood and other natural hazard areas;
 - (v) Storm surge areas;
 - (vi) Non-coastal wetlands, including forested wetlands, shrub-scrub wetlands and freshwater marshes;
 - (vii) Water supply watersheds or wellhead protection areas;
 - (viii) Primary nursery areas;
 - (ix) Environmentally fragile areas, such as wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
 - (x) Additional natural features or conditions identified by the local government.

(B) Environmental conditions. The plan shall provide an assessment of the following environmental conditions and features:

- (i) Water quality:

- (I) Status and changes of surface water quality, including impaired streams from the most recent N.C. Division of Water Resources Basin Planning Branch Reports, Clean Water Act 303(d) List, and other comparable data;
 - (II) Current situation and trends on permanent and temporary closures of shellfishing waters as determined by the Report of Sanitary Survey by the Shellfish Sanitation and Recreational Water Quality Section of the N.C. Division of Marine Fisheries;
 - (III) Areas experiencing chronic wastewater treatment system malfunctions; and
 - (IV) Areas with water quality or public health problems related to non-point source pollution.
- (ii) Natural hazards:
 - (I) Areas subject to recurrent flooding, storm surges and high winds; and
 - (II) Areas experiencing significant shoreline erosion as evidenced by the presence of threatened structures or public facilities.
 - (iii) Natural resources:
 - (I) Environmentally fragile areas (as defined in Sub-Part (c)(2)(A)(ix) of this Rule) or areas where resource functions are impacted as a result of development; and
 - (II) Natural resource areas that are being impacted or lost as a result of incompatible development. These may include, but are not limited to the following: coastal wetlands, protected open space, and agricultural land.
- (3) Existing Land Use and Development. The plan shall include a map and descriptions of the following:
 - (A) Existing land use patterns, which may include the following categories: Residential, commercial, industrial, institutional, public, dedicated open space, vacant, agriculture, and forestry. Land use descriptions shall include estimates of the land area allocated to each land use and characteristics of each land use category.
 - (B) Historic, cultural, and scenic areas designated by a state or federal agency or by local government.
 - (4) Community Facilities. The plan shall evaluate existing and planned capacity, location, and adequacy of community facilities that serve the community's existing and planned population and economic base; as well as those that protect important environmental factors such as water quality; and that guide land development in the coastal area. The evaluation shall include:
 - (A) Public and private water supply and wastewater systems. The plan shall describe existing public and private systems, including existing condition and capacity. It shall describe any documented overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health as documented by the Division of Water Resources (DWR). It shall indicate future needs based on population projections. The plan shall include a map of existing and planned service areas.
 - (B) Transportation systems. The plan shall include a map of the existing and planned multimodal systems and port and airport facilities. It shall describe any highway segments deemed by the North Carolina Department of

Transportation (NCDOT) as having unacceptable service as documented in the most recent NCDOT Transportation and/or Thoroughfare Plan. It shall describe highway facilities on the current thoroughfare plan or facilities on the current transportation improvement plan. It shall describe the impact of existing facilities on land use patterns.

(C) Stormwater systems. The plan shall describe the existing public stormwater management system. It shall identify existing drainage problems and water quality issues related to point-source discharges of stormwater runoff.

(d) Future Land Use. This element of the plan is intended to guide the development and use of land in a manner that achieves the goals of the Coastal Area Management Act through local government land use and development policies, including a future land use map. This element shall include:

(1) Policies.

(A) Community Concerns and Aspirations and Existing and Emerging Conditions shall be considered in the development of local government plan policies as required in Rule .0702(b) and (c) of this Section.

(B) Policies shall be consistent with the goals of the CAMA, shall address the Land Use Plan Management Topics set forth in Subparagraph (d)(2) of this Rule, and comply with all state and federal rules.

(C) Policies that exceed use standards and permitting requirements found in Subchapter 7H, State Guidelines for Areas of Environmental Concern, shall be identified in the plan.

(2) Land Use Plan Management Topics. The purposes of the CRC management topics are to ensure that plans support the goals of the CAMA, define the CRC's expectations for land use policies, and provide a basis for plan review and certification by the CRC. In addition to the management topics outlined below, plans may also include policies to address local areas of concern. Each management topic includes two components: a management goal and planning objectives.

(A) Public Access:

(i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.

(ii) Planning Objectives: The plan shall include policies

that address access needs and opportunities, with strategies to develop public access and provisions for all segments of the community, including persons with disabilities. Oceanfront communities shall establish access policies for beach areas targeted for nourishment.

(B) Land Use Compatibility:

(i) Management Goal: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, avoids risks to public health, safety, and welfare.

(ii) Planning Objectives: The plan shall include policies that characterize future land use development patterns and establish mitigation criteria and concepts to minimize conflicts.

(C) Infrastructure Carrying Capacity:

(i) Management Goal: Ensure that public infrastructure systems are sized, located, and managed so the quality and productivity of AECs and other fragile areas are protected or restored.

(ii) Planning Objectives: The plan shall include policies that establish service criteria and ensure improvements minimize impacts to AECs and other fragile areas.

(D) Natural Hazard Areas:

(i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

(ii) Planning Objectives: The plan shall include policies that establish mitigation and adaptation concepts and criteria for development and redevelopment, including public facilities, and that

minimize threats to life, property, and natural resources resulting from erosion, high winds, storm surge, flooding, or other natural hazards.

- (E) Water Quality:
 - (i) Management Goal: Maintain, protect, and where possible enhance water quality in all coastal wetlands, rivers, streams, and estuaries.
 - (ii) Planning Objectives: The plan shall include policies that establish strategies and practices to prevent or control nonpoint source pollution and maintain or improve water quality.

- (3) Future land use map. The plan shall include a map that depicts the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure. The plan shall include map designations with descriptions of land uses and development.

(e) Tools for Managing Development. The purpose of this element is to describe the management tools and actions the local government will use to implement the plan. This element shall include:

- (1) Guide for land use decision-making. The plan shall describe the role of the plan policies, including the future land use map, in local decisions regarding land use and development.
- (2) Development program. The plan shall describe the community's development management program, including local ordinances, codes, other plans and policies.
- (3) Action plan and implementation schedule. The plan shall describe the actions that will be taken by the local government to implement policies that meet the CRC's management topic goals and objectives. It shall specify the fiscal year(s) in which each action is anticipated to start and finish. It shall describe the specific steps the local government plans to take to implement the policies, including the adoption and amendment of local ordinances, other plans, and special projects. The action plan shall be used to prepare the implementation status report for the plan.

History Note: Authority G.S. 113A-102; 113A-107(a); 113A-110; 113A-111; 113A-124;
Eff. August 1, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. February 1, 2016.

15A NCAC 07B .0801 STATE REVIEW AND COMMENT ON DRAFT PLAN

The Division of Coastal Management shall review all draft land use plans or comprehensive plans, hereinafter referred to as plans, for consistency with the CRC's requirements for plans prior to local adoption, as set forth in Rule .0702 of this Subchapter. The Division shall provide written notice to the CRC, other State and Federal Agencies, and adjacent jurisdictions (including non-CAMA areas and if applicable, out of state areas) that the plan is available for review and comment. The review period shall be 30 calendar days and shall begin upon receipt of a plan accepted as complete by the Division, as set forth in Rule .0702 of this Subchapter. The Division shall provide written comments to the local government within 45 calendar days after the end of the review period.

History Note: Authority G.S. 113A-106; 113A-107;
Eff: February 1, 2016.

15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS

(a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice of the public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter referred to as "the plan", or amendment no less than five business days prior to publication of a public hearing notice. The public hearing notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the plan.

(b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local government.

(c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the CRC or his or her designee the locally adopted plan, a certified statement of the local government adoption action, and documentation that it has followed the public hearing process required in G.S. 113A-110. The locally adopted plan or amendment shall be submitted at least 45 calendar days prior to the CRC meeting on which it will be considered for certification.

(d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and independent authority to make amendments to the plan as it affects its jurisdiction.

History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;
Eff. August 1, 2002;
Amended Eff. January 1, 2007; February 1, 2006;
Readopted Eff. February 1, 2016.

15A NCAC 07B .0803 CERTIFICATION AND USE OF THE PLAN

(a) CRC Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for locally adopted land use plans or comprehensive plans, hereinafter

referred to as "the plan", or plan amendments. The procedures are as follows:

- (1) The Division District Planner shall submit a written report to the CRC on the locally adopted plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification as set forth in Subparagraph (a)(3) of this Rule.
- (2) The public shall have an opportunity to submit written objections or comments on the locally adopted plan or amendment prior to action by the CRC. Written objections or comments shall be received by the Division no more than 30 calendar days after local adoption of the plan or amendment. Written objections shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan elements that are opposed. Written objections or comments shall be sent by the Division to the local government submitting the plan or amendment. Written objections or comments shall be considered by the CRC in the certification of the local plan or amendment.
- (3) The CRC shall certify plans and amendments following the procedures and conditions specified in this Rule. The CRC shall certify plans and amendments which:
 - (A) are consistent with the current federally approved North Carolina Coastal Management Program;
 - (B) are consistent with the rules of the CRC;
 - (C) do not violate state or federal law; and
 - (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this Subchapter.
- (4) If the plan or amendment does not meet certification requirements, the CRC shall within 45 calendar days inform the local government how the plan or amendment does not meet the procedures and conditions for certification.

(b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

(c) Use of the Plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

- (1) Local administration: The local government reviews the CAMA permits for consistency with the plan;
- (2) Joint administration: The local government identifies policies, including the future land use

map and implementation actions that will be used by the Division for the CAMA permit consistency reviews or;

- (3) Division administration: The Division reviews the CAMA permits for consistency with the plan policies, including the future land use map and implementation actions.

(d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124; Eff. August 1, 2002; Amended Eff. April 1, 2008; September 1, 2006; Readopted Eff. February 1, 2016.

15A NCAC 07B .0804 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

Jurisdictions with a locally adopted and certified land use plan shall submit an Implementation Status Report to the Division of Coastal Management every two years from the date of initial certification by the CRC. This report shall be based on implementation actions that meet the CRC's Management Topic goals and objectives, as indicated in the action plan pursuant to Rule .0702(e)(3) of this Subchapter. The Implementation Status Report shall also identify:

- (1) All local, state, federal, and joint actions that have been undertaken successfully to implement its certified land use plan;
- (2) Any actions that have been delayed and the reasons for the delays;
- (3) Any unforeseen land use issues that have arisen since certification of the land use plan; and
- (4) Consistency of existing land use and development ordinances with current land use plan policies.

History Note: Authority G.S. 113A-106; 113A-107; Eff. February 1, 2016.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 08 – BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08A .0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) apply when those defined terms are used in this Chapter.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions apply when these terms are used in this Chapter:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Inactive" status;

- (2) "Agreed-upon procedures" means a professional service whereby a CPA is engaged to issue a report of findings based on specific procedures performed on identified subject matter;
- (3) "AICPA" means the American Institute of Certified Public Accountants;
- (4) "Applicant" means a person who has applied to take the CPA examination or applied for a certificate of qualification;
- (5) "Attest service" means a professional service whereby a CPA in the practice of public accounting is engaged to issue or does issue:
 - (A) any audit or engagement to be performed in accordance with the Statements on Auditing Standards, Statements on Generally Accepted Governmental Auditing Standards, Public Company Accounting Oversight Board Auditing Standards, and International Standards on Auditing;
 - (B) any review or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services;
 - (C) any compilation or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services; or
 - (D) any engagement to be performed in accordance with the Statements on Standards for Attestation Engagements;
- (6) "Audit" means a professional service whereby a CPA is engaged to examine financial statements, items, accounts, or elements of a financial statement prepared by management, in order to express an opinion on whether the financial statements, items, accounts, or elements of a financial statement are presented in conformity with an applicable reporting framework, that enhances the degree of confidence that intended users can place on the financial statements, items, accounts, or elements of a financial statement;
- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted by the Board and who may sit for the CPA examination;
- (9) "Client" means a person or an entity who orally or in writing agrees with a licensee to receive any professional services performed or delivered;
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) "Compilation" means a professional service whereby a CPA is engaged to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the statements;
- (12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (13) "CPA" means certified public accountant;
- (14) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership that uses "certified public accountant(s)" or "CPA(s)" in or with its name or offers to or renders any attest services in the public practice of accountancy;
- (15) "CPE" means continuing professional education;
- (16) "Disciplinary action" means revocation or suspension of, or refusal to grant a certificate, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (17) "FASB" means the Financial Accounting Standards Board;
- (18) "Firm network" means an association of entities that includes one or more firms that cooperate for the purpose of enhancing the firms' capabilities to provide professional services and share one or more of the following characteristics:
 - (A) the use of a common brand name, including initials, as part of the firm name;
 - (B) common control among the firms through ownership, management, or other means;
 - (C) profits or costs, excluding costs of operating the association; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the firm;
 - (D) common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the association's strategy and are accountable for performance pursuant to that strategy;
 - (E) significant part of professional resources; or

- (F) common quality control policies and procedures that firms are required to implement and that are monitored by the association;
- (19) "GASB" means the Governmental Accounting Standards Board;
- (20) "Inactive," when used to refer to the status of a person, describes a person who has requested inactive status and has been approved by the Board and who does not use the title "certified public accountant," nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he nor she nor anyone else refers to him or her in any representation as described in Rule .0308(b) of this Section;
- (21) "IRS" means the Internal Revenue Service;
- (22) "Jurisdiction" means any state or territory of the United States or the District of Columbia;
- (23) "License year" means the 12 months beginning July 1 and ending June 30;
- (24) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (25) "NASBA" means the National Association of State Boards of Accountancy;
- (26) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (27) "North Carolina office" means any office physically located in North Carolina;
- (28) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (29) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- (30) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (31) "Revenue Department" means the North Carolina Department of Revenue;
- (32) "Review" means a professional service whereby a CPA is engaged to perform procedures, limited to analytical procedures and inquiries, to obtain a reasonable basis for expressing limited assurance on whether any material modifications should be made to the financial statements for them to be in conformity with generally accepted accounting principles or other comprehensive basis of accounting;
- (33) "Reviewer" means a member of a review team including the review team captain;
- (34) "Suspension" means a revocation of a certificate for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension;

- (35) "Trade name" means a name used to designate a business enterprise;
- (36) "Work papers" mean the CPA's records of the procedures applied, the tests performed, the information obtained, and the conclusions reached in attest services, tax services, consulting services, special report services, or other engagements. Work papers include programs used to perform professional services, analyses, memoranda, letters of confirmation and representation, checklists, copies or abstracts of company documents, and schedules of commentaries prepared or obtained by the CPA. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds or symbols; and
- (37) "Work product" means the end result of the engagement for the client that may include a tax return, attest or assurance report, consulting report, and financial plan. The forms include handwritten, typed, printed, word processed, photocopied, photographed, and computerized data, or in any other form of letters, words, pictures, sounds, or symbols.

(c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service cancellation by that date, if received by a private delivery service by that date, or received in the Board office on the next business day.

History Note: Authority G.S. 93-1; 93-12; 93-12(3); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006; January 1, 2004; April 1, 1999; August 1, 1998; February 1, 1996; April 1, 1994; September 1, 1992; Readoped Eff. February 1, 2016.

21 NCAC 08A .0307 PUBLIC PRACTICE OF ACCOUNTANCY OR ACCOUNTING

- (a) A person is engaged in the "public practice of accountancy" who:
 - (1) holds himself or herself out to the public as a certified public accountant or an accountant; and
 - (2) in consideration of compensation received or to be received, offers to perform or does perform for other persons services that involve:
 - (A) preparing, auditing, or verifying financial transactions, books, accounts, or records;
 - (B) preparing, verifying or certifying financial, accounting, and related statements intended for publication, including preparing tax returns;
 - (C) rendering professional services or assistance in or about any and all

matters of principle or detail relating to accounting procedure and systems; or

- (D) recording, presenting or certifying, and interpreting such service (including tax, consulting or management advisory services) through statements and reports.

(b) Services, as described in Subparagraph (a)(2) of this Rule, may be performed on a full-time, part-time or temporary basis in the various accounting fields, including public accounting, governmental or other not-for-profit accounting, industrial, commercial or financial accounting, taxation and tax-related matters, or accounting education.

History Note: Authority G.S. 93-1; 93-12; Eff. October 1, 1984; Amended Eff. April 1, 1994; March 1, 1990; Readopted Eff. February 1, 2016.

21 NCAC 08A .0308 HOLDING OUT TO THE PUBLIC

(a) The phrase "holds himself out to the public as a certified public accountant," as used in defining "public practice of accountancy" in G.S. 93-1(a)(5) and in these rules, means any representation that a person holds a certificate of qualification, if that representation is made in connection with an offer to perform or the performance of accountancy services for the public, regardless of whether that representation is made by the person, someone associated with that person, or someone serving as that person's agent. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate in connection with the professional services offered to be performed or performed by the person.

(b) For purposes of this Rule, a "representation" shall be deemed to include any oral, electronic, or written communication indicating that the person holds a certificate, including without limitation, the use of titles or legends on letterheads, reports, business cards, brochures, resumes, office signs, telephone directories, websites, the Internet, or any other advertisements, news articles, publications, listings, tax return signatures, signatures on experience or character affidavits for exam or certificate applicants, displayed membership in CPA associations, displayed CPA licenses from this or any other jurisdiction, and displayed certificates or licenses from other organizations which have the designation "CPA" or "Certified Public Accountant" by the person's name.

History Note: Authority G.S. 93-1(a)(5); 93-12; Eff. September 1, 1988; Amended Eff. January 1, 2006; April 1, 1999; April 1, 1994; May 1, 1989; Readopted Eff. February 1, 2016.

21 NCAC 08A .0309 CONCENTRATION IN ACCOUNTING

- (a) A concentration in accounting includes:
- (1) at least 30 semester hours, or the equivalent in quarter hours, of undergraduate accountancy

courses that shall include no more than six semester hours of accounting principles and no more than three semester hours of business law; or

- (2) at least 20 semester hours or the equivalent in quarter hours, of graduate accounting courses that are open exclusively to graduate students; or
- (3) a combination of undergraduate and graduate courses that would be equivalent to Subparagraph (1) or (2).

(b) In recognition of differences in the level of graduate and undergraduate courses, one semester (or quarter) hour of graduate study in accounting is considered the equivalent of one and one-half semester (or quarter) hours of undergraduate study in accounting.

(c) Up to four semester hours, or the equivalent in quarter hours, of graduate income tax courses completed in law schools may count towards the semester hour requirement of Paragraph (a) of this Rule.

(d) When, in the Board's determination, an accounting course duplicates another course previously taken, only the semester (or quarter) hours of one of the courses shall be counted in determining if the applicant has a concentration in accounting.

(e) Accounting courses include such courses as principles courses at the elementary, intermediate and advanced levels; managerial accounting; business law; cost accounting; fund accounting; auditing; and taxation. There are many college courses offered that would be helpful in the practice of accountancy, but are not included in the definition of a concentration in accounting. Such courses include business finance, business management, computer science, economics, writing skills, accounting internships, and CPA exam review.

History Note: Authority G.S. 93-12(5); Eff. May 1, 1989; Amended Eff. February 1, 2011; January 1, 2001; April 1, 1994; Readopted Eff. February 1, 2016.

21 NCAC 08B .0508 REQUESTS FOR INFORMAL OPINIONS

Requests to Board employees or legal counsel, or requests to Board members not in accordance with Rule .0501 of this Section, for opinions concerning the application of the Board's rules or any statutes are discouraged. If ever an opinion is given, it shall not be binding on the Board. Applicants, licensees, and any other persons who act in reliance on such opinions do so at their own risk.

History Note: Authority G.S. 93-12(3); 93-12(9); 150B-17; Eff. December 1, 1987; Amended Eff. May 1, 1989; Readopted Eff. February 1, 2016.

21 NCAC 08F .0103 FILING OF EXAMINATION APPLICATIONS AND FEES

(a) All applications for CPA examinations shall be filed with the Board and accompanied by the examination fee. The Board sets the fee for each examination at the amount that enables the Board

to recover its actual costs of examination services. If a check or credit card authorization fails to clear the bank, the application shall be deemed incomplete and returned. CPA Exam applications and fee information are on the Board's website at www.nccpaboard.gov and may be requested from the Board.

(b) The initial application filed to take the examination shall include supporting documentation demonstrating that all legal requirements have been met, including:

- (1) minimum legal age;
- (2) education; and
- (3) good moral character.

(c) Any person born outside the United States shall furnish to the Board office evidence of citizenship; evidence of resident alien status; or

- (1) other bona fide evidence that the applicant is legally allowed to remain in the United States;
- (2) a notarized affidavit of intention to become a U.S. citizen; or
- (3) evidence that the applicant is a citizen of a foreign jurisdiction that extends to citizens of this State like or similar privileges to be examined.

(d) Official transcripts (originals-, not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and posted to the transcript. No examination grades shall be released until an official transcript is filed with the Board confirming the education requirement as stated in the college registrar's letter.

(e) Applicants for re-examination shall not re-submit official transcripts, additional statements, or affidavits regarding education.

(f) To document good moral character as required by G.S. 93-12(5), three persons not related by blood or marriage to the applicant shall sign the application certifying the good moral character of the applicant.

(g) An applicant shall include as part of any application for the CPA examination a statement of explanation and a certified copy of the final disposition if the applicant has been arrested, charged, convicted or found guilty of, received a prayer for judgment continued, or pleaded nolo contendere to any criminal offense. An applicant shall not be required to disclose any arrest, charge, or conviction that has been expunged by the court.

(h) If an applicant has been denied any license by any state or federal agency, the applicant shall include as part of the application for the CPA examination a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(i) Two identical photographs shall accompany the application for the CPA examination. These photographs shall be of the applicant alone, 2x2 inches in size, front view, full face, taken in normal street attire without a hat or dark glasses, printed on paper with a plain light background and taken within the last six months. Retouched

photographs shall not be accepted. Applicants shall write their names on the back of their photographs.

(j) If an applicant's name has legally changed and is different from the name on any transcript or other document supplied to the Board, the applicant shall furnish copies of the documents legally authorizing the name change.

(k) Candidates shall file initial and re-exam applications to sit for the CPA Examination on forms provided by the Board.

(l) Examination fees are valid for a six-month period from the date of the applicant's notice to schedule for the examination from the examination vendor.

(m) No application for examination shall be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or conditionally suspended sentence, any of which are imposed as a result of having been convicted or having pled to a criminal charge.

History Note: Authority G.S. 93-12(3); 93-12(4); 93-12(5); 93-12(7);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006; January 1, 2004; August 1, 1998; February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989;

Readopted Eff. February 1, 2016.

**21 NCAC 08F .0105 CONDITIONING
REQUIREMENTS**

(a) **Passing Grades.** A candidate shall pass all sections of the examination with a grade of 75 or higher on each section.

(b) **Military Service.** A candidate who is on active military service shall not have the time on active military service counted against Subparagraph (c)(1) of this Rule unless the candidate applies to take the examination during the active military service, in which case each month a candidate sits shall be counted toward Subparagraph (c)(1) of this Rule.

(c) A candidate is subject to the following conditioning requirements:

- (1) a candidate shall obtain a passing grade on all sections of the examination within an 18-month period;
- (2) a candidate may sit for any section of the examination individually;
- (3) a candidate may sit for each section of the examination up to four times during a one-year period but not more than one time in a three-month testing window as defined by the examination vendors(s); and
- (4) credit awarded by the Board for passage of a section of the examination is valid for an 18-month period beginning on the date the section is taken.

History Note: Authority G.S. 93-12(3); 93-12(5);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. February 1, 2011; January 1, 2006; January 1, 2004; August 1, 1998; April 1, 1994; April 1, 1991; March 1, 1990;

Readopted Eff. February 1, 2016.

21 NCAC 08F .0111 INELIGIBILITY DUE TO VIOLATION OF ACCOUNTANCY ACT

(a) A person may not be eligible to take the CPA examination or receive a North Carolina certificate of qualification as a CPA if the Board determines that the person has engaged in conduct that would constitute a violation of G.S. 93 or the Rules of Professional Ethics and Conduct as set forth in 21 NCAC 08N.

(b) Any individual found to have engaged in conduct that subverts, or attempts to subvert the CPA Examination process may have his or her scores on the examination withheld and declared invalid, be disqualified from holding the CPA certification, and may be subject to the imposition of other appropriate sanctions.

(c) Conduct that subverts or attempts to subvert the examination process includes the following:

- (1) conduct that violates the standard of the test administration such as communicating with any other examinee during the administration of the examination;
- (2) having in one's possession during the administration of the examination any books, notes, written or printed material, or data of any other kind, other than the distributed examination materials;
- (3) failure to cooperate with testing officials;
- (4) conduct that violates the credentialing process, such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the examination on another's behalf;
- (5) conduct that violates the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; or
- (6) retaking or attempting to retake an examination section by an individual holding a valid CPA certificate in this State or a candidate who has unexpired credit for having already passed the same examination section, unless directed to do so by the Board.

History Note: Authority G.S. 93-12(5); 93-12(9);

Eff. May 1, 1989;

Amended Eff. April 1, 2003;

Readopted Eff. February 1, 2016.

21 NCAC 08F .0302 EDUCATION AND WORK EXPERIENCE REQUIRED PRIOR TO CPA EXAM

(a) Applicants who intend to demonstrate their possession of sufficient education to become a CPA by showing that they possess a bachelor's degree shall submit official transcripts with their application to take the CPA examination. Official transcripts shall show the grades the applicant received on courses completed

and shall also show degrees awarded. An official transcript bears the seal of the school and the signature of the registrar or assistant registrar.

(b) The Board may approve an application to take the CPA examination prior to the receipt of a bachelor's degree, if:

- (1) the concentration in accounting that shall be included in or supplement the bachelor's degree is already complete or is reasonably expected to be completed by the end of the school term within which the examination falls; and
- (2) an applicant reasonably expects to receive the bachelor's degree within 120 days after the application is received by the Board. However, if the applicant fails to receive the degree within the specified time, the CPA examination grades shall not be released and if the applicant wishes to retake the examination, the applicant shall reapply.

History Note: Authority G.S. 93-12(3); 93-12(5);

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Amended Eff. February 1, 2011; August 1, 1998; April 1, 1994; May 1, 1989; September 1, 1988; April 1, 1987;

Readopted Eff. February 1, 2016.

21 NCAC 08F .0401 WORK EXPERIENCE REQUIRED OF CANDIDATES FOR CPA CERTIFICATION

(a) G.S. 93-12(5)c sets forth work experience alternatives, one of which is required of candidates applying for CPA certification. In connection with those requirements, the following provisions apply:

- (1) the work experience shall be acquired prior to the date a candidate applies for certification; and
- (2) all experience that is required to be under the direct supervision of a CPA shall be under the direct supervision of a CPA on active status.

(b) The following provisions apply to all candidates seeking to meet the work experience requirement of G.S. 93-12(5)c.3 by working in the field of accounting:

- (1) One year of work experience is 52 weeks of full-time employment. The candidate is employed full-time when the candidate is expected by the employer to work for the employer at least 30 hours each week. Any other work is working part-time.
- (2) All weeks of actual full-time employment are added to all full-time equivalent weeks in order to calculate how much work experience a candidate has acquired. Dividing that number by 52 results in the years of work experience the candidate has acquired.
- (3) Full-time-equivalent weeks are determined by the number of actual part-time hours the candidate has worked. Actual part-time hours do not include hours paid for sick leave, vacation leave, attending continuing education

courses, or other time not spent directly performing accounting services. For each calendar week during which the candidate worked actual part-time hours of 30 hours or more, the candidate receives one full-time-equivalent week. The actual part-time hours worked in the remaining calendar weeks are added together and divided by 30. The resulting number is the additional number of full-time-equivalent weeks to which the candidate is entitled.

- (4) The candidate shall submit experience affidavits on a form provided by the Board from all of the relevant employers; provided that when such experience was not acquired while employed with a CPA firm, the candidate shall also submit details of the work experience and supervision on a form provided by the Board. Experience affidavits for part-time work shall contain a record of the actual part-time hours the candidate has worked for each week of part-time employment. Both the experience affidavit and the form for additional detail shall be certified by the employer's office supervisor or an owner of the firm who is a certificate holder.

(c) Rule .0409 of this Section applies to teaching experience acquired pursuant to G.S. 93-12(5)c.2 and 4.

History Note: Authority G.S. 93-12(3); 93-12(5); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Temporary Amendment Eff. June 17, 1982 for a period of 120 days to expire on October 12, 1982; Legislative Objection Lodged Eff. July 20, 1982; Amended Eff. February 1, 2011; January 1, 2006; August 1, 1998; March 1, 1990; July 1, 1989; December 1, 1988; September 1, 1988; Readopted Eff. February 1, 2016.

21 NCAC 08F .0410 EDUCATION REQUIRED OF CANDIDATES FOR CPA CERTIFICATION

(a) G.S. 93-12(5)a sets forth the education required of candidates applying for CPA certification. The 150 semester hours required include a concentration in accounting, as defined by 21 NCAC 08A .0309; and

(b) 24 semester hours of coursework that include one three semester hour course from at least eight of the following 10 fields of study:

- (1) communications;
- (2) computer technology;
- (3) economics;
- (4) ethics;
- (5) finance;
- (6) humanities or social science;
- (7) international environment;
- (8) law;
- (9) management; or
- (10) statistics.

(c) Anyone applying for CPA certification who holds a Master's or more advanced degree in accounting, tax law, economics, finance, business administration, or a law degree from an accredited college or university is in compliance with Paragraph (b) of this Rule.

History Note: Authority G.S. 93-12(5); Eff. January 1, 2001; Amended Eff. February 1, 2011; January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08F .0502 APPLICATION FOR CPA CERTIFICATE

(a) A person applying for a certificate of qualification shall file with the Board an application and an experience affidavit on forms provided by the Board and supporting documentation to determine that the applicant has met the statutory and rule requirements. CPA certificate applications and fee information are on the Board's website at www.nccpaboard.gov or may be requested from the Board.

(b) The application for a CPA certificate shall include three certificates of good moral character provided by the Board and completed by CPAs.

(c) An applicant shall include as part of any application for a CPA certificate a statement of explanation and a certified copy of final disposition if the applicant has been arrested, charged, convicted or found guilty of, received a prayer for judgment continued, or pleaded nolo contendere to any criminal offense. An applicant shall not be required to disclose any arrest, charge, or conviction that has been expunged by the court.

(d) If an applicant has been denied any license by any state or federal agency, the applicant shall also include as part of the application for the CPA certificate a statement explaining such denial. An applicant shall include a statement of explanation and a certified copy of applicable license records if the applicant has been registered with or licensed by a state or federal agency and has been disciplined by that agency.

(e) No application for a certificate shall be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or conditionally suspended sentence, any of which are imposed as a result of having been convicted or having pled to a criminal charge.

History Note: Authority G.S. 93-12(3); 93-12(5); Eff. December 1, 1982; Amended Eff. January 1, 2014; March 1, 1990; May 1, 1989; October 1, 1984; Readopted Eff. February 1, 2016.

21 NCAC 08G .0401 CPE REQUIREMENTS FOR CPAS

- (a) In order for a CPA to receive CPE credit for a course:
- (1) the CPA shall attend or complete the course and receive a certificate of completion as set forth in Rule .0403(c)(13) of this Section;
 - (2) the course shall meet the requirements set out in Rule .0404(a) and (c) of this Section; and

- (3) the course shall increase the professional competency of the CPA.
- (b) A course that increases the professional competency of a CPA shall be a course in an area of accounting in which the CPA practices or is planning to practice in the future, in the area of professional ethics, or an area of the profession.
- (c) Because of differences in the education and experience of CPAs, a course may contribute to the professional competence of one CPA but not another. Each CPA shall therefore exercise judgment in selecting courses for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.
- (d) Active CPAs shall complete 40 CPE hours, computed in accordance with Rule .0409 of this Section by December 31 of each year, except as follows:
 - (1) CPAs having certificate applications approved by the Board in April-June shall complete 30 CPE hours during the same calendar year;
 - (2) CPAs having certificate applications approved by the Board in July-September shall complete 20 CPE hours during the same calendar year; or
 - (3) CPAs having certificate applications approved by the Board in October-December shall complete 10 CPE hours during the same calendar year.
- (e) There shall be no CPE requirements for inactive CPAs.
- (f) Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, shall be carried forward and treated as hours earned in the following year. Ethics CPE hours may not be included in any carry forward hours. A CPA shall not claim CPE credit for courses taken in any year prior to the year of certification.
- (g) Any CPE hours used to satisfy the requirements for change of status as set forth in 21 NCAC 08J .0105, for reissuance as set forth in 21 NCAC 08J .0106 or for application for a new certificate as set forth in Rule 08I .0104 of this Chapter may be used to satisfy the annual CPE requirement set forth in Paragraph (d) of this Rule.
- (h) It shall be the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current year and for each of the four calendar years prior to the current year.
- (i) A non-resident licensee may satisfy the annual CPE requirements including this Rule in the jurisdiction in which he or she is licensed and currently works or resides. If there is no annual CPE requirement in the jurisdiction in which he or she is licensed and currently works or resides, he or she shall comply with Paragraph (d) of this Rule.

History Note: Authority G.S. 93-12(3); 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2014; January 1, 2007; January 1, 2004; August 1, 1995; April 1, 1994; May 1, 1989; September 1, 1988; Readopted Eff. February 1, 2016.

21 NCAC 08G .0403 QUALIFICATION OF CPE SPONSORS

- (a) The Board shall not register either sponsors of CPE courses or CPE courses.
- (b) Sponsors of continuing education programs that are listed in good standing on the NASBA National Registry of CPE Sponsors shall be considered by the Board as compliant with the CPE requirements of Paragraph (c) of this Rule.
- (c) CPE providers not in good standing on the NASBA National Registry of CPE Sponsors shall meet the following requirements:
 - (1) have an individual who did not prepare the course review each course to be sure it meets the standards for CPE;
 - (2) state the following in every brochure or other publication or announcement concerning a course:
 - (A) the general content of the course and the specific knowledge or skill taught in the course;
 - (B) any prerequisites for the course and any advance preparation required for the course and if none, that shall be stated;
 - (C) the level of the course, such as basic, intermediate, or advanced;
 - (D) the teaching methods to be used in the course;
 - (E) the amount of sponsor recommended CPE credit a CPA who takes the course may claim; and
 - (F) the date the course is offered, if the course is offered only on a certain date, and, if applicable, the location;
 - (3) ensure that the instructors or presenters of the course are qualified to teach the subject matter of the course and to apply the instructional techniques used in the course;
 - (4) evaluate the performance of an instructor or presenter of a course to determine whether the instructor or presenter is suited to serve as an instructor or presenter in the future as follows:
 - (A) before the course's conclusion, provide for the attendees an opportunity to evaluate the quality of the course by questionnaires, oral feedback, or other means, in order to determine whether the course's objectives have been met, its prerequisites were necessary, the facilities used were satisfactory, and the course content was appropriate for the level of the course; and
 - (B) systematically review the evaluation process to ensure its effectiveness;
 - (5) encourage participation in a course only by those who have the education and experience for the level of the course;
 - (6) distribute course materials to participants;

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- (7) use physical facilities for conducting the course that are consistent with the instructional techniques used;
- (8) assign the number of CPE credits each participant may be eligible to receive by either:
 - (A) monitoring attendance at a group course; or
 - (B) testing in order to determine if the participant has learned the material presented;
- (9) inform instructors and presenters of the results of the evaluation of their performances;
- (10) retain for five years from the date of the course presentation or completion:
 - (A) a record of participants completing course credit requirements;
 - (B) an outline of the course;
 - (C) the date and location of presentation;
 - (D) the participant evaluations or summaries of evaluations;
 - (E) the documentation of the instructor's qualifications; and
 - (F) the number of contact hours recommended for each participant;
- (11) have a visible, continuous, and identifiable contact person who is charged with the administration of the sponsor's CPE programs that has the responsibility and shall be accountable for assuring and demonstrating compliance with this Rule by the sponsor or by any other organization working with the sponsor for the development, distribution, or presentation of CPE courses;
- (12) develop and promulgate policies and procedures for the management of grievances including tuition and fee refunds; and
- (13) provide persons completing course requirements with written proof of completion indicating the participant's name, the name of the course, the date the course was held or completed, the sponsor's name and address, and the number of CPE hours calculated and recommended in accordance with Rule .0409 of this Section.

(d) Failure of a National Registry of CPE Sponsor to comply with the terms of this Rule shall be grounds for the Board to disqualify the sponsor as a CPE sponsor with this Board and to notify NASBA and the public of this action.

History Note: Authority G.S. 93-12(3); 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2014; January 1, 2007; January 1, 2004; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983; Readopted Eff. February 1, 2016.

21 NCAC 08G .0404 REQUIREMENTS FOR CPE CREDIT

(a) A CPA shall not be granted CPE credit for a course unless the course:

- (1) is in one of the seven fields of study recognized by the Board and set forth in Paragraph (b) of this Rule;
- (2) is developed by an individual who has education and work experience in the subject matter of the course; and
- (3) uses instructional techniques and materials that are current and accurate as set forth by Rule .0403 of this Section.

(b) The seven fields of study recognized by the Board are:

- (1) Accounting and Auditing
 - (A) Accountancy
 - (B) Accounting – Governmental
 - (C) Auditing
 - (D) Auditing – Governmental
- (2) Consulting Services
 - (A) Administrative Practice
 - (B) Social Environment of Business
- (3) Ethics
 - (A) Behavioral Ethics
 - (B) Regulatory Ethics
- (4) Management
 - (A) Business Law
 - (B) Business Management and Organization
 - (C) Finance
 - (D) Management Advisory Services
 - (E) Marketing
- (5) Personal Development
 - (A) Communications
 - (B) Personal Development
 - (C) Personnel/HR
- (6) Special Knowledge and Applications
 - (A) Computer Science
 - (B) Economics
 - (C) Mathematics
 - (D) Production
 - (E) Specialized Knowledge and Applications
 - (F) Statistics
- (7) Tax

(c) The following may qualify as acceptable types of continuing education programs, provided the programs comply with the requirements set forth in Paragraph (a) of this Rule:

- (1) professional development programs of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;
- (3) courses taken at regionally accredited colleges and universities;
- (4) educational programs that are designed and intended for continuing professional education activity conducted within an association of accounting firms; or
- (5) correspondence courses that are designed and intended for continuing professional education activity.

(d) CPE credit may be granted for teaching a CPE course or authoring a publication as long as the preparation to teach or write increased the CPA's professional competency and was in one of the seven fields of study recognized by the Board and set forth in Paragraph (b) of this Rule.

(e) CPE credit shall not be granted for a self-study course if the material that the CPA must study to take the examination is not designed for CPE purposes. This includes periodicals, guides, magazines, subscription services, books, reference manuals and supplements that contain an examination to test the comprehension of the material read.

(f) A CPA may claim credit for a course offered by a non-registered sponsor provided that the course meets the requirements of this Rule and Rules .0403(c), and .0409 of this Section. The CPA shall maintain documentation proving that the course met these standards.

History Note: Authority G.S. 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2007; January 1, 2004; August 1, 1998; February 1, 1996; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983; Readopted Eff. February 1, 2016.

21 NCAC 08G .0406 COMPLIANCE WITH CPE REQUIREMENTS

(a) All active CPAs shall file with the Board a completed CPE reporting form by the July 1 renewal date of each year.

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by June 30, the Board may:

- (1) issue a letter of warning for the first such failure within a five calendar year period; and
- (2) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 for the second such failure within a five calendar year period.

History Note: Authority G.S. 93-12(8b); 93-12(9)(e); Eff. May 1, 1981; Amended Eff. January 1, 2007; January 1, 2004; April 1, 1994; March 1, 1990; May 1, 1989; October 1, 1988; Readopted Eff. February 1, 2016.

21 NCAC 08G .0410 PROFESSIONAL ETHICS AND CONDUCT CPE

(a) As part of the annual CPE requirement, all active CPAs shall complete CPE on professional ethics and conduct. The CPA shall complete two contact hours in either a group study format or in a self-study format of a course on regulatory or behavioral professional ethics and conduct. This CPE shall be offered by a CPE sponsor registered with NASBA pursuant to Rule .0403(b) of this Section.

(b) A non-resident licensee whose primary office is in North Carolina shall comply with Paragraph (a) of this Rule. All other non-resident licensees may satisfy Paragraph (a) of this Rule by completing the ethics requirements in the jurisdiction in which he

or she is licensed as a CPA and works or resides. If there is no ethics CPE requirement in the jurisdiction where he or she is licensed and currently works or resides, he or she shall comply with Paragraph (a) of this Rule.

History Note: Authority G.S. 93-12(3); 93-12(8b); 93-12(9); Eff. January 1, 2005; Amended Eff. January 1, 2014; February 1, 2012; January 1, 2007; January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08I .0104 MODIFICATION OF DISCIPLINE

(a) A person whose certificate or CPA firm whose registration has been permanently revoked by the Board may apply to the Board for modification of the discipline at any time after five years from the date of the original discipline. If an application for modification of discipline is denied, the person or CPA firm may re-apply three years thereafter.

(b) The application for modification of discipline shall be in writing and show good cause for the relief sought. The application for a person shall be accompanied by three or more supporting recommendations, made under oath, from CPAs who have personal knowledge of the facts relating to the revocation and of the activities of the applicant since the discipline was imposed. The application for a CPA firm shall be accompanied by three or more supporting recommendations, made under oath, for each CPA partner, CPA member, or CPA shareholder from CPAs who have personal knowledge of the facts relating to the revocation and of the activities of the CPA partner, CPA member, or CPA shareholder since the discipline was imposed.

(c) "Good cause" as used in Paragraph (b) of this Rule means that the applicant is rehabilitated with respect to the conduct that was the basis of the discipline. Evidence demonstrating such rehabilitation shall include evidence that:

- (1) the person has not engaged in any conduct during the discipline period that, if that person had been licensed or registered during such period, would have constituted the basis for discipline pursuant to G.S. 93-12(9);
- (2) the person has completed the sentence imposed with respect to any criminal conviction that constituted any part of the previous discipline; and
- (3) restitution has been made to any aggrieved party with respect to a court order, civil settlement, lien or other agreement.

(d) In determining good cause, the Board may consider all of the applicant's activities since the disciplinary penalty was imposed, the offense for which the applicant was disciplined, the applicant's activities during the time the applicant was in good standing with the Board, the applicant's rehabilitative efforts, restitution to damaged parties in the matter for which the penalty was imposed, and the applicant's general reputation for truth and professional probity. For the purpose of this Paragraph, "applicant" shall, in the case of a CPA firm, include CPA partners, CPA members, or CPA shareholders.

(e) Any person who applies for a modification of discipline and for a new certificate after revocation shall, in addition to the other

requirements of this Section, comply with all qualifications and requirements for initial certification as identified by the Board that existed at the time of the original application.

(f) No application for a new certificate or for modification of discipline shall be considered while the applicant is serving a sentence for any criminal offense. Serving a sentence includes incarceration, probation (supervised or unsupervised), parole, or conditionally suspended sentence, any of which are imposed as a result of having been convicted or having pled to a criminal charge.

(g) An application shall be ruled upon by the Board on the basis of the recommendations and evidence submitted in support thereof. However, the Board may make additional inquiries of any person or persons, or request additional evidence it deems appropriate.

(h) As a condition for a new certificate or modification of discipline, the Board may impose terms and conditions it considers suitable to ensure the licensee's or CPA firm's future compliance with the statutory and rule requirements of the Board including the rules of Professional Ethics and Conduct as set forth in 21 NCAC 08N.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-2; 93-12(3); 93-12(7a); 93-12(7b); 93-12(9);

Eff. September 1, 1982;

Temporary Amendment Eff. September 15, 1983, for a period of 108 days to expire January 1, 1984;

Amended Eff. January 1, 2014; April 1, 1999; August 1, 1998; February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989;

Readopted Eff. February 1, 2016.

21 NCAC 08J .0101 ANNUAL RENEWAL OF CERTIFICATE, FORFEITURE, AND REAPPLICATION

(a) All active CPAs shall renew their certificates annually by the first day of July. The fee for such renewal is the maximum amount allowed by G.S. 93-12(8).

(b) To renew a certificate a CPA shall submit to the Board:

- (1) a completed certificate renewal application form;
- (2) a completed CPE report, as required by 21 NCAC 08G .0406(a); and
- (3) the annual renewal fee set forth in G.S. 93-12(8).

(c) Upon failure of a CPA to comply with any applicable part of Paragraph (b) of this Rule by July 1, the Board shall send notice of such failure in the form of a demand letter to the CPA at the most recent mailing address the Board has on file. Completed renewal application packages shall be postmarked with proper postage not later than 30 days after the mailing date of the demand letter, unless that date falls on a weekend, in which case the renewal package shall be postmarked or received in the Board office on the next business day. For renewal packages sent via the U.S. Postal Service, only a U.S. Postal Service cancellation shall be considered as the postmark. If the renewal package is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark. Subsequent failure of the CPA to comply with any applicable part of Paragraph (b) of this Rule within 30 days after

such notice is mailed by the Board automatically results in forfeiture of the CPA's certificate, as required by G.S. 93-12(15).

(d) Upon forfeiture of a certificate, the certificate holder is no longer a CPA and the Board shall send notice of such forfeiture to the certificate holder by certified mail to the most recent mailing address the Board has on file. The certificate holder shall return the certificate to the Board office within 15 days after receipt of notice of forfeiture or, if the certificate has been destroyed or lost, shall submit an affidavit, on a form supplied by the Board, within 15 days of receipt of such notice that the certificate has been destroyed or has been lost and shall be returned to the Board if found.

(e) A person who has forfeited a certificate pursuant to G.S. 93-12(15) for failure to renew his or her certificate may apply for reissuance under Rule .0106 of this Section.

(f) If a check or credit card authorization for the annual renewal fee fails to clear the bank, the annual renewal shall be deemed incomplete and returned.

(g) Any active CPA serving in the armed forces of the United States and to whom an extension of time to file a tax return is granted pursuant to G.S. 105-249.2, shall be granted the same extension of time to comply with the requirements of Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 93-12(7a); 93-12(8); 93-12(8a); 93-12(8b); 93-12(15); 93B-15;

Eff. February 1, 1976;

Readopted Eff. September 26, 1977;

Legislative Objection Lodged Eff. July 20, 1982;

Amended Eff. August 1, 1982;

Curative Amended Eff. August 1, 1982;

Temporary Amendment Eff. May 13, 1983 for a period of 111 days to expire on September 1, 1983;

Amended Eff. February 1, 2011; August 1, 1998; February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989;

Readopted Eff. February 1, 2016.

21 NCAC 08J .0105 INACTIVE STATUS: CHANGE OF STATUS

(a) A CPA may apply to the Board for change of status to inactive status provided the CPA meets the description of inactive status as defined in 21 NCAC 08A .0301. Application for any status change shall be made on the form provided by the Board.

(b) A CPA who does not meet the definition of inactive may not remain on inactive status.

(c) A CPA on inactive status may change to active status by:

- (1) paying the certificate renewal fee for the license year in which the application for change of status is received;
- (2) furnishing the Board with evidence of satisfactory completion of 40 hours of CPE courses during the 12-month period immediately preceding the application for change of status. Eight of the required hours shall be credits derived from a course or examination in North Carolina accountancy statutes and rules (including the Code of Professional Ethics and Conduct as set forth in

- (3) 21 NCAC 08N contained therein) as set forth in 21 NCAC 08F .0504; and submitting three certificates of good moral character and completed by CPAs.

History Note: Authority G.S. 93-12(3); 93-12(8); 93-12(8b); Eff. December 1, 1982; Curative Adopted Eff. January 25, 1983; Legislative Objection Lodged Eff. January 31, 1983; Amended Eff. January 1, 2014; February 1, 2012; February 1, 2011; August 1, 1998; August 1, 1995; April 1, 1994; March 1, 1990; May 1, 1989; Readopted Eff. February 1, 2016.

21 NCAC 08J .0107 MAILING ADDRESSES OF CERTIFICATE HOLDERS AND CPA FIRMS

All certificate holders and CPA firms shall notify the Board in writing within 30 days of any change in home address and phone number; CPA firm address and phone number; business location and phone number; and email address.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(7b)(5); Eff. October 1, 1984; Amended Eff. January 1, 2014; April 1, 1999; April 1, 1991; August 1, 1986; Readopted Eff. February 1, 2016.

21 NCAC 08J .0111 COMPLIANCE WITH CPA FIRM REGISTRATION

If a CPA firm fails to comply with any part of Rule .0108 or Rule .0110 of this Section, and continues to offer or render services, the Board may take disciplinary action against the CPA firm's members. As set forth in G.S. 93-12(9)(e), disciplinary action may include:

- (1) one hundred dollars (\$100.00) civil penalty for non-compliance of less than 60 days;
- (2) two hundred dollars (\$200.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days;
- (3) five hundred dollars (\$500.00) civil penalty for each member for non-compliance in excess of 120 days.

History Note: Authority G.S. 55B-12; 57D-2-02; 59-84.2; 93-12(8c); 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; January 1, 2004; April 1, 1999; Readopted Eff. February 1, 2016.

21 NCAC 08M .0105 PEER REVIEW REQUIREMENTS

(a) A CPA or CPA firm providing any of the following services to the public shall participate in a peer review program:

- (1) audits;
- (2) reviews of financial statements;
- (3) compilations of financial statements; or

- (4) any engagement to be performed in accordance with the Statements on Standards for Attestation Engagements.

(b) A CPA or CPA firm not providing any of the services listed in Paragraph (a) of this Rule is exempt from peer review until the issuance of the first report provided to a client. A CPA or CPA firm shall register with the peer review program as listed in Paragraph (d) of this Rule within 30 days of the issuance of the first report provided to a client.

(c) A CPA, a new CPA firm, or a CPA firm exempt from peer review that starts providing any of the services in Paragraph (a) of this Rule shall furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within 18 months of the issuance of the first report provided to a client.

(d) Participation in and completion of the AICPA Peer Review Program shall be required.

(e) CPA firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.

(f) A CPA firm that does not have offices in North Carolina and that has provided any services as listed in G.S. 93-10(c)(3) to North Carolina clients shall participate in a peer review program.

(g) Subsequent peer reviews of a CPA firm are due three years and six months from the year end of the 12-month period of the first peer review, unless granted an extension by the peer review program.

History Note: Authority G.S. 93-12(3); 93-12(8c); Eff. January 1, 2004; Amended Eff. January 1, 2014; February 1, 2011; January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08M .0106 COMPLIANCE

(a) A CPA firm registered for peer review shall provide to the Board the following:

- (1) peer review due date;
- (2) year end date;
- (3) final Letter of Acceptance from peer review program within 60 days of the date of the letter; and
- (4) a package to include the Peer Review Report, Letter of Response, and Final Letter of Acceptance for all failed and second passed with deficiencies reports issued by a peer review program within 60 days of the date of the Final Letter of Acceptance.

(b) A peer review shall not be complete until the Final Letter of Acceptance is issued by the peer review program with the new due date.

(c) If a CPA firm fails to comply with Rule .0105(c), (d), or (g) of this Section, and continues to offer or render services, the Board may take disciplinary action against the CPA firm's members that may include a suspension of each members' CPA certificate for a period of not less than 30 days and a civil penalty up to one thousand dollars (\$1,000) as set forth in G.S. 93-12(b)(9).

History Note: Authority G.S. 93-12(7b); 93-12(8c); Eff. January 1, 2004; Amended Eff. February 1, 2011; January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0101 SCOPE OF THESE RULES

(a) The rules in this Subchapter are the Rules of Professional Ethics and Conduct that G.S. 93-12(9) authorizes the Board to adopt. As such, they complement the other statutory causes for discipline set out in G.S. 93-12 (9)(a) through (d) and other provisions of G.S. 93, 55B, 57D, and 59-84.2. These Rules cover a broad range of behavior and shall not enumerate every possible unethical act.

(b) In the interpretation and enforcement of these Rules, the Board will consider the following without dispositive weight: relevant interpretations, rulings and opinions issued by the boards of other jurisdictions and by appropriately authorized ethics committees of professional organizations.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Readopted Eff. February 1, 2016.

21 NCAC 08N .0102 APPLICABILITY AND ORGANIZATION OF RULES

These Rules are applicable to all certificate holders. Rules in Section .0200 of this Subchapter relate to CPAs whether or not employed in the public practice of accountancy. Rules in Section .0300 of this Subchapter pertain to CPAs using the CPA title in connection with providing products or services to clients. Rules in Section .0400 of this Subchapter pertain to CPAs whenever engaged in attest services.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Readopted Eff. February 1, 2016.

21 NCAC 08N .0103 RESPONSIBILITY FOR COMPLIANCE BY OTHERS

A CPA and CPA firm shall be responsible for assuring compliance with the rules in this Subchapter by anyone who is the CPA's partner, fellow shareholder, member, officer, director, licensed employee, unlicensed employee or agent or unlicensed principal, or by anyone whom the CPA supervises. A CPA or CPA firm shall not permit others (including affiliated entities) to carry out on the CPA's behalf, with or without compensation, acts that if carried out by the CPA would be a violation of these Rules.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0201 INTEGRITY

The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality, and integrity. A CPA shall at all times maintain independence of thought and action, hold the

affairs of clients in strict confidence, strive continuously to improve professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Readopted Eff. February 1, 2016.

21 NCAC 08N .0202 DECEPTIVE CONDUCT PROHIBITED

(a) A CPA shall not engage in deceptive conduct. "Deception" means any fraud, misrepresentations, representations, or omissions that a CPA either knew or should have known to have a capacity or tendency to be misleading. Deceptive conduct shall be prohibited whether or not anyone has actually been deceived.

- (b) Prohibited conduct under this Section includes deception in:
- (1) obtaining or maintaining employment;
 - (2) obtaining or keeping clients;
 - (3) obtaining or maintaining certification, inactive status, or exemption from peer review;
 - (4) reporting CPE credits;
 - (5) certifying the character or experience of exam or certificate applicants;
 - (6) implying abilities not supported by education, professional attainments, or licensing recognition;
 - (7) asserting that services or products sold in connection with use of the CPA title are of a particular quality or standard when they are not;
 - (8) creating false or unjustified expectations of favorable results;
 - (9) using or permitting another to use the CPA title in a form of business not permitted by the accountancy statutes or rules;
 - (10) permitting anyone not certified in this State (including one licensed in another jurisdiction) to unlawfully use the CPA title in this State or to unlawfully operate as a CPA firm in this State; or
 - (11) falsifying a review, report, or any required program or checklist of any peer review program.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2014; January 1, 2004; April 1, 1999; Readopted Eff. February 1, 2016.

21 NCAC 08N .0203 DISCREDITABLE CONDUCT PROHIBITED

(a) A CPA shall not engage in conduct discreditable to the accounting profession.

(b) Prohibited discreditable conduct includes:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA;
- (2) stating or implying an ability to influence a governmental agency or official;
- (3) failing to comply with any order issued by the Board;
- (4) failing to fulfill the terms of a peer review engagement contract;
- (5) misrepresentation in reporting CPE credits; or
- (6) entering into any settlement or other resolution of a dispute that purports to keep its contents confidential from the Board.

- (3) to preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes;
- (4) to preclude the disclosure of confidential client information necessary for the peer review process or for any quality review program;
- (5) to preclude the CPA from assisting the Board in enforcing the accountancy statutes and rules;
- (6) to affect a CPA's disclosure of confidential information to state or federal authorities when the CPA concludes in good faith based upon professional judgment that a crime is being or is likely to be committed; or
- (7) to affect a CPA's disclosure of confidential information when such disclosure is required by state or federal laws or regulations.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9);
 Eff. April 1, 1994;
 Amended Eff. January 1, 2014; January 1, 2004; August 1, 1995;
 Readopted Eff. February 1, 2016.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9);
 Eff. April 1, 1994;
 Amended Eff. February 1, 2004; April 1, 2003;
 Readopted Eff. February 1, 2016.

21 NCAC 08N .0204 DISCIPLINE BY FEDERAL AND STATE AUTHORITIES

- (a) Violations of Other Authorities' Laws or Rules. A CPA shall not act in a way that would cause the CPA to be disciplined by federal or state agencies or boards for violations of laws or rules on ethics. CPAs who engage in activities regulated by other federal or state authorities (may include the following agencies: Internal Revenue Service, Department of Revenue, U.S. Securities and Exchange Commission, State Bar, North Carolina Secretary of State, Public Company Accounting Oversight Board, National Association of Securities Dealers, Department of Insurance, Government Accountability Office, U.S. Department of Housing and Urban Development, State Auditor, State Treasurer, or Local Government Commission) shall comply with all such authorities' ethics laws and rules.
- (b) Prima Facie Evidence. A conviction or final finding of unethical conduct by a competent authority is prima facie evidence of a violation of this Rule.
- (c) Notice to the Board Required. A CPA shall notify the Board in writing within 30 days of any conviction or finding against him or her of unlawful conduct by any federal or state court or regulatory authority.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9);
 Eff. April 1, 1994;
 Amended Eff. January 1, 2006;
 Readopted Eff. February 1, 2016.

21 NCAC 08N .0206 COOPERATION WITH BOARD INQUIRY

A CPA shall provide full cooperation in connection with any inquiry made by the Board. Full cooperation includes responding within 21 days to all inquiries of the Board or representatives of the Board and claiming Board correspondence from the U.S. Postal Service, private delivery service, or personal delivery.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9);
 Eff. April 1, 1994;
 Amended Eff. February 1, 2011;
 Readopted Eff. February 1, 2016.

21 NCAC 08N .0207 VIOLATION OF TAX LAWS

A CPA shall not knowingly violate any state or federal tax laws or regulations in handling the CPA's personal business affairs, the business affairs of an employer or client, or the business affairs of any company owned by the CPA.

History Note: Authority G.S. 93-12(9);
 Eff. April 1, 1994;
 Amended Eff. February 1, 2011;
 Readopted Eff. February 1, 2016.

21 NCAC 08N .0205 CONFIDENTIALITY

- (a) Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.
- (b) Exceptions. This Rule shall not be construed:
 - (1) to relieve a CPA of any reporting obligations pertaining to Section .0400 of this Subchapter;
 - (2) to affect in any way the CPA's compliance with an order of a court or a validly issued subpoena by this Board;

21 NCAC 08N .0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS

- (a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, pleading of nolo contendere, or receiving a prayer for judgment continued to any criminal offense.
- (b) Civil Actions. A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration that:
 - (1) is grounded upon an allegation of professional negligence, gross negligence, dishonesty,

- fraud, misrepresentation, incompetence, or violation of any federal or state tax law; and
- (2) was brought against either the CPA or a North Carolina office of a CPA firm of which the CPA was a managing owner.

(c) Settlements. A CPA shall notify the Board within 30 days of any settlement in lieu of a civil suit or criminal charge that is grounded upon an allegation of professional negligence; gross negligence; dishonesty; fraud; misrepresentation; incompetence; or violation of any federal, state, or local law. Notification shall be required regardless of any confidentiality clause in the settlement.

(d) Investigations. A CPA shall notify the Board within 30 days of any inquiry or investigation by the criminal investigation divisions of the Internal Revenue Service (IRS) or any state department of revenue pertaining to any personal or business tax matters.

(e) Liens. A CPA shall notify the Board within 30 days of the filing of any liens by the Internal Revenue Service (IRS) or any state department of revenue regarding the failure to pay or apparent failure to pay for any amounts due for any tax matters.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(3); 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2014; January 1, 2006; April 1, 2003; April 1, 1999; Readopted Eff. February 1, 2016.

21 NCAC 08N .0209 ACCOUNTING PRINCIPLES

(a) Generally Accepted Accounting Principles. A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle that has a material effect on the statements taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases the CPA's report shall describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(b) Financial Accounting Standards Board Accounting Standards Codification. The Financial Accounting Standards Board Accounting Standards Codification, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted accounting principles for the purposes of Paragraph (a) of this Rule.

(c) Copies of Standards. Copies of the Financial Accounting Standards Board Accounting Standards Codification may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the FASB, Post Office Box 5116, Norwalk, CT 06856 as part of the "FASB Accounting Standards." They are available at cost, which is two hundred fifteen dollars (\$215.00) in paperback form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010;

Readopted Eff. February 1, 2016.

21 NCAC 08N .0211 RESPONSIBILITIES IN TAX PRACTICE

(a) Standards for Tax Services. A CPA shall not render services in the area of taxation unless the CPA has complied with the standards for tax services.

(b) Statements on Standards for Tax Services. The Statements on Standards for Tax Services issued by the AICPA, including subsequent amendments and editions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered as the standards for tax services for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Standards. Copies of the Statements on Standards for Tax Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC, 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred ninety-four dollars (\$194.00) in paperback form or one hundred sixty-nine dollars (\$169.00) in online subscription form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006; April 1, 2003; Readopted Eff. February 1, 2016.

21 NCAC 08N .0212 COMPETENCE

A CPA shall perform professional services competently and shall:

- (1) undertake only those engagements that the CPA or CPA's firm can expect to complete with professional competence;
- (2) exercise due professional care in the performance of an engagement;
- (3) adequately plan and supervise an engagement; and
- (4) obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Readopted Eff. February 1, 2016.

21 NCAC 08N .0213 OTHER RULES

A CPA shall not willfully violate any other rule in this Chapter nor any other provision of the Accountancy Statutes, the Professional Corporation Act, the Partnership Act, or the North Carolina Limited Liability Company Act.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0214 OUTSOURCING TO THIRD-PARTY PROVIDERS

(a) A CPA shall provide a written disclosure in advance of the outsourcing to the client that he or she is using a third-party provider to assist the CPA in providing any professional services to the client.

(b) A CPA outsourcing professional services to a third-party provider shall be responsible for ensuring a third-party provider is in compliance with all rules of Professional of Conduct and Ethics in this Subchapter.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. January 1, 2006; Amended Eff. July 1, 2010; Readopted Eff. February 1, 2016.

21 NCAC 08N .0215 INTERNATIONAL FINANCIAL ACCOUNTING STANDARDS

(a) International Financial Accounting Standards. A CPA shall not express an opinion that financial statements are presented in accordance with international financial accounting standards if such statements contain any departure from an accounting standard that has a material effect on the statements, taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading. In such cases, the CPA's report shall describe the departure, the approximate effect thereof if practicable, and the reason(s) why compliance with the standard would result in a misleading statement.

(b) International Financial Accounting Standards consist of the following:

- (1) International Financial Reporting Standards (IFRS) issued after 2001;
- (2) International Accounting Standards (IAS) issued before 2001;
- (3) Interpretations originated from the International Financial Reporting Interpretations Committee (IFRIC) issued after 2001; and
- (4) Standing Interpretations Committee (SIC) issued before 2001.

(c) Copies of Standards. Copies of International Financial Accounting Standards may be inspected in the office of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the International Accounting Standards Board, IASC Foundation Publications Department, 30 Cannon Street, London, EC4M6XH, United Kingdom. They are available at cost, which is approximately one hundred two dollars (\$102.00) in paperback form or four hundred thirty-two dollars (\$432.00) in loose-leaf subscription form.

History Note: Authority G.S. 55-12; 57D-2-02; 93-12(9); Eff. February 1, 2011; Readopted Eff. February 1, 2016.

21 NCAC 08N .0301 PROFESSIONAL JUDGMENT

(a) Professional Judgment. A CPA shall not subordinate the CPA's professional judgment to non-CPAs.

(b) Tax Practice. In tax practice, the CPA may resolve doubt in favor of the CPA's client as long as there is reasonable support for the CPA's position.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Readopted Eff. February 1, 2016.

21 NCAC 08N .0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA who uses CPA in or with the name of the business or offers or renders audits, reviews, compilations, agreed-upon procedure or engagement services performed in accordance with the standards in 21 NCAC 08A .0301(b)(5) in the public practice of accountancy to clients shall do so only through a registered sole proprietorship, partnership, Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Ownership. A CPA firm may have an ownership of up to 49 percent by non-CPAs. A CPA firm shall have ownership of at least 51 percent and be controlled in law and fact by holders of valid CPA certificates who have the unrestricted privilege to use the CPA title and to practice public accountancy in a jurisdiction and at least one of whom shall be licensed by this Board.

(c) CPA Firm Registration Required. A CPA shall not offer or render professional services through a CPA firm that is in violation of the registration requirements of 21 NCAC 08J .0108, 08J .0110, or 08M .0105.

(d) Supervision of CPA Firms. Every North Carolina office of a CPA firm registered in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

(e) CPA Firm Requirements for CPA Ownership. A CPA firm and its designated supervising CPA shall be accountable for the following in regard to a CPA owner:

- (1) a CPA owner shall be a natural person or a general partnership or a limited liability partnership directly owned by natural persons;
- (2) a CPA owner shall actively participate in the business of the CPA firm; and
- (3) a CPA owner who, prior to January 1, 2006, is not actively participating in the CPA firm may continue as an owner until such time as his or her ownership is terminated.

(f) CPA Firm Requirements for Non-CPA Ownership. A CPA firm and its designated supervising CPA owner shall be accountable for the following in regard to a non-CPA owner:

- (1) a non-CPA owner shall be a natural person or a general partnership or limited liability partnership directly owned by natural persons;
- (2) a non-CPA owner shall actively participate in the business of the firm or an affiliated entity as his or her principal occupation;
- (3) a non-CPA owner shall comply with all applicable accountancy statutes and the rules as set forth in G.S. 93 and all rules in this Chapter.
- (4) a non-CPA owner shall be of good moral character and shall be dismissed and

- (5) disqualified from ownership for any conduct that, if committed by a licensee, would result in a discipline pursuant to G.S. 93-12(9); and a non-CPA owner shall report his or her name, home address, phone number, social security number, and Federal Tax ID number (if any) on the CPA firm's registration.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; January 1, 2006; April 1, 2003; April 1, 1999; August 1, 1995; Readopted Eff. February 1, 2016.

21 NCAC 08N .0303 OBJECTIVITY AND CONFLICTS OF INTEREST

- (a) Personal Financial Interest in Advice. When offering or rendering accounting or related financial, tax, or management advice, a CPA shall be objective and shall not place the CPA's own financial interests nor the financial interests of a third party ahead of the legitimate financial interests of the CPA's client or the public in any context in which a client or the public can reasonably expect objectivity from one using the CPA title.
- (b) Expectation of Objectivity Presumed. If the CPA uses the CPA title in any way to obtain or maintain a client relationship, the Board shall presume the reasonable expectation of objectivity.
- (c) Acceptance of a Commission or Referral Fee. A CPA shall not recommend or refer to a client any product or service for a commission; recommend or refer any product or service to be supplied by a client; or receive a commission, when the CPA also performs the following for the client:
- (1) an audit or review of a financial statement;
 - (2) a compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will use the financial statement and the CPA's compilation report does not disclose a lack of independence; or
 - (3) an examination of prospective financial information.

This prohibition applies during the period in which the CPA is engaged to perform any of the services listed in Paragraph (c) of this Rule and the period covered by any historical financial statements involved in such listed services.

- (d) Acceptance of a Contingent Fee.
- (1) The offering or rendering of professional services for, or the receipt of, a contingent fee by a CPA shall not be prohibited except for engaging to render or rendering by a CPA:
 - (A) of professional services for any person for whom the CPA also performs attest services, during the period of the attest services engagement, and the period covered by any historical financial statements involved in such attest services; and
 - (B) for the preparation of original or amended tax returns or claims for tax refunds.

- (2) Fees shall not be regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

- (e) A CPA shall communicate in advance to a client the scope of services or products to be rendered or referred for which the CPA will receive a commission, referral, or contingent fee. A CPA shall provide disclosure in a written statement within ten business days of the service or product to be rendered or referred with the commission, referral, or contingent fee to be charged or received by the CPA.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; April 1, 1999; Readopted Eff. February 1, 2016.

21 NCAC 08N .0304 CONSULTING SERVICES STANDARDS

- (a) Standards for Consulting Services. A CPA shall not render consulting services unless the CPA has complied with the standards for consulting services.
- (b) Statements on Standards for Consulting Services. The Statements on Standards for Consulting Services (including the definition of such services) issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for consulting services for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.
- (c) Copies of Statements. Copies of the Statements on Standards for Consulting Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred ninety-four dollars (\$194.00) in paperback form or one hundred sixty-nine dollars (\$169.00) in on-line subscription form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0305 RETENTION OF CLIENT RECORDS

- (a) Return Upon Demand. A CPA shall return client records in his or her possession to the client after a demand is made for their return. The records shall be returned upon demand unless circumstances make some delay reasonable in order to retrieve a closed file or to extract the CPA's work papers described in Paragraph (f) of this Rule. If the records cannot be returned upon demand, the CPA shall immediately notify the client of the date the records will be returned. Nothing in this Rule shall be interpreted to require a CPA to pay delivery costs when the records are returned to the client.

(b) **Who May Demand Client Records.** If the client is a partnership, records shall be returned upon request to any of its general partners. If the client is a limited partnership or a registered limited liability partnership, records shall be returned upon request to its general partner(s) and the managing partner, or his or her designated individual respectively. If the client is a corporation, records shall be returned upon request to its president. If the client is a limited liability company, records shall be returned upon request to the manager. Joint records shall be returned upon request to any party to the record.

(c) **Return of Original Records.** If the engagement is terminated prior to completion or the CPA's work product has neither been received nor paid for by the client, the CPA shall be required to return only those records originally given to the CPA by the client.

(d) **Retention to Force Payment.** A CPA shall not retain a client's records in order to force payment of any kind.

(e) **Work Papers Included in Client Records.** Work papers are usually the CPA's property and need not be surrendered to the client. However, in some instances work papers may contain data that should be reflected in the client's books and records but for convenience have not been duplicated therein with the result that the client's records are incomplete. In such instances, the portion of the work papers containing such data constitutes part of the client's records, and copies shall be given to the client along with the rest of the client's records. Work papers considered part of the client's records include but are not limited to:

- (1) worksheets in lieu of original entry (such as listings and distributions of cash receipts or cash disbursements on columnar work paper);
- (2) worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;
- (3) all adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and
- (4) consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(f) **Work Papers Belonging to the CPA.** Work papers developed by the CPA incident to the performance of an engagement that do not result in changes to the client's records, or are not in themselves part of the records ordinarily maintained by such clients, are the CPA's work papers and are not the property of the client. For example, the CPA may make extensive analyses of inventory or other accounts as part of the selective audit procedures. These analyses are considered to be a part of the CPA's work papers, even if the analyses have been prepared by client personnel at the request of the CPA. Only to the extent these analyses result in changes to the client's records would the CPA be required to furnish the details from the work papers in support of the journal entries recording the changes, unless the journal entries themselves contain all necessary details.

(g) **Reasonable fees for Copies.** Nothing in this Rule shall be construed to require the CPA to furnish a client with copies of the client's records already in the client's possession. However, if the

client asserts that such records have been lost, or are otherwise not in the client's possession, the CPA shall furnish copies of the records and may charge a reasonable fee.

(h) **Retention of Work Product and Work Papers.** A CPA shall ensure that the work product and the work papers created in the performance of an engagement for a client are retained for at least of five years after the date of issuance of the work product unless the CPA is required by law to retain such records for a longer period.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; April 1, 2003; Readopted Eff. February 1, 2016.

21 NCAC 08N .0306 ADVERTISING OR OTHER FORMS OF SOLICITATION

(a) **Deceptive Advertising.** A CPA shall not seek to obtain clients by advertising or using other forms of solicitation in a manner that is deceptive.

(b) **Specialty Designations.** A CPA may advertise the nature of services provided to clients, but the CPA shall not advertise or indicate a specialty designation or other title unless the CPA has met the requirements of the granting organization for the separate title or specialty designation and the individual is currently on active status and in good standing with the granting organization for the separate title or specialty designation.

(c) The CPA firm shall offer to perform or perform professional services only in the exact name of the CPA firm as registered with the Board. The exact CPA firm name as registered with the Board shall be used on the following documents:

- (1) letterhead;
- (2) contracts;
- (3) engagement letters;
- (4) tax returns; and
- (5) all professional services reports.

(d) The CPA firm may advertise professional services using the exact name of the CPA firm, a portion of the CPA firm name, or initials or acronyms derived from the exact CPA firm name as registered with the Board.

(e) Any CPA or CPA firm offering to or performing professional services via the Internet shall include the following information on the Internet:

- (1) CPA business or CPA firm name as registered with the Board;
- (2) principal place of business;
- (3) business phone number; and
- (4) North Carolina certificate number and North Carolina as jurisdiction of certification.

(f) The use of the phrase "certified public accountant(s)" or "CPA(s)" in the name of any business entity on letterhead, professional services reports, business cards, brochures, building signage, office signs, telephone directories, contracts, engagement letters, tax returns, Internet directories, or any other advertisements or forms or solicitation shall be prohibited except for registered CPA firms.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994;

Amended Eff. February 1, 2011; April 1, 1999; February 1, 1996; Readopted Eff. February 1, 2016.

21 NCAC 08N .0307 CPA FIRM NAMES

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive. The name or initials of one or more members of a new CPA firm, as defined in 21 NCAC 08A .0301, shall be included in the CPA firm name. The name of former members and the initials of former members that are currently in the CPA firm name and the name of current members and the initials of current members may be included in a new CPA firm name. The name, the portion of the name, the initials of the name or the acronym derived from the name of a firm network that includes names that were not previous CPA members or are not current CPA members of the CPA firm may be included in the CPA firm name. The name or initials of a non-CPA member in a CPA firm name may be included in the CPA firm name if certified public accountant or CPA is not included in or with the CPA firm name.

(b) Style of Practice. It is misleading if a CPA firm practices under a name or style that would tend to imply the existence of a partnership or registered limited liability partnership or a professional corporation or professional limited liability company of more than one CPA shareholder or CPA member or an association when in fact there is no partnership nor is there more than one CPA shareholder or CPA member of a CPA firm. For example, no CPA firm having just one CPA member may have as a part of its name the words "associates," "group," "firm," or "company" or their abbreviations. It is also misleading if a CPA renders non-attest professional services through a non-CPA firm using a name that implies any non-licensees are CPAs.

(c) Any CPA firm that has continuously used an assumed name approved by the Board prior to April 1, 1999, may continue to use the assumed name. A CPA firm (or a successor firm by sale, merger, or operation of law) using the name, or a portion of a name, or the initials of the name, or the acronym derived from the name of a firm association or firm network that was approved by the Board prior to April 1, 1999 may continue to use that name so long as that use is not deceptive. A CPA firm (or a successor firm by sale, merger, or operation of law) may continue to use the surname of a retired or deceased partner or shareholder in the CPA firm's name so long as that use is not deceptive.

(d) Any CPA firm registered in another jurisdiction that provides notification of intent to practice pursuant to G.S. 93-10(c)(3) may practice under the name as registered with that jurisdiction.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; January 1, 2006; April 1, 1999; August 1, 1995; Readopted Eff. February 1, 2016.

21 NCAC 08N .0308 VALUATION SERVICES STANDARDS

(a) Standards for Valuation Services. A CPA shall not render valuation services of a business, a business ownership interest, security, or intangible asset unless the CPA has complied with the standards for valuation services.

(b) Statements on Standards for Valuation Services. The Statements on Standards for Valuation Services (including the definition of such services) issued by the AICPA, including amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for valuation services for the purposes of Paragraph (a) of this Rule. Departures from the standards listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies of the statements on standards for valuation services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred ninety-four dollars (\$194.00) in paperback form or one hundred sixty-nine dollars (\$169.00) in online subscription form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. January 1, 2006; Amended Eff. July 1, 2010; Readopted Eff. February 1, 2016.

21 NCAC 08N .0309 PERSONAL FINANCIAL PLANNING SERVICES

(a) Statement on Standards on Personal Financial Planning Services. A CPA shall not render personal financial planning services unless the CPA has complied with the applicable standards for personal financial planning services.

(b) Statement on Standards on Personal Financial Planning Services. The Statement on Standards on Personal Financial Planning Services (including the definition of such services) issued by the AICPA, including subsequent amendments and editions, is hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for personal financial planning services for the purpose of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies of the Statement on Standards on Personal Financial Planning Services may be inspected in the office of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in online subscription form.

History Note: Authority G.S. 55-12; 57D-2-02; 93-12(9); Eff. February 1, 2016.

21 NCAC 08N .0401 PUBLIC RELIANCE

The rules in this Section apply to any CPA who engages in attest services as defined in 21 NCAC 08A .0301(b).

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0402 INDEPENDENCE

(a) A CPA, or the CPA's firm, who is performing an engagement in which the CPA, or the CPA's firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) shall be independent with respect to the client in fact and appearance.

(b) Independence is impaired if, during the period of the professional engagement, a covered person:

- (1) had or was committed to acquire any direct or material indirect financial interest in the client;
- (2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client; and
 - (A) the covered person (individually or with others) had the authority to make investment decisions for the trust or estate;
 - (B) the trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership interests; or
 - (C) the value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate;
- (3) had a joint closely held investment that was material to the covered person; or
- (4) except as permitted in the AICPA Professional Standards Code of Professional Conduct and Bylaws, had any loan to or from the client or any officer or director of the client, or any individual owning 10 percent or more of the client's outstanding equity securities or other ownership interests.

(c) Independence is impaired if during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm, his or her immediate family and close relatives, (as defined in the AICPA Code of Professional Conduct and Bylaws) or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.

(d) Independence is impaired if, during the period covered by the financial statements, or during the period of the professional engagement, a shareholder, a member, a partner, or professional employee of the firm was simultaneously associated with the client as a:

- (1) director, officer, employee, or in any capacity equivalent to that of a member of management;
- (2) promoter, underwriter, or voting trustee; or
- (3) trustee for any pension or profit-sharing trust of the client.

(e) For the purposes of this Rule "covered person" is

- (1) an individual on the attest engagement team;
- (2) an individual in a position to influence the attest engagement;

(3) a partner or manager who provides non-attest services to the attest client beginning once he or she provides 10 hours of non-attest services to the client within any fiscal year and ending on the later of the date:

- (A) the firm signs the report on the financial statements for the fiscal year during which those services were provided; or
- (B) he or she no longer expects to provide 10 or more hours of non-attest services to the attest client on a recurring basis;

(4) a partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;

(5) the firm, including the firm's employee benefit plans; or

(6) an entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles (GAAP) for consolidation purposes) by any of the individuals or entities described in Subparagraphs (1) through (5) of this Paragraph or by two or more such individuals or entities if they act together;

(f) The impairments of independence listed in this Rule shall not be interpreted to be an all inclusive list.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; April 1, 2003; Readopted Eff. February 1, 2016.

21 NCAC 08N .0403 AUDITING STANDARDS

(a) Standards for Auditing Services. A CPA shall not render auditing services unless the CPA has complied with the applicable generally accepted auditing standards.

(b) Statements on Auditing Standards. The Statements on Auditing Standards issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted auditing standards for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies of the Statements on Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred ninety-four dollars (\$194.00) in paperback form or one hundred sixty-nine dollars (\$169.00) in on-line subscription form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0404 ACCOUNTING AND REVIEW SERVICES STANDARDS

(a) Standards for Accounting and Review Services. A CPA shall not render accounting and review services unless the CPA has complied with the standards for accounting and review services.

(b) Statements on Standards for Accounting and Review Services. The Statements on Standards for Accounting and Review Services issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for accounting and review services for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred ninety-four dollars (\$194.00) in paperback form or one hundred sixty-nine dollars (\$169.00) in on-line subscription form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0405 GOVERNMENTAL ACCOUNTING STANDARDS

(a) Standards for Governmental Accounting. A CPA shall not permit the CPA's name to be associated with governmental financial statements for a client unless the CPA has complied with the standards for governmental accounting.

(b) Statements on Governmental Accounting and Financial Reporting Services. The Statements on Governmental Accounting and Financial Reporting Services issued by the GASB, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for governmental accounting for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies of the Statements on Governmental Accounting and Financial Reporting Standards, including technical bulletins and interpretations, may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the GASB, Post Office Box 30784, Stamford, CT 06150. They are available at cost, which is one hundred eighty-four dollars (\$184.00). In addition to the basic set, an updating subscription service is available for two hundred twenty-five dollars (\$225.00) annually.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1999; Amended Eff. July 1, 2010; February 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0406 ATTESTATION STANDARDS

(a) Standards for Attestation Services. A CPA shall not render attestation services unless the CPA has complied with the applicable attestation standards.

(b) Statements on Standards for Attestation Engagements. The Statements on Standards for Attestation Engagements issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered attestation standards for the purposes of Paragraph (a) of this Rule. Departures from the statements listed in this Paragraph shall be justified by those who do not follow them as set out in the statements.

(c) Copies of Statements. Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred ninety-four dollars (\$194.00) in paperback form or one hundred sixty-nine dollars (\$169.00) in on-line subscription form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0408 PEER REVIEW STANDARDS

A CPA who is engaged to perform a peer review shall not violate the rules or standards as set in 21 NCAC 08M of the peer review program under which the review is made or the engagement contract connected with that peer review.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2006; Readopted Eff. February 1, 2016.

21 NCAC 08N .0409 GOVERNMENT AUDITING STANDARDS

(a) Standards for Government Audits. A CPA shall not render audit services to a government entity or entity that receives government awards and is required to receive an audit in accordance with Government Auditing Standards unless the CPA has complied with the applicable Generally Accepted Government Auditing Standards.

(b) Government Auditing Standards. The Government Auditing Standards issued by the United States Government Accountability Office, including subsequent amendments and additions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered Generally Accepted Government Auditing Standards for the purpose of Paragraph (a) of this Rule. Departures from the standards listed in this Paragraph shall be justified by those who do not follow them as set out in the standards.

(c) Copies of Standards. Copies of the Government Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the Government Printing Office, Washington, D.C. 20402-0001.

They are available at a cost, which is sixteen dollars (\$16.00) in paperback form.

History Note: Authority G.S. 55B-12; 57D-2-02; 93-12(9); Eff. February 1, 2011; Readopted Eff. February 1, 2016.

21 NCAC 08N .0410 INTERNATIONAL STANDARDS ON AUDITING

(a) International Standards on Auditing. A CPA shall not render auditing services unless the CPA has complied with the applicable international standards on auditing.

(b) Statement on International Standards on Auditing. The Statement on International Standards on Auditing issued by the International Auditing and Assurance Board, including subsequent amendments and additions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered International Standards on Auditing for the purpose of Paragraph (a) of this Rule. Departures from the standards listed in this Paragraph shall be justified by those who do not follow them as set out in the standards.

(c) Copies of the Standards. Copies of the International Standards on Auditing may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the International Auditing and Assurance Board at 529 5th Avenue, 6th Floor, New York, NY 10017. They are available at a cost, which is one hundred sixty dollars (\$160.00) in paperback form.

History Note: Authority G.S.55-12; 57D-2-02; 93-12(9); Eff. February 1, 2016.

CHAPTER 18 – BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

21 NCAC 18B .0101 PRINCIPAL OFFICE: MAILING ADDRESS: OFFICE HOURS

The principal office and mailing address of the North Carolina State Board of Examiners of Electrical Contractors is at 3101 Industrial Drive, Suite 206, Raleigh, North Carolina 27609. Office hours are posted on the Board website, www.ncbeec.org.

History Note: Authority G.S. 87-39; 87-42; Eff. October 1, 1988; Amended Eff. February 1, 2016; January 1, 2006.

CHAPTER 25 – INTERPRETER AND TRANSLITERATOR LICENSING BOARD

21 NCAC 25 .0103 CONTACT INFORMATION

- (a) The Board's mailing address is: PO Box 20963, Raleigh, NC 27619-0963.
(b) The Board's e-mail address is: contact@ncitlb.org.
(c) The Board's telephone number is: 919-779-5709.
(d) The Board's fax number is: 919-779-5642.

(e) The Board's website is: http://www.ncitlb.org.

History Note: Authority G.S. 90D-6; Eff. March 21, 2005; Amended Eff. February 1, 2016.

CHAPTER 45 – BOARD OF EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS

21 NCAC 45 .0101 ADDRESS

The mailing address for the North Carolina State Board of Fee-Based Practicing Pastoral Counselors is. P.O. Box 447, Kernersville, NC 27285-0447.

History Note: Authority G.S. 90-385; Eff. March 1, 1996; Amended Eff. February 1, 2016.

TITLE 25 –OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01D .2701 SEVERANCE SALARY CONTINUATION POLICY

In accordance with G.S. 126-8.5, severance salary continuation shall be paid to eligible employees as defined in 25 NCAC 01D .2702 in accordance with the rules in this Section. Severance pay shall be subject to available funding and approval by the Office of State Budget and Management.

History Note: Authority G.S. 126-4(10); 126-8.5; Eff. October 1, 1985; Amended Eff. October 1, 1995; September 1, 1991; November 1, 1990; November 1, 1988; Recodified from 25 NCAC 01D .0509 Eff. December 29, 2003; Amended Eff. February 1, 2016; March 1, 2009.

25 NCAC 01D .2702 SEVERANCE SALARY CONTINUATION ELIGIBILITY

(a) The following type of employee who has been reduced in force and who does not obtain employment in another position in State government or any other position that is funded in whole or in part by the State by the effective date of the separation shall be eligible for severance salary continuation:

- (1) full-time and part-time (half-time or more) permanent employees;
(2) trainee employees with 12 or more months of continuous State service;
(3) trainee employees who obtained career status with no "break in service," as defined in Rule .0114 of this Subchapter, prior to entering a trainee appointment;
(4) time-limited employees with 36 or more months of continuous State service; and
(5) employees in exempt policymaking or exempt managerial positions as defined in G.S. 126-5(b) are eligible for severance salary

continuation if the position is abolished as result of a reduction in force.

(b) Trainee employees with less than 12 continuous months of service, time-limited employees with less than 36 continuous months of service, probationary, and temporary employees are not eligible for severance salary continuation.

(c) An employee who is separated, or who has received written notification of separation 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. 126-8.5 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.

(d) 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 if the employee meets the eligibility requirements in Paragraph (a) of this Rule.

(e) An employee who is receiving workers' compensation or short-term disability payments is eligible for severance salary continuation if the employee meets the eligibility requirements in Paragraph (a) of the Rule.

(f) An employee on leave with or 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 if the employee meets the eligibility requirements in Paragraph (a) of this Rule.

History Note: Authority G.S. 126-4(10); 126-8.5; Eff. February 1, 2016.

25 NCAC 01D .2703 EFFECTS OF REEMPLOYMENT ON SEVERANCE PAY

(a) An employee who is reemployed in any position with the State, or any other position that is funded in whole or in part by the State, while receiving severance salary continuation, shall not be eligible for severance salary continuation effective the date of reemployment.

(b) An eligible employee who is offered employment in any position with the State and declines to accept the employment offer, either prior to or following separation, shall not be eligible for severance salary continuation effective on the date that the offer is declined.

(c) The agency offering employment or reemployment is responsible for determining if an employee is receiving severance salary continuation payments and shall notify the separating agency of the date severance salary continuation shall be terminated.

History Note: Authority G.S. 126-4(10); 126-8.5; Eff. February 1, 2016.

25 NCAC 01D .2704 AMOUNT AND METHOD OF PAYMENTS FOR SEVERANCE

(a) In accordance with G.S. 126-8.5, severance salary continuation shall be based on total State service as defined in Rule .0112 of this Subchapter and supplemented by an age adjustment factor as follows:

(1)	Amount of Severance Salary Continuation:	
	Years of Service	Payment
	Less than 1 year	2 weeks
	1 but less than 2 years	1 month
	2 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

(2) 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 payment.

(b) Severance salary continuation shall be paid on a pay period basis.

(c) Any period covered by severance salary continuation shall not be credited as a period of State service.

(d) If an employee dies while receiving severance salary continuation, the balance of the severance salary continuation 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.

History Note: Authority G.S. 126-4(10); 126-8.5; Eff. February 1, 2016.

25 NCAC 01H .0801 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES

(a) Promotional priority consideration shall be provided when a career State employee, as defined in G.S. 126-1.1, applies for a position that is a higher salary grade (salary grade equivalency) or has a higher market rate and the eligible employee is in competition with outside applicants.

(b) If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee shall receive the job offer over an outside applicant.

(c) "Substantially equal qualifications" occur when the employer cannot make a reasonable and justifiable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

(d) For purposes of this Rule, an outside applicant is any applicant who is not a member of the State government workforce as defined in 25 NCAC 01H .0631(c).

History Note: Authority G.S. 126-4; 126-7.1; Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988; ARRC Objection January 21, 1988; Curative Eff. November 1, 1988; Amended Eff. March 1, 1994; Recodified from 25 NCAC 01H .0625 Eff. December 29, 2003; Amended Eff. February 1, 2016; February 1, 2007.

25 NCAC 01H .0802 RELATIONSHIP TO OTHER EMPLOYMENT PRIORITY CONSIDERATIONS

History Note: Authority G.S. 126-4; 126-7.1; 126-16; Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 28, 1988; Eff. March 1, 1988; Amended Eff. June 1, 1992; Recodified from 25 NCAC 01H .0626 Eff. December 29, 2003; Amended Eff. February 1, 2007; Repealed Eff. February 1, 2016.

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

Upon written notification of imminent separation through reduction in force (RIF), 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, unless the priority has been satisfied in accordance with the rules of this Section. The following conditions apply:

- (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 that 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;
- (2) 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 begin at the salary grade (or salary grade equivalency), or salary rate of the position held at the most recent notification of separation and shall expire 12 months from the most recent notification date;
- (3) If after receiving formal notice of imminent reduction in force, an employee retires or applies for retirement prior to the separation date, an employee shall have no right to priority consideration;
- (4) Employees notified of separation from permanent full-time positions shall have priority consideration for permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority consideration for permanent part-time positions only;
- (5) Employees who have priority consideration at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as

- (6) priority applicants until the selection process is complete;
- (6) If an employee with priority consideration applies for a position but declines an interview or offer of the position, the employee loses priority if the position is at a salary grade (or salary grade equivalency), market rate, or salary rate equal to or greater than that held at the time of notification;
- (7) If an employee with priority consideration is placed in another position 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), market rate, 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 consideration may accept a temporary position at any level and retain priority consideration;
- (9) When priority has been granted for a lower salary grade (or salary grade equivalency) or lower market rate or lower salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) or higher market 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 the priority consideration through the 12-month priority period;
- (11) Priority consideration for an eligible employee is terminated when:
 - (a) an employee accepts a permanent or time-limited position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation;
 - (b) an employee accepts a permanent or time-limited position with the State equal to or greater than the employee's salary grade (or salary grade equivalency) of the full-time or part-time position held at the time of notification, in accord with Item (4) of this Rule;
 - (c) an employee accepts a career banded position with the same or higher market rate than that held at the time of notification;
 - (d) an employee has received 12 months of priority consideration; or
 - (e) an employee applies for retirement or retires from State employment.

APPROVED RULES

- (12) Priority consideration for employees notified of or separated through reduction in force shall not include priority to any exempt positions; a break in service, as defined in 25 NCAC 01D .0114.
- (13) When an employee with priority consideration accepts a position at a lower salary rate or lower employee's salary grade (or salary grade equivalency) and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and *History Note: Authority G.S. 126-4(6); 126-4(10); 126-7.1; Eff. March 1, 1987; Amended Eff. December 1, 1995; April 1, 1993; June 1, 1992; January 1, 1990; Recodified from 25 NCAC 01D .0511 Eff. December 29, 2003; Amended Eff. February 1, 2007;*
- (14) An employee with priority consideration shall serve a new probationary period when there is *Temporary Amendment Eff. May 23, 2014; Amended Eff. February 1, 2016; April 1, 2015.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission March 17, 2016 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
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

March 17, 2016	April 21, 2016
May 19, 2016	June 16, 2016

AGENDA

**RULES REVIEW COMMISSION
THURSDAY, MARCH 17, 2016 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. 911 Board – 09 NCAC 06C .0111, .0112, .0113, .0114, .0205, .0216 (Reeder)
 - B. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
 - C. Board of Chiropractic Examiners – 21 NCAC 10 .0208 (Reeder)
 - D. Board of Dental Examiners, - 21 NCAC 16O .0301, .0302, .0401, .0402; 16Q .0101, .0202, .0203, .0204, .0205, .0206, .0207, .0301, .0302, .0303, .0304, .0305, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0501, .0502, .0503, .0601, .0602, .0703 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between January 21, 2016 through February 22, 2016
 - HHS - Division of Health Service Regulation (Reeder)
 - Social Services Commission (Thomas)
 - Department of Insurance (Reeder)
 - Environmental Management Commission (Reeder)
 - Coastal Resources Commission (Reeder)
 - Wildlife Resources Commission (Hammond)
 - Department of Revenue (Reeder)
 - Board of Dental Examiners (Reeder)
 - Medical Board (Reeder)
 - Board of Nursing (Reeder)
 - State Human Resources Commission (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting

- VI. Existing Rules Review
- Review of Reports
 1. 10A NCAC 70I – Social Services Commission (Reeder)
 2. 10A NCAC 70K – Social Services Commission (Reeder)
 3. 15A NCAC 01L – Department of Environmental Quality (Hammond)
 4. 15A NCAC 01N – Department of Environmental Quality (Hammond)
 5. 20 NCAC 01 – Department of State Treasurer (May)
 6. 20 NCAC 04 - Department of State Treasurer (May)
 7. 20 NCAC 07– Department of State Treasurer (May)
 - Commission Business
 - Public Hearing: RRC Proposed Rules 26 NCAC 05 .0103, .0104, .0301, .0302, .0303
 - Next meeting: Thursday, April 21, 2016

Commission Review
Log of Permanent Rule Filings
 January 21, 2016 through February 22, 2016

HHS - HEALTH SERVICE REGULATION, DIVISION OF

The rules in Subchapter 14A concern rulemaking (.0100); contested cases (.0200); and hearings, transfers and discharges (.0300).

<u>Definitions</u>	10A NCAC 14A .0201
Repeal/*	
<u>Request for Determination</u>	10A NCAC 14A .0202
Repeal/*	
<u>Record</u>	10A NCAC 14A .0203
Repeal/*	
<u>Exceptions to Recommended Decision</u>	10A NCAC 14A .0204
Repeal/*	

SOCIAL SERVICES COMMISSION

The rules in Subchapter 71P concern state/county special assistance for adults including general provisions (.0100); adult care (.0200); budgeting principles (.0300); mixed budgeting: when other budget members are recipients (.0400); payment procedures (.0500); application process (.0600); redetermination of eligibility (.0700); coverage (.0800); and eligibility factors (.0900).

<u>Supervision</u>	10A NCAC 71P .0101
Amend/*	
<u>Definitions</u>	10A NCAC 71P .0102
Amend/*	
<u>State/County Special Assistance Program Procedures</u>	10A NCAC 71P .0103
Amend/*	
<u>Maximum Rates</u>	10A NCAC 71P .0201
Amend/*	
<u>Licensed Facilities</u>	10A NCAC 71P .0202
Amend/*	
<u>Minimum Payment</u>	10A NCAC 71P .0301
Amend/*	
<u>Beneficiary in Adult Care</u>	10A NCAC 71P .0302
Amend/*	

RULES REVIEW COMMISSION

<u>Recipient in Domiciliary Care with Spouse at Home</u> Repeal/*	10A NCAC 71P .0303
<u>Recipient/Domiciliary Care: Spouse/Not Receiving</u> Repeal/*	10A NCAC 71P .0304
<u>Beneficiary in a Private Living Arrangement</u> Adopt/*	10A NCAC 71P .0306
<u>Minimum Payment</u> Repeal/*	10A NCAC 71P .0401
<u>Recipient/Domiciliary Care: Spouse/Children</u> Repeal/*	10A NCAC 71P .0402
<u>Recipient/Domiciliary Care: Spouse/Children Recv'g AFDC-MA</u> Repeal/*	10A NCAC 71P .0403
<u>Recipient/Domiciliary Care: Spouse/Recv'g Medical Assist.</u> Repeal/*	10A NCAC 71P .0404
<u>Recipient/Spouse Both Receiving Special</u> Repeal/*	10A NCAC 71P .0405
<u>Recipient/Domiciliary Care: Spouse: Nursing/Intermed. FAC.</u> Repeal/*	10A NCAC 71P .0406
<u>Payee</u> Amend/*	10A NCAC 71P .0501
<u>Payment Authorization</u> Amend/*	10A NCAC 71P .0502
<u>Correction of Administrative Overpayments</u> Amend/*	10A NCAC 71P .0504
<u>Benefit Insurance</u> Amend/*	10A NCAC 71P .0505
<u>Receipt and Use of Checks</u> Repeal/*	10A NCAC 71P .0506
<u>Lost: Stolen and Forged Checks</u> Amend/*	10a NCAC 71P .0507
<u>Fraud</u> Amend/*	10a NCAC 71P .0508
<u>Acceptance of Application</u> Amend/*	10A NCAC 71P .0601
<u>Initial Application</u> Amend/*	10A NCAC 71P .0602
<u>Eligibility Determination Process</u> Amend/*	10A NCAC 71P .0603
<u>Time Standard</u> Amend/*	10A NCAC 71P .0604
<u>Notice to Beneficiary</u> Adopt/*	10A NCAC 71P .0608
<u>Time and Content</u> Amend/*	10A NCAC 71P .0701
<u>Verification of Facility</u> Amend/*	10A NCAC 71P .0702
<u>Re-Evaluation</u> Repeal/*	10A NCAC 71P .0704
<u>Notice to Beneficiary of Intended Action</u> Adopt/*	10A NCAC 71P .0705
<u>AA-SA: Group I</u> Repeal/*	10A NCAC 71P .0801

<u>AD-SA: Group I</u> Repeal/*	10A NCAC 71P .0802
<u>SAA</u> Amend/*	10A NCAC 71P .0803
<u>SAD</u> Amend/*	10A NCAC 71P .0804
<u>SA: Certain Disabled</u> Amend/*	10A NCAC 71P .0805
<u>United States Citizenship</u> Amend/*	10A NCAC 71P .0902
<u>Residence</u> Amend/*	10A NCAC 71P .0903
<u>Resources</u> Amend/*	10A NCAC 71P .0904
<u>Income</u> Amend/*	10A NCAC 71P .0905
<u>Evaluation</u> Repeal/*	10A NCAC 71P .0906

INSURANCE, DEPARTMENT OF

The rules in Chapter 18 concern multiple employer welfare arrangements.

<u>Filing Requirements</u> Readopt without Changes/*	11 NCAC 18 .0103
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The rules in Chapter 20 concern managed care health benefit plans including managed care definitions (.0100); contracts between network plan carriers and health care providers (.0200); provider accessibility and availability (.0300); network provider credentials (.0400); HMO quality management programs (.0500); and significant modifications to HMO operations (.0600).

<u>Contract Provisions</u> Readopt without Changes/*	11 NCAC 20 .0202
<u>Changes Requiring Approval</u> Readopt without Changes/*	11 NCAC 20 .0203
<u>Carrier and Intermediary Contracts</u> Readopt without Changes/*	11 NCAC 20 .0204
<u>Provider Availability Standards</u> Readopt without Changes/*	11 NCAC 20 .0301
<u>Provider Accessibility Standards</u> Readopt without Changes/*	11 NCAC 20 .0302
<u>Application</u> Readopt without Changes/*	11 NCAC 20 .0404
<u>Delegation of Credential Verification Activities</u> Readopt without Changes/*	11 NCAC 20 .0410
<u>Applications for Modifications to Service Areas or Produc...</u> Readopt without Changes/*	11 NCAC 20 .0601

The rules in Chapter 21 concern third party administrators.

<u>Payment of Claims</u> Readopt without Changes/*	11 NCAC 21 .0106
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ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100); classifications and groundwater quality standards (.0200); the assignments of underground water classifications (.0300); risk-based assessment and corrective action for petroleum underground storage tanks (.0400); and risk-based assessment and correction action for non-UST petroleum releases (.0500).

Corrective Action 15A NCAC 02L .0106
Amend/*

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); general permit to construct boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures; the reconstruction of primary or frontal dune systems; and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

General Identification and Description of Landforms 15A NCAC 07H .0305
Amend/*

General Use Standards for Ocean Hazard Areas 15A NCAC 07H .0306
Amend/*

The rules in Subchapter 7J concern procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings. They include definitions (.0100); permit application and procedures (.0200); hearing procedures (.0300); final approval and enforcement (.0400); general permits (.0500); declaratory rulings and petitions for rulemaking (.0600); procedures for considering variance petitions (.0700); general permit procedure (.1100); static vegetation line exception procedures (.1200); and development line procedures (.1300).

Requesting the Static Line Exception 15A NCAC 07J .1201
Amend/*

Requesting the Development Line 15A NCAC 07J .1301
Adopt/*

Procedures for Approving the Development Line 15A NCAC 07J .1302
Adopt/*

Local Governments and Communities with Development Lines 15A NCAC 07J .1303
 Adopt/*

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

Wildlife Taken for Depredations 15A NCAC 10B .0106
 Amend/*

Black Bear 15A NCAC 10B .0107
 Amend/*

Sale of Wildlife 15A NCAC 10B .0118
 Amend/*

Prohibited Taking and Manner of Take 15A NCAC 10B .0201
 Amend/*

Bear 15A NCAC 10B .0202
 Amend/*

Deer (White Tailed) 15A NCAC 10B .0203
 Amend/*

Elk 15A NCAC 10B .0225
 Adopt/*

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

Public Mountain Trout Waters 15A NCAC 10C .0205
 Amend/*

Black Bass 15A NCAC 10C .0305
 Amend/*

Crappie 15A NCAC 10C .0306
 Amend/*

Striped Bass 15A NCAC 10C .0314
 Amend/*

White Perch 15A NCAC 10C .0319
 Amend/*

Manner of Taking Nongame Fishes: Purchase and Sale 15A NCAC 10C .0401
 Amend/*

Taking Nongame Fishes for Bait or Personal Consumption 15A NCAC 10C .0402
 Amend/*

The rules in Subchapter 10D are game lands rules.

General Regulations Regarding Use 15A NCAC 10D .0102
 Amend/*

Hunting On Game Lands 15A NCAC 10D .0103
 Amend/*

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>Carteret County</u> Amend/*	15A NCAC 10F .0330
<u>Jackson County</u> Adopt/*	15A NCAC 10F .0377

The rules in Subchapter 10I concern endangered and threatened species.

<u>Endangered Species Listed</u> Amend/*	15A NCAC 10I .0103
<u>Threatened Species Listed</u> Amend/*	15A NCAC 10I .0104
<u>Special Concern Species</u> Amend/*	15A NCAC 10I .0105

REVENUE, DEPARTMENT OF

The rules in Chapter 7 concern sales and use tax.

The rules in Chapter 7B concern state sales and use tax including general provisions (.0100); general application of law to manufacturing and industrial processing (.0200); specific tangible personality classified for use by industrial users (.0300); specific industries (.0400); exempt sales to manufacturers (.0500); sales of mill machinery and accessories (.0600); specific industry purchases (.0700); adjustments, replacements and alterations and installation sales (.0800); advertising, advertising agencies and public relations firms (.0900); barbers, beauty shop operators, shoe and watch repairmen (.1000); sales of bulk tobacco barns and farm machines and equipment (.1100); hotels, motels, tourist camps and tourist cabins (.1200); sales in interstate commerce (.1300); sales of medicines, drugs and medical supplies (.1400); finance companies, finance charges and carrying charges (.1500); sales to or by hospitals, educational, charitable or religious institutions, and refunds thereto (.1600); sales to or by the state, counties, cities and other political subdivisions (.1700); hospitals and sanitariums (.1800); tire recappers and retreaders: and tire and tube repairs (.1900); sales and gifts by employers to employees or other users (.2000); electricity, piped natural gas, bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas and other combustibles (.2100); food and food products for human consumption (.2200); sales to out-of-state merchants for resale (.2300); sales of medical supplies and equipment to veterinarians (.2400); furniture and storage warehousemen (.2500); liability of contractors, use tax on equipment brought into state and building materials (.2600); dentists, dental laboratories and dental supply houses (.2700); florists, nurserymen, greenhouse operators and farmers (.2800); vending machines (.2900); articles taken in trade, trade-ins, repossessions, returned merchandise and used or secondhand merchandise (.3000); radio and television stations and motion picture theatres (.3100); telecommunications and telegraph companies (.3200); orthopedic appliances (.3300); memorial stone and monument dealers and monument manufactures (.3400); machinists, foundrymen and pattern makers (.3500); funeral expenses (.3600); lubricants and oils and greases (.3700); premiums and gifts and trading stamps (.3800); containers, wrapping and packing and shipping materials (.3900); fertilizer, seeds and feed and insecticides (.0400); artists, art dealers and photographers (.4100); sales to the United States government or agencies thereof (.4200); refunds to interstate carriers (.4300); lease or rental (.4400); laundries, dry cleaning plants, launderettes, linen rentals and solicitors for such businesses (.4500); motor vehicles and boats (.4600); printers and newspaper or magazine publishers (.4700); basis of reporting (.4800); transportation charges (.4900); eyeglasses and other ophthalmic aids and supplies, oculists and optometrists and opticians (.5000); leased departments and transient sellers (.5100); baby chicks and poults (.5200); certificate of authority and bond requirements (.5300); and forms used for sales and use tax purposes (.5400).

<u>Taxability and Gross Receipts</u> Repeal/*	17 NCAC 07B .1201
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<u>Prescription Drugs</u> Repeal/*	17	NCAC 07B	.1401
<u>Fraternity and Sorority Meals</u> Repeal/*	17	NCAC 07B	.2208
<u>Cover Charge</u> Repeal/*	17	NCAC 07B	.2211
<u>Contractors, Subcontractors, and Retailer-Contractors</u> Repeal/*	17	NCAC 07B	.2602
<u>Plumbing: Heating Contractors: Purchases</u> Repeal/*	17	NCAC 07B	.2608
<u>Leases for Out of State Use</u> Repeal/*	17	NCAC 07B	.4407

DENTAL EXAMINERS, BOARD OF

The rules in Subchapter 16W concern public health hygienists.

<u>Direction Defined</u> Amend/*	21	NCAC 16W	.0101
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MEDICAL BOARD

The rules in Subchapter 32M regulate the approval, registration and practice of nurse practitioners (.0100).

<u>Reporting Criteria</u> Adopt/*	21	NCAC 32M	.0117
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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>Reporting Criteria</u> Adopt/*	21	NCAC 36	.0815
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STATE HUMAN RESOURCES COMMISSION

The rules in Chapter 1 are from the State Personnel Commission.

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

<u>Public Inspection</u> Readopt with Changes/*	25	NCAC 01C	.0303
<u>Confidential Information in Personnel Files</u> Readopt with Changes/*	25	NCAC 01C	.0304
<u>Temporary Appointment</u> Readopt without Changes/*	25	NCAC 01C	.0405
<u>Temporary Part-time Appointment</u> Readopt without Changes/*	25	NCAC 01C	.0407

<u>Limitations</u> Readopt without Changes/*	25	NCAC	01C	.0504
<u>Agency Responsibility</u> Readopt with Changes/*	25	NCAC	01C	.0902
<u>Eligibility Requirements</u> Readopt with Changes/*	25	NCAC	01C	.0903
<u>Unavailability When Leave is Exhausted</u> Readopt without Changes/*	25	NCAC	01C	.1007

The rules in Subchapter 1O are rules dealing with the performance management system.

<u>Policy</u> Repeal/*	25	NCAC	01O	.0101
<u>Purpose</u> Repeal/*	25	NCAC	01O	.0102
<u>Components of a Performance Management System</u> Repeal/*	25	NCAC	01O	.0103
<u>Rating Scale</u> Repeal/*	25	NCAC	01O	.0104
<u>Dispute Resolution</u> Repeal/*	25	NCAC	01O	.0105
<u>Monitoring, Evaluating, Reporting</u> Repeal/*	25	NCAC	01O	.0106
<u>Performance Management Policy</u> Adopt/*	25	NCAC	01O	.0107
<u>Performance Management Covered Employees</u> Adopt/*	25	NCAC	01O	.0108
<u>Performance Management Definitions</u> Adopt/*	25	NCAC	01O	.0109
<u>Performance Cycle</u> Adopt/*	25	NCAC	01O	.0110
<u>Documentation of Performance</u> Adopt/*	25	NCAC	01O	.0111
<u>Performance Management Resources and Training</u> Adopt/*	25	NCAC	01O	.0112
<u>Confidentiality and Records Retention</u> Adopt/*	25	NCAC	01O	.0113
<u>Performance Management Compliance</u> Adopt/*	25	NCAC	01O	.0114
<u>Performance Management Dispute</u> Adopt/*	25	NCAC	01O	.0115
<u>Frequency of Performance Reviews</u> Adopt/*	25	NCAC	01O	.0207
<u>Performance Planning</u> Adopt/*	25	NCAC	01O	.0208
<u>Performance Feedback</u> Adopt/*	25	NCAC	01O	.0209
<u>Addressing Poor Performance</u> Adopt/*	25	NCAC	01O	.0210
<u>Annual Performance Evaluation</u> Adopt/*	25	NCAC	01O	.0211

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
The Geube Group, Michael K Grant Sr. v. Alcoholic Beverage Control Commission	14 ABC 08696	02/16/15	
Alcoholic Beverage Control Commission v. Bhavesh Corp T/A K and B Foodmart	14 ABC 09023	02/04/15	
Alcoholic Beverage Control Commission v. Greenleaf Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5 th Ave Speedmart	15 ABC 00355	04/22/15	
Alcoholic Beverage Control Commission v. Monterrey Mexican Restaurant Inc T/A Monterrey Mexican Restaurant	15 ABC00393	04/07/15	
NC Alcoholic Beverage Control Commission v. Greenbox, LLC, T/A Big Shots Sports Bar and Grill	15 ABC 04354	10/29/15	
Alcoholic Beverage Control Commission v. Woodlawn Restaurant and Lounge, LLC T/A O'Hara's Restaurant and Lounge	15 ABC 04355	09/03/15	
Alcoholic Beverage Control Commission v. Ortez Corp. Inc, T/A Pollo Royal Restaurant	15 ABC 04362	09/03/15	
NC Alcoholic Beverage Control Commission v. Rodeo Restaurant Group Corp, T/A Brasilla Churrasco Steakhouse	15 ABC 05010	10/06/15	
NC Alcoholic Beverage Control Commission v. Double K Sports Bar Inc, T/A Double K Sports Bar	15 ABC 05753	12/07/15	
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
12/10/2015 1:59 PM

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

IN THE OFFICES OF
ADMINISTRATIVE HEARINGS
15 EHR 04929

Howard Pearse and Angela Pearse,
Petitioners,

v.

Chatham County Public Health
Department, the North Carolina
Department of Environment and Natural
Resources, Division of Environmental
Health, the North Carolina Department of
Health and Human Services, Division of
Environmental Health, and North Carolina
Department of Health and Human
Services, Environmental Health Section.
Respondents.

**DECISION AND ORDER FOR
PERMANENT INJUNCTION AND
ATTORNEY'S FEES AND COSTS**

THIS CAUSE was heard by the undersigned Administrative Law Judge following the previously issued preliminary injunction. Matthew J. Gray appeared on behalf of Petitioners. Respondents were represented by John P. Barkley.

The Verified Petition for Temporary Restraining Order and Preliminary Injunction and the attachments thereto, the documents attached to the August 4, 2015 Notice of Filing, including deposition transcripts of Thomas J. Boyce, Ann C. Lowry and Kim A. Warren, Petitioner's Memorandum of Law, and other legal authorities presented by the parties have shown that Petitioners will suffer irreparable loss unless the requested injunctive relief is issued, and that Petitioners are entitled to their attorney's fees and costs. As such, this Court finds as follows:

1. On March 3, 2015, the Respondents issued a non-expiring improvements permit to the Petitioners.

2. On June 19, 2015, Petitioners submitted an application for a construction authorization for the property known as 345 Rays Drive, Apex, NC 27623, now known as 200 Rays Drive, Apex, NC 27623 (being one in the same property) bearing tax parcel identification number 17661, and containing 2.96 acres, as more particularly described in the February 9, 2015 survey attached to the improvements permit dated March 3, 2015 (the "Subject Property"). Petitioners paid Respondents a \$235.00 fee to submit the construction authorization application.

3. On July 6, 2015, Kim Warren, Program Supervisor of the On-Site Wastewater Program with the Chatham County Health Department, verbally advised Petitioners' consultant, Mr. John D. Gray, that Respondent Chatham County Public Health Department denied Petitioners' application for a construction authorization. Ms. Warren advised that the sole basis for the denial was that the wastewater system fill pad had not been constructed. Petitioners pointed out to Respondents that construction of the fill pad before issuance of the construction authorization would be in direct violation of N.C.G.S. §130A-336(b). That statute provides that:

... No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department.

Nevertheless, Ms. Warren advised Petitioners that Tim Crissman, a regional specialist for the State, directed her to deny the construction authorization application.

4. On July 7, 2015, Petitioners, through their consultant Mr. Gray, spoke by phone with Ms. Anne Lowry, Environmental Health Director with the Chatham County

Health Department. Ms. Lowry confirmed that Mr. Crissman had directed the construction authorization be denied. Ms. Lowry also advised that the Chatham County Health Department would follow that direction.

5. On July 10, 2015, Petitioners filed a Verified Petition for Contested Case Hearing and Motion for Immediate Temporary Restraining Order and Injunctive Relief.

6. On July 14, 2015, the undersigned entered a Temporary Restraining Order ordering that Respondents refrain from (1) requiring Petitioners to construct a component part of a wastewater system, namely the fill pad, without a construction authorization, and (2) denying the Petitioners' application for a construction authorization for the Subject Property.

7. On July 17, 2015, Respondents issued a construction authorization to the Petitioners that stated, "CA issued without fill pad in place due to order of Administrative Law Judge Lassiter on 7/14/15."

8. During the August 5, 2015 Preliminary Injunction hearing, and in its filings, Petitioners sought injunctive relief that Respondents cease, desist and refrain from denying or revoking the construction authorization, and that Respondents re-issue the construction authorization removing the language "CA issued without fill pad in place due to order of Administrative Law Judge Lassiter on 7/14/15" and replacing that language with "CA issued as required by N.C. Gen. Stat. §130A-336(b)." Petitioners sought relief on the grounds that the applicable statutes are plain, definite and unambiguous; that the statutes required Respondents to issue the construction authorization; that the fill pad was a component part of the Wastewater System; that the condition imposed by the Respondents required construction of the Wastewater System

without a construction authorization in direct violation of N.C. Gen. Stat. §130A-336(b) and would therefore subject Petitioners to criminal prosecution pursuant to N.C. Gen. Stat. §130A-25(a); and as otherwise stated in their pleadings.

9. This Court entered a Preliminary Injunction on August 7, 2015, finding that the applicable statutes are plain, definite, and unambiguous, and thus, Respondents' argument is without merit. In State v. Davis, 364 N.C. 297, 302, 698 S.E.2d 65, 68 (2010), our Supreme Court stated:

'The intent of the Legislature controls the interpretation of a statute.' State v. Joyner, 329 N.C. 211, 217, 404 S.E.2d 653, 657 (1991) (citation and quotation marks omitted). When a statute is unambiguous, this Court 'will give effect to the plain meaning of the words without resorting to judicial construction.' State v. Byrd, 363 N.C. 214, 219, 675 S.E.2d 323, 325 (2009) (citations omitted). '[C]ourts must give [an unambiguous] statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein.' State v. Green, 348 N.C. 588, 596, 502 S.E.2d 819, 824 (1998) (citations omitted), cert. denied, 525 U.S. 1111, 119 S.Ct. 883, 142 L.Ed.2d 783 (1999).

10. N.C. Gen. Stat. §130A-336(b) states that:

... No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department.

11. Merriam-Webster's Collegiate Dictionary (Tenth Edition 2002) defines the word "shall" as:

[W]ill have to; must; used to express a command or exhortation; used in laws, regulations, or directives to express what is mandatory. . .

12. Through Session Law 2014-120, the Legislature clarified the definition of "Wastewater System." The Legislative intent for that clarification is stated in the very

heading of the Session Law: "AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH CAROLINA"

13. N.C. Gen. Stat. §130A-334(15) now defines "Wastewater System" as, "... a system of wastewater collection, treatment, and disposal in single or multiple components, including a ground absorption system, privy, septic tank system, ..." N.C. Gen. Stat. §130A-1(b) now defines "Ground Absorption system" as "... a system of tanks, treatment units, nitrification fields, and appurtenances for wastewater collection, treatment, and subsurface disposal."

14. Under these definitions, a fill pad is part of a Wastewater System. Respondents conceded this during the Preliminary Injunction hearing, and in the prior case of Lewter v. Chatham County Health Dept., 12 EHR 06065. In that case, both Ann Lowry and Kim Warren testified that the fill pad was part of the wastewater system. (See Petitioners' August 4, 2015 Notice of Filing, Lowry Depo., p. 25, L1-14 and Warren Depo., p.39, L17-21, p.42, L5-25, p.44,L22 – p.45, L4 and p.47,L15-L23.) Respondents are bound by those admissions.

15. N.C. Gen. Stat. §130A-338 provides that, "Where construction, ... is proposed to be done upon a residence, ... no permit required for electrical, plumbing, heating, air conditioning or other construction, ... under any provision of general or special law shall be issued until an authorization for wastewater system construction has been issued under G.S. 130A-336"

16. In this case, Respondents knew, when it denied Petitioners' application, that Petitioners could not obtain a building permit without the issuance of the construction authorization. When Respondents denied Petitioners' application,

Respondents knew that the fill pad was a component part of a Wastewater System, and knew that construction of the fill pad before issuance of the construction authorization would be in direct violation of N.C.G.S. §130A-336(b). That statute provides that:

... No person shall commence or assist in the installation, construction, or repair of a wastewater system unless an improvement permit and an authorization for wastewater system construction have been obtained from the Department or the local health department.

17. Respondents failed to follow the statutory requirements of N.C. Gen. Stat. §130A-336(b) by failing to issue the construction authorization upon the application of Petitioners, and by denying the construction authorization upon the application of Petitioners.

18. When Respondents denied Petitioners' application, Respondents knew that installation of a wastewater system without a construction authorization would be a criminal misdemeanor. N.C. Gen. Stat. §130A-25(a) provides that "... , a person who violates a provision of this Chapter ... shall be guilty of a misdemeanor."

19. Immediate and irreparable injury, loss and damage will result to the Petitioners if the State is not restrained from denying the application for a construction authorization, because (1) Petitioners will thus be forced to violate North Carolina law to obtain the construction authorization, and (2) revocation of the construction authorization will place Petitioners' building permit and construction loan at risk, all of which may lead to unnecessary and increased expense to Petitioners.

20. The granting of the requested Motion for Permanent Injunction is necessary to prevent irreparable harm.

21. Based on the findings above, Respondents failed to follow the North Carolina Statutes and their own regulations in denying Petitioners' application for a construction authorization. Respondents exceeded their authority, acted erroneously, failed to act as required by law or rule, and failed to use proper procedure. N.C.G.S. §150(B)-23(a).

22. The evidence demonstrates that Respondents' denial of the Petitioners' application for construction authorization was not based on any statutory or regulatory requirements. Petitioners' rights were substantially prejudiced, because the Respondents' actions subjected Petitioners to criminal liability and deprived them of their construction authorization to which they were legally entitled.

23. Under relevant North Carolina law, decisions are arbitrary and capricious if they are "patently in bad faith, or whimsical in the sense that they indicate a lack of fair and careful consideration or fail to indicate any course of reasoning and the exercise of judgment." *Lewis v. N.C. Dep't of Human Res.*, 92 N.C.App. 737, 740, 375 S.E.2d 712, 714 (1989).

24. The evidence in this case demonstrates that Respondent's decision to deny the Petitioners' application for a construction authorization was arbitrary and capricious, because the decision indicates a clear lack of fair and careful consideration. The above findings document that Respondents attempted to force Petitioners to violate a criminal statute by attempting to force Petitioners to install a fill pad for the wastewater system while the Respondents knew that the fill pad was part of the wastewater system and that construction of any part of the wastewater system without a construction authorization would be a criminal misdemeanor. N.C.G.S. §130A-25(a). Respondents'

actions lacked any fair and careful consideration, were arbitrary and capricious, and violate N.C.G.S. §150B-23(a)(4). Based upon the foregoing, Petitioners are entitled to their attorneys' fees and costs pursuant to N.C.G.S. §150B-33(b)(11).

25. Petitioners have incurred \$9,044.41 in attorneys' fees and costs. The rates charged by the Petitioners' attorneys are usual and customary for this type of work. The attorney's fees and costs incurred by the Petitioners are reasonable.

IT IS THEREFORE DECIDED AND ORDERED that:

1. Respondents shall permanently cease, desist and refrain from denying or revoking the construction authorization; and
2. Respondents acted arbitrarily and capriciously, and are assessed \$9,044.41 for the reasonable attorneys' fees and costs incurred by the Petitioners. Respondents shall make payment of the \$9,044.41 in attorneys' fees and costs within 30 calendar days of the entry of this Decision and Order.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.**

In conformity with 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. The party who files a Petition for Judicial Review must also send a copy of the Petition for Judicial Review to the Office of Administrative Hearings when he or she files an appeal to ensure the timely filing of the record.

It

This the 10th day of December, 2015.



Melissa Owens Lassiter
Administrative Law Judge

FILED

STATE OF NORTH CAROLINA
COUNTY OF MADISON

FILED
2015 DEC 11 AM 9:28
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 01534

<p>William Kirk Ramsey Petitioner,</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission Respondent.</p>	<p>ADMIN HEARINGS</p> <p>PROPOSAL FOR DECISION</p>
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On November 3, 2015, Chief Administrative Law Judge Julian Mann III, heard this contested case in the Haywood County Courthouse, Waynesville, North Carolina. Pursuant to N.C.G.S. § 150B-40(e), Respondent requested the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Pro se

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

ISSUE

Did Petitioner fail to make proper notice of criminal charges to the Respondent Commission?

FINDINGS OF FACT

1. Both parties are properly before the Chief Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent North Carolina Sheriffs' Education and Training Standards Commission on January 5, 2015. (Respondent's Exhibit 1)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Respondent Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B .0204(b)(2) provides the Sheriffs' Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0300.

4. 12 N.C.A.C. 10B .0301(a)(7) requires that every justice officer employed or certified in North Carolina shall within five (5) working days notify the Sheriffs' Standards Division and the appointing department head, in writing, of all criminal offenses charged against the officer and shall also give notification, in writing, to the Sheriffs' Standards Division and the appointing department head following the adjudication of these criminal charges.

5. Petitioner completed Basic Law Enforcement Training in 2010 and is currently certified as a justice officer through the Madison County Sheriff's Office. Petitioner has been employed through the Madison County Sheriff's Office since 2010 and is currently a reserve deputy with that agency. Petitioner received his certification from the Respondent Commission on August 13, 2011. (Respondent's Exhibit 3)

6. Petitioner executed a Report of Appointment, Form F-4, which was submitted to the Respondent Commission on August 30, 2010. On that form, Petitioner was cautioned that he must report all new criminal charges to the Sheriffs' Commission within five (5) working days. Petitioner signed an acknowledgement indicating that he understood the reporting requirements. (Respondent's Exhibit 5)

7. Petitioner also completed a Form F-3 Personal History Statement, which was submitted to the Respondent Commission on August 22, 2010. Petitioner was advised on the Personal History Statement that he was under an obligation to update all information contained within the Statement. Petitioner signed the Personal History Statement before a notary, acknowledging his understanding of his duty to update information contained within the F-3 Personal History Statement. (Respondent's Exhibit 6, p.16)

8. On December 8, 2012, Petitioner was charged with carrying a concealed weapon while consuming alcohol in Buncombe County, North Carolina, case number 12 CR 008845. (Respondent's Exhibit 4) This criminal charge was subsequently dismissed on November 8, 2013.

9. Petitioner did not report to the Respondent Commission that he had been charged with the above-referenced criminal offense in 12 CR 008845 within five (5) working days of December 8, 2012. Petitioner initially reported this charge to his commanding officer within five (5) days of being charged, with the understanding that his chain of command at the Madison County Sheriff's Office would report the charge to the Respondent Commission within the

required five (5) working day period. Petitioner does not dispute that his employer failed to report the criminal charge to the Respondent Commission.

10. Petitioner regrets his failure to follow up with his employer in order to ensure that the Respondent Commission received notification that Petitioner had been charged with the above-referenced offense within the required time set out in 12 N.C.A.C. 10B .0301(a)(7). Petitioner accepts responsibility and has not attempted to make excuses for his failure to ensure the Respondent Commission received proper notification.

11. Petitioner's failure to report his criminal charge within the time required arose out of Petitioner's reliance on his chain of command. Petitioner acknowledges that ultimately he is responsible for reporting criminal charges to the Respondent Commission under 12 NCAC 10B 0301(a)(7), and that he failed to do so pursuant to 12 N.C.A.C. 10B .0301(a)(7). Petitioner has indicated that, based on this experience, he will always follow up in the future to ensure all information is being updated in a timely manner, pursuant to the Commission's rules. Hence, it is exceedingly unlikely that Petitioner will violate a reporting requirement of the Sheriffs' Commission in the future.

12. Mitigating circumstances exist in this case to warrant a lesser sanction than revocation of certification, especially in light of Petitioner reporting the criminal charge in 12 CR 008845 to his employer immediately, with the expectation and understanding that his employer would provide the requisite written notification to the Respondent Commission.

13. Based on the evidence presented at the administrative hearing, Counsel to the Commission will recommend that Petitioner be allowed to maintain his certification.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Chief Administrative Law Judge, and jurisdiction and venue are proper.

2. The Petitioner failed to make timely notification of his criminal charge in 12 CR 008845, which constitutes a violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(7).

3. The Respondent's proposed revocation of Petitioner's justice officer certification is supported by substantial evidence. However, pursuant to 12 NCAC 10B .0205 (2), the Respondent Commission has the discretion to impose a lesser sanction, to include a verbal and/or written warning in lieu of suspension or revocation. The undersigned recommends such a written and/or verbal warning to Petitioner, given the evidence presented at the hearing and the mitigating circumstances existing in this case.

PROPOSAL FOR DECISION

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends the Respondent issue Petitioner a verbal and/or written warning for violating 12 NCAC 10B .0301(a)(7), based on the totality of the evidence presented at the administrative hearing.

NOTICE

The Agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed findings of fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

IT IS SO ORDERED.

This the 11th day of December, 2015.



Julian Mann III
Chief Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
12/03/2015 4:19 PM

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05188

COUNTY OF WAKE

<p>Gerrod Bennett Gay Petitioner,</p> <p>v.</p> <p>N C Sheriffs' Education And Training Standards Commission Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On November 18, 2015, Administrative Law Judge Melissa Owens Lassiter heard this case in Raleigh, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an administrative law judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Andy Gay, Esq.
Darren G. Jackson, Esq.
Gay, Jackson & McNally, L.L.P.
P.O. Box 10
500 North Arendell Avenue
Zebulon, North Carolina 27597

Respondent: Matthew L. Boyatt, Assistant Attorney General

ISSUE

Whether Petitioner's application for certification should be denied based on Petitioner testing positive for the controlled substance Butalbital following a pre-employment drug screen on or about May 4, 2015.

Pursuant to N.C.G.S. §150B-41, the parties do hereby stipulate to the following Findings of Fact and Conclusions of Law.

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 Summary Denial of Justice Officer's Certification letter mailed by Respondent Sheriffs' Commission on June 15, 2015.

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as "The Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. 12 NCAC 10B .0301(a)(6) (c) provides that every Justice Officer employed or certified in North Carolina shall have produced a negative result on a drug screen administered according to the following specifications:

(C) The drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites.

4. Further, 12 NCAC 10B .0204(b) (5) provides that the Commission shall revoke, deny, or suspend a law enforcement officer's certification when the Commission finds that the applicant for certification or certified officer has produced a positive result on any drug screen reported to the Respondent Commission, or reported to any other commission, agency, or board established to certify a person as a justice officer, corrections officer, or criminal justice officer, unless the positive result is due to a medically indicated cause.

5. Pursuant to 12 N.C.A.C. 10B .0205, when Respondent suspends or denies the certification of a justice officer for a positive drug screen, the period of sanction shall be not less than five years; however, Respondent may either reduce or suspend the period of sanction under Paragraph 2 (g) of this Rule, or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

6. Petitioner is currently an applicant for certification through the Franklin County Sheriff's Office.

7. On Saturday, May 2, 2015, Petitioner traveled to the Epsom Fire Department to meet with his father in order to pick up a water pump for Petitioner's tractor. Petitioner had not been feeling well and was suffering from a headache and chest/sinus congestion. Petitioner met with his father at approximately 10:00 a.m. Petitioner's father noticed that Petitioner did not appear to be feeling well. Petitioner told his father that he was suffering from a severe headache and congestion.

8. Petitioner's father gave Petitioner one (1) pill on May 2, 2015, and advised Petitioner that the pill was headache medication and that it would alleviate Petitioner's symptoms. Petitioner took the medication provided by his father and did not give the matter much thought at the time. At the time Petitioner took this medication, Petitioner did not have a prescription for Butalbital or Floricet. Petitioner later learned from his father that he had been provided the drug Floricet, which contains Butalbital, a schedule III controlled substance.

9. Two (2) days later on May 4, 2015, Petitioner presented to Urgent Care in order to submit to a drug screen in furtherance of his application for certification through the Sheriffs' Commission. Petitioner willingly submitted his urine sample for analysis.

10. Immediately following his drug screen, Petitioner saw a physician at Urgent Care on May 4, 2015 due to Petitioner's persistent cough and congestion. Petitioner was diagnosed as suffering from an acute upper respiratory infection. Petitioner was prescribed Zithromax, Hycodan, and Proventil.

11. On May 13, 2015, Petitioner learned that he tested positive for the controlled substance Butalbital. It was at this time that Petitioner contacted his father to inquire as to exactly what medication his father provided to Petitioner on May 2, 2015. As indicated above, Petitioner learned that his father gave him the prescription medication Floricet, which contains Butalbital, a schedule III controlled substance.

12. Petitioner's taking of medication without a valid prescription was limited to a one (1) time occurrence on May 2, 2015, when Petitioner took the prescription Floricet pill provided by his father.

13. Having reflected on his actions, Petitioner regrets having taken the medication provided by his father without first seeking medical attention and receiving a prescription from a licensed medical provider. Having accepted responsibility for his actions, it does not appear as though Petitioner poses a risk of engaging in similar activity once he is certified as a justice officer.

14. William Dennis, M.D., is a licensed physician in Henderson, North Carolina, who is familiar with the facts of this case. Dr. Dennis has reviewed Petitioner's medical records, to include Petitioner's positive drug screen result dated May 13, 2015, in addition to the records related to Petitioner's medical examination at Urgent Care on May 4, 2015.

15. It is Dr. Dennis's opinion to a reasonable degree of medical certainty that Petitioner's drug screen is consistent with Petitioner having taken one (1) tablet of Floricet. Dr. Dennis opined that the drug screen report and record in this case does not support the conclusion that Petitioner has a history of taking and abusing controlled substances.

16. Petitioner's use of the drug Butalbital without a valid prescription was limited to his one-time use of Floricet on May 2, 2015. Petitioner admits that what he did was wrong and that it was unlawful for him to take a prescription medication that had been prescribed to another person.

17. Petitioner's certification is subject to denial pursuant to 12 NCAC 10B .0204 (b)(5) based on Petitioner having produced a positive drug screen through the Sheriffs' Commission on or about May 13, 2015. Petitioner's positive drug screen was not the result of a medically indicated cause insofar as Petitioner had not consulted with a physician and had not been prescribed Floricet and/or Butalbital prior to May 2, 2015.

18. The Respondent has the discretion to issue a lesser sanction than outright denial of Petitioner's application for certification where extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension. See 12 N.C.A.C. 10B .0205 (2)(g).

19. The record in this case establishes that at the time Petitioner used the Floricet that had been prescribed to his father, Petitioner was suffering from significant congestion and a persistent headache. On May 4, 2015, Petitioner underwent a medical examination which resulted in a diagnosis of acute upper respiratory infection. Petitioner was prescribed Zithromax, Hycodan, and Proventil. These circumstances weigh in favor of issuing Petitioner certification.

20. Petitioner has the support of the law enforcement community, as evidenced by the Sheriff of Franklin County appearing at the hearing of this matter in support of Petitioner's application for certification.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. 12 N.C.A.C. 10B .0301(6)(c) requires every justice officer employed in North Carolina to produce negative drug screen results. The drug Butalbital is classified as a barbiturate, a schedule III controlled substance.
3. 12 N.C.A.C. 10B .0204(b)(5) provides that the Sheriffs' Education and Training Standards Commission shall revoke, deny, or suspend certification when the Commission finds that the applicant or certified officer has produced a positive drug screen reported to the Respondent Commission or to any other commission, agency, or board established to certify a person as a justice officer.
4. Petitioner tested positive for Butalbital on or about May 13, 2015. Petitioner did not possess a valid prescription for this controlled substance at the time he took the medication on May 2, 2015. Petitioner's conduct was unlawful insofar as Petitioner took medication that had been prescribed to his father. Petitioner is not in compliance with

rule 12 N.C.A.C. 10B .0301(6)(c) and 12 N.C.A.C. 10B .0204(b)(5), and Petitioner's application for certification is therefore subject to denial

5. Pursuant to 12 N.C.A.C. 10B .0205(2)(g), when Respondent denies the certification of a justice officer for a positive drug screen result, the period of sanction shall be not less than five (5) years.

6. However, Pursuant to 12 N.C.A.C. 10B .0205(2)(g), Respondent may either reduce or suspend the period of sanction under this rule or substitute a period of probation in lieu of revocation or denial of certification following an administrative hearing, where extenuating circumstances brought out at the administrative hearing warrant such a reduction.

PROPOSAL FOR DECISION

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned recommends Respondent issue Petitioner's justice officer's certification. Extenuating circumstances brought out at the administrative hearing warrant the issuance of Petitioner's certification. Petitioner's use of the Floricet that had been prescribed to his father was limited to one-time use on May 2, 2015. At that time, Petitioner was suffering from a significant headache and chest/sinus congestion. Petitioner has admitted that his actions were unlawful. The Petitioner regrets having taken the medication. There is no indication that Petitioner will engage in such behavior in the future. Therefore, the undersigned recommends that Petitioner be certified through the Respondent Commission.

NOTICE

The Agency making the Final Decision in this contested case is required to give each party an opportunity to file Exceptions to this Proposal for Decision, to submit Proposed Findings of Fact and to present oral and written arguments to the Agency. N.C.G.S. § 150B-40(e).

The Agency that will make the Final Decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

This the 3rd day of December, 2015.



Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
12/08/2015 8:33 AM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05833

<p>Aundra Lynn France Petitioner,</p> <p>v.</p> <p>N C Private Protective Services Board Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On September 25, 2015, Administrative Law Judge Randall May called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Simple Assault.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case: N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 14B NCAC 16 § .0700.

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 armed and unarmed security guard and patrol business.
2. Petitioner applied to Respondent Board for an unarmed guard registration.

3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following:

A conviction in Forsyth County, State of North Carolina, on August 5, 2015 for misdemeanor Simple Assault.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated August 11, 2015, Respondent advised Petitioner that a hearing on the denial of her unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on September 29, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above conviction, was admitted into evidence as part of Respondent's Exhibit 1.
7. Petitioner testified that in 2014 she was a school bus driver servicing schools in the City of Winston-Salem. One evening she was assigned to pick up kids from Reynolds High School because the bus driver assigned to that school was unavailable. She had to make several pick-ups from the school that day. On one of her pick-ups a male student got on the bus and called her by her nickname, "Ms. Cookie". She stated that she did not want to be called that on that day so she nudged the student in the side and told him to go sit down.
8. When asked to give more specifics about the incident she related that she could not remember more. She stated that she suffered from short term memory loss after the incident. When the police came to arrest her she did not remember any more about the incident. When asked who filed charges against her for nudging the boy she stated that she did not remember. She did not remember going to court but does remember being arrested.
9. The boy was about 15 or 16 years old. She does not know why she was not charged with "Assault on a Minor."
10. Her court-appointed attorney told her to plead guilty, which she did.
11. She believes she is a "good, law-abiding citizen."
12. She has worked for Lankford Protective Services since January 2015. She was assigned to the furniture market at the Furniture Mart and also acted as crossing guard for the school system in Winston-Salem.
13. Todd Apple, Regional Director for Lankford Protective Services, testified as a character witness. Petitioner fully disclosed the incident, and after reviewing her criminal history record and finding no other offenses, he decided to hire her. She

is an exemplary employee, and he was comfortable enough with her to assign her to be a crossing guard.

14. She is very well liked at the Furniture Mart and the Site Manager specifically asked that she be assigned again for the October, 2015 show.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74C-8(d)(2), conviction of any crime involving an act of violence is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Forsyth County, North Carolina for misdemeanor Simple Assault.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge, presented a credible character witness, and has rebutted the presumption.

BASED ON the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an unarmed guard registration.

NOTICE AND ORDER

The North Carolina Private Protective Services Board 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. 27699-6700.

IT IS SO ORDERED.

This the 8th day of December, 2015.



J Randall May
Administrative Law Judge

On this date mailed to:

Jeffrey P Gray
Bailey & Dixon, LLP
P.O. Box 1351
Raleigh NC 27602
Attorney For Respondent

Aundra Lynn France
4217 Villa Club Drive
Winston Salem NC 27106
Petitioner

This the 8th day of December, 2015.



Betty Owens
Paralegal
N. C. Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6700
Phone: 919-431-3000

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
12/08/2015 8:34 AM

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05959

<p>Mario Da'Shawn Cotton Petitioner,</p> <p>v.</p> <p>N C Private Protective Services Board Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On September 29, 2015, Administrative Law Judge Randall May called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied an unarmed guard permit based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Assault on a Female in the State of North Carolina.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 14B NCAC 16 § .0700.

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 armed and unarmed security guard and patrol business.
2. Petitioner applied to Respondent Board for an unarmed guard registration.

3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following:

A conviction in Cumberland County, State of North Carolina, on November 19, 2013 for misdemeanor Assault on a Female.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated August 17, 2015, Respondent advised Petitioner that a hearing on the denial of his unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on September 29, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above, was admitted into evidence as part of Respondent's Exhibit 1.
7. Petitioner testified that in October 2013 he lived in Fayetteville, N. C. His friend decided to have a house party and asked him to be the bouncer for the party. Petitioner admitted he drank a few beers during the party. His friend got into an altercation with another girl at the party. The girls were brandishing knives during the altercation so he quickly stepped in to break up the fight. His friend got angry at him and struck him with a piece of wood. He responded by pushing her away from him and she fell backwards. When she got up, she called the police. The police arrived and questioned his friend about the incident. Based on her statement, he was arrested and charged with Assault on a Female. The court appointed an attorney to represent him.
8. The attorney recommended he enter a guilty plea. The court sentenced him to six months' probation. He had to pay \$268.00 in court costs and complete the mandated anger management course. He completed all the court's requirements.
9. He no longer has a relationship with the girl who was the alleged victim. He stated that he is married now and trying to care for his family. He has two children.
10. The "assault" was actually the result of him trying to break up a fight.
11. Petitioner testified he had worked as a bouncer since age 18; he is now 28. He had never had training until he took the Respondent Board's unarmed guard training. He feels he now has a better understanding of the use of force.
12. Petitioner does not believe this offense represents who he is. He wants to work to protect his community.
13. Petitioner worked for Shadow Protective Services for approximately one year and was assigned to hotels in the Fayetteville area. He patrolled the areas to deter crime.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74C-8(d)(2), conviction of any crime involving an act of assault is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Cumberland County, North Carolina for misdemeanor Assault on Female.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and has rebutted the presumption.

BASED ON the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an unarmed guard registration.

NOTICE AND ORDER

The North Carolina Private Protective Services Board 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. 27699-6700.

SO ORDERED this the 8th day of December, 2015.



J Randall May
Administrative Law Judge