

NORTH CAROLINA REGISTER

VOLUME 30 • ISSUE 21 • Pages 2221 - 2384

May 2, 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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julie.brincefield@oah.nc.gov

(919) 431-3073

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Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919)807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

545 Legislative Office Building

300 North Salisbury Street

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Raleigh, North Carolina 27611

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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

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

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

Application by: Jim Bell
Bio-Microbics
8450 Cole Parkway
Shawnee KS 66227

For: Innovative Approval of Bio-Microbics MicroFAST® 0.5, 0.625, 0.75, 0.9, 1.5, 3.0

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

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

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

**Decision in Response to the Third Amended Certificate of Public Advantage Periodic Report
September 30, 2015 Submitted By: Mission Health, Inc. and Mission Hospital, Inc.**

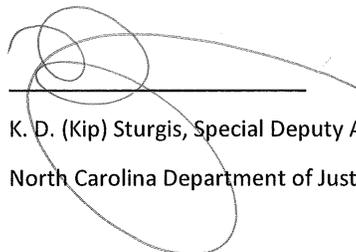
The Division of Health Service Regulation of the Department of Health and Human Services in conjunction with the Attorney General of the State of North Carolina has reviewed the Periodic Report cited above and the comments received from the Public in connection thereto. No comments were received.

The Department and the Attorney General have determined that the Certificate should remain in effect as is because the benefits of the COPA continue to outweigh any detriments.

Dated this 30th day of March, 2016



S. Mark Payne, Assistant Secretary for Audit & Division of Health Service Regulation
North Carolina Department of Health and Human Services



K. D. (Kip) Sturgis, Special Deputy Attorney General
North Carolina Department of Justice

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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rule cited as 02 NCAC 60B .0403.

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

Proposed Effective Date: September 1, 2016

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than May 17, 2017 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: S.L. 2014-100 requires the North Carolina Board of Agriculture to establish, by rule a schedule of fees for the preparation of forest management plans. This rule establishes those fees.

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001, email tina.hlabse@ncagr.gov

Comment period ends: July 1, 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

CHAPTER 60 – DIVISION OF FOREST RESOURCES

SUBCHAPTER 60B – DIVISION PROGRAMS

SECTION .0400 – FOREST MANAGEMENT

02 NCAC 60B .0403 FOREST MANAGEMENT PLANS

(a) Individuals desiring to use or obtain more information on the North Carolina Forest Service Forest Management Plan Preparation service shall contact their County Forest Ranger's Office.

(b) The fee for the North Carolina Forest Service Forest Management Plan Preparation service for a Forest Management Plan or Forest Stewardship Plan is \$5.00 per acre.

G.S. 106-1004.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 09E .0105.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncdoj.gov/getdoc/7324c057-cceb-432b-ae61-1da820830e21/Proposed-Rule-Revisions_8-21-13.aspx

Proposed Effective Date: January 1, 2017

Public Hearing:

Date: August 10, 2016

Time: 10:30 a.m.

Location: Wake Technical Community College, 321 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action: The Commission voted to amend the training topics and associated training hours/credits for law enforcement officers for the 2017 calendar year. This rule was published on January 15, 2016 in Volume 30, Issue 14 of the NC Register in order to amend it (effective July 1, 2016), and those revisions are indicated in italics. The new revisions are indicated via regular strike through and underline (effective July 1, 2017).

Comments may be submitted to: Trevor Allen, PO Drawer 149, Raleigh, NC 27602, phone (919) 779-8205, fax (919) 779-8210, email tjallen@ncdoj.gov

Comment period ends: August 10, 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

CHAPTER 09 – CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 09E – IN-SERVICE TRAINING PROGRAMS

SECTION .0100 – LAW ENFORCEMENT OFFICERS IN-SERVICE TRAINING PROGRAM

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

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

- (1) 2016-2017 Firearms Training and Qualification (6 credits);
(2) 2016-2017 Legal Update (4 credits);
(3) 2016-2017 Juvenile Minority Sensitivity Training: The Color of Justice Positively Impacting Today's Youth (2 credits);
(4) Human Trafficking Awareness-2017 Domestic Violence: Protecting Victims of Domestic Violence(2 credits); (4 credits);
(5) North Carolina Firearms Laws: Citizens and Guns (minimum of 2 credits);-2017 Improving Decision-Making Skills (4 credits); and
(6) 2016-2017 Department Topics of Choice (4 credits). (4 credits). The Department Head may

choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Subchapter to satisfy this requirement are not required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

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

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

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

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

(c) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

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

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

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

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

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

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Subchapter is are exempt from this written test requirement;
(2) A student shall pass each test by achieving 70 percent correct answers; and
(3) A student who completes a topic of in-service training in a traditional classroom setting or

online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

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

- State funds affected 17 NCAC 11 .0216
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected 17 NCAC 11 .0216
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4 17 NCAC 11 .0217

TITLE 17 – DEPARTMENT OF REVENUE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Property Tax Commission intends to amend the rules cited as 17 NCAC 11 .0216 and .0217.

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

Proposed Effective Date: September 1, 2016

Public Hearing:

Date: July 1, 2016

Time: 3:00 p.m.

Location: North Carolina Department of Revenue Building, Room 135, 501 N. Wilmington Street, Raleigh, NC 27604

Reason for Proposed Action: The amendment to the rule specifies a change to business entity representation before the Property Tax Commission and provides that a business entity's appeal is subject to dismissal unless a business entity files prior written notice of non-attorney representation with the Commission pursuant to G.S. 105-290(d2).

Comments may be submitted to: Janet L. Shires, Property Tax Commission, PO Box 871, Raleigh, NC 27602, email janet.shires@dornc.com

Comment period ends: July 1, 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).

CHAPTER 11 – PROPERTY TAX COMMISSION

SECTION .0200 – APPEALS TO PROPERTY TAX COMMISSION

17 NCAC 11 .0216 LEGAL REPRESENTATION BEFORE THE COMMISSION

(a) Although individual taxpayers are entitled to represent themselves before the Commission, representation by an attorney is recommended because the hearings are governed by the rules of evidence as practiced in the courts. Corporate taxpayers and counties must be represented by an attorney licensed to practice law in North Carolina. Parties appearing before the Property Tax Commission may either represent themselves if natural persons, or shall be represented by an attorney licensed to practice law in North Carolina, except as provided for in G.S. 105-290(d2). This requirement will shall not be waived by the Commission. An appellant represented by an attorney who is a member of a law firm is urged to see that another member of the firm be prepared to present his case in the event the primary attorney is unable to attend the hearing. Notice of non-attorney representation pursuant to G.S. 105-290(d2) shall be filed with the Commission within 30 days of filing a Notice of Appeal or the appeal shall be subject to dismissal.

(b) All parties, attorney attorneys, and witnesses shall be present for the hearing of their case at least 30 minutes before the time it is scheduled. scheduled by the Commission or the appeal shall be subject to dismissal.

Authority G.S. 84-4; 105-288; 105-290.

17 NCAC 11 .0217 APPEARANCE AT HEARING REQUIRED

(a) In order to pursue an appeal, the appellant must shall either appear at the scheduled hearing as permitted by Rule .0216 of this Section or be represented at the hearing by an attorney at law. Attorneys at law not authorized to practice in North Carolina must shall comply with the provisions of G.S. 84-4.1.

(b) If no continuance is requested or granted, the failure of the appellant or his attorney to appear at the scheduled time and date for hearing is shall be grounds for dismissal of appellant's appeal. The Commission may dismiss the appeal on motion of the opposing party or on its own motion.

(c) If the appellant is a trust, a trustee may appear for the trust; if trust. If the appellant is a partnership, a general partner may appear for the partnership. A family member may not represent another family member; an member. An attorney-in-fact may not represent the grantor of the power of attorney.

Authority G.S. 84-4; 105-288; 105-290.

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 March 17, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Definitions</u>	10A NCAC 14A .0201*	n/a G.S. 150B-21.5(b)(1)
<u>Request for Determination</u>	10A NCAC 14A .0202*	n/a G.S. 150B-21.5(b)(1)
<u>Record</u>	10A NCAC 14A .0203*	n/a G.S. 150B-21.5(b)(1)
<u>Exceptions to Recommended Decision</u>	10A NCAC 14A .0204*	n/a G.S. 150B-21.5(b)(1)

COASTAL RESOURCES COMMISSION

<u>General Identification and Description of Landforms</u>	15A NCAC 07H .0305*	30:09 NCR
<u>General Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0306*	30:09 NCR
<u>Requesting the Static Line Exception</u>	15A NCAC 07J .1201*	30:09 NCR
<u>Requesting the Development Line</u>	15A NCAC 07J .1301*	30:09 NCR
<u>Procedures for Approving the Development Line</u>	15A NCAC 07J .1302*	30:09 NCR
<u>Local Governments and Communities with Development</u>	15A NCAC 07J .1303*	30:09 NCR

WILDLIFE RESOURCES COMMISSION

<u>Wildlife Taken for Depredations</u>	15A NCAC 10B .0106*	30:10 NCR
<u>Black Bear</u>	15A NCAC 10B .0107	30:10 NCR
<u>Sale of Wildlife</u>	15A NCAC 10B .0118*	30:10 NCR
<u>Prohibited Taking and Manner of Take</u>	15A NCAC 10B .0201*	30:10 NCR
<u>Bear</u>	15A NCAC 10B .0202	30:10 NCR
<u>Deer (White Tailed)</u>	15A NCAC 10B .0203*	30:10 NCR
<u>Elk</u>	15A NCAC 10B .0225*	30:10 NCR
<u>Public Mountain Trout Waters</u>	15A NCAC 10C .0205*	30:10 NCR
<u>Black Bass</u>	15A NCAC 10C .0305*	30:10 NCR
<u>Crappie</u>	15A NCAC 10C .0306*	30:10 NCR
<u>Striped Bass</u>	15A NCAC 10C .0314*	30:10 NCR
<u>White Perch</u>	15A NCAC 10C .0319	30:10 NCR
<u>Manner of Taking Nongame Fishes: Purchase and Sale</u>	15A NCAC 10C .0401*	30:10 NCR
<u>Taking Nongame Fishes for Bait or Personal Consumption</u>	15A NCAC 10C .0402*	30:10 NCR
<u>General Regulations Regarding Use</u>	15A NCAC 10D .0102*	30:10 NCR
<u>Hunting On Game Lands</u>	15A NCAC 10D .0103*	30:10 NCR
<u>Carteret County</u>	15A NCAC 10F .0330*	30:10 NCR
<u>Jackson County</u>	15A NCAC 10F .0377*	30:10 NCR
<u>Endangered Species Listed</u>	15A NCAC 10I .0103*	30:10 NCR
<u>Threatened Species Listed</u>	15A NCAC 10I .0104*	30:10 NCR
<u>Special Concern Species</u>	15A NCAC 10I .0105*	30:10 NCR

REVENUE, DEPARTMENT OF

<u>Taxability and Gross Receipts</u>	17	NCAC 07B .1201*	n/a G.S. 150B-1(d)(4)
<u>Prescription Drugs</u>	17	NCAC 07B .1401*	n/a G.S. 150B-1(d)(4)
<u>Fraternity and Sorority Meals</u>	17	NCAC 07B .2208*	n/a G.S. 150B-1(d)(4)
<u>Cover Charge</u>	17	NCAC 07B .2211*	n/a G.S. 150B-1(d)(4)
<u>Contractors, Subcontractors, and Retailer-Contractors</u>	17	NCAC 07B .2602*	n/a G.S. 150B-1(d)(4)
<u>Plumbing: Heating Contractors: Purchases</u>	17	NCAC 07B .2608*	n/a G.S. 150B-1(d)(4)
<u>Leases for Out of State Use</u>	17	NCAC 07B .4407*	n/a G.S. 150B-1(d)(4)

DENTAL EXAMINERS, BOARD OF

<u>Conscious Sedation</u>	21	NCAC 16Q .0301*	30:01 NCR
<u>Nitrous Oxide Monitoring</u>	21	NCAC 16Q .0302*	30:01 NCR
<u>Non-Delegable Functions</u>	21	NCAC 16Q .0401*	30:01 NCR
<u>Educational Requirements</u>	21	NCAC 16Q .0402*	30:01 NCR
<u>General Anesthesia Equipment and Clinical Requirements</u>	21	NCAC 16Q .0202*	30:01 NCR
<u>Temporary Approval Prior to Site Evaluation</u>	21	NCAC 16Q .0203	30:01 NCR
<u>Procedure for General Anesthesia Evaluation or Inspection...</u>	21	NCAC 16Q .0204*	30:01 NCR
<u>Results of Site Evaluation and Reevaluation</u>	21	NCAC 16Q .0205	30:01 NCR
<u>Itinerant (Mobile) General Anesthesia Permit, Equipment</u>	21	NCAC 16Q .0206*	30:01 NCR
<u>Annual Review of General Anesthesia and Itinerant</u>	21	NCAC 16Q .0207*	30:01 NCR
<u>Credentials and Permits for Moderate Conscious Sedation</u>	21	NCAC 16Q .0301*	30:01 NCR
<u>Moderate Conscious Sedation Clinical Requirements and</u>	21	NCAC 16Q .0302*	30:01 NCR
<u>Temporary Approval Prior to Site Inspection</u>	21	NCAC 16Q .0303	30:01 NCR
<u>Off Site Use of Moderate Conscious Sedation Permits</u>	21	NCAC 16Q .0304*	30:01 NCR
<u>Annual Renewal of Moderate Conscious Sedation Permit</u>	21	NCAC 16Q .0305*	30:01 NCR
<u>Procedure for Moderate Conscious Sedation Evaluation or</u>	21	NCAC 16Q .0306*	30:01 NCR
<u>Minimal Conscious Sedation Credentials, Evaluation and</u>	21	NCAC 16Q .0401	30:01 NCR
<u>Minimal Conscious Sedation Permit Requirements, Clinical</u>	21	NCAC 16Q .0402	30:01 NCR
<u>Temporary Approval Prior to Site Inspection</u>	21	NCAC 16Q .0403	30:01 NCR
<u>Credentials and Permits for Moderate Pediatric Conscious</u>	21	NCAC 16Q .0404*	30:01 NCR
<u>Moderate Pediatric Conscious Sedation Clinical</u>	21	NCAC 16Q .0405*	30:01 NCR
<u>Off Site Use of Moderate Pediatric Conscious Sedation</u>	21	NCAC 16Q .0406*	30:01 NCR
<u>Annual Renewal of Moderate Pediatric Conscious Sedation</u>	21	NCAC 16Q .0407*	30:01 NCR
<u>Procedure for Moderate Pediatric Conscious Sedation .</u>	21	NCAC 16Q .0408*	30:01 NCR
<u>Annual Renewal Required</u>	21	NCAC 16Q .0501	30:01 NCR
<u>Payment of Fees</u>	21	NCAC 16Q .0502	30:01 NCR
<u>Inspection Authorized</u>	21	NCAC 16Q .0503	30:01 NCR
<u>Reports of Adverse Occurrences</u>	21	NCAC 16Q .0601	30:01 NCR
<u>Failure to Report</u>	21	NCAC 16Q .0602	30:01 NCR
<u>Reports of Adverse Occurrences</u>	21	NCAC 16Q .0703*	30:01 NCR
<u>Direction Defined</u>	21	NCAC 16W .0101*	30:08 NCR

MEDICAL BOARD

<u>Reporting Criteria</u>	21	NCAC 32M .0117*	30:10 NCR
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NURSING, BOARD OF

Reporting Criteria 21 NCAC 36 .0815 30:10 NCR

STATE HUMAN RESOURCES COMMISSION

Public Inspection 25 NCAC 01C .0303 30:09 NCR
Confidential Information in Personnel Files 25 NCAC 01C .0304 30:09 NCR
Temporary Appointment 25 NCAC 01C .0405* 30:09 NCR
Temporary Part-time Appointment 25 NCAC 01C .0407* 30:09 NCR
Limitations 25 NCAC 01C .0504* 30:09 NCR
Agency Responsibility 25 NCAC 01C .0902 30:09 NCR
Eligibility Requirements 25 NCAC 01C .0903 30:09 NCR
Unavailability When Leave is Exhausted 25 NCAC 01C .1007* 30:09 NCR
Policy 25 NCAC 01O .0101 30:05 NCR
Purpose 25 NCAC 01O .0102 30:05 NCR
Components of a Performance Management System 25 NCAC 01O .0103 30:05 NCR
Rating Scale 25 NCAC 01O .0104 30:05 NCR
Dispute Resolution 25 NCAC 01O .0105 30:05 NCR
Monitoring, Evaluating, Reporting 25 NCAC 01O .0106 30:05 NCR
Performance Management Policy 25 NCAC 01O .0107* 30:05 NCR
Performance Management Covered Employees 25 NCAC 01O .0108* 30:05 NCR
Performance Management Definitions 25 NCAC 01O .0109* 30:05 NCR
Performance Cycle 25 NCAC 01O .0110* 30:05 NCR
Documentation of Performance 25 NCAC 01O .0111* 30:05 NCR
Performance Management Resources and Training 25 NCAC 01O .0112* 30:05 NCR
Confidentiality and Records Retention 25 NCAC 01O .0113* 30:05 NCR
Performance Management Compliance 25 NCAC 01O .0114* 30:05 NCR
Performance Management Dispute 25 NCAC 01O .0115* 30:05 NCR
Frequency of Performance Reviews 25 NCAC 01O .0207* 30:05 NCR
Performance Planning 25 NCAC 01O .0208* 30:05 NCR
Performance Feedback 25 NCAC 01O .0209* 30:05 NCR
Addressing Poor Performance 25 NCAC 01O .0210* 30:05 NCR
Annual Performance Evaluation 25 NCAC 01O .0211* 30:05 NCR

The following Rules are subject to the next Legislative Session. (see G.S. 150B-21.3(b1))

ENVIRONMENTAL MANAGEMENT COMMISSION

Corrective Action 15 NCAC 02L .0106* 29:24 NCR

DENTAL EXAMINERS, BOARD OF

General Anesthesia and Sedation Definitions 21 NCAC 16Q .0101* 30:01 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

**10A NCAC 14A .0203 RECORD
 10A NCAC 14A .0204 EXCEPTIONS TO
 RECOMMENDED DECISION**

**10A NCAC 14A .0201 DEFINITIONS
 10A NCAC 14A .0202 REQUEST FOR
 DETERMINATION**

History Note: Authority G.S. 143B-10; 143B-10(j)(3); 150B-11; 150B-22; 150B-23; 150B-23(e); 150B-29(b); 150B-36; 150B-37; Eff. November 1, 1989; Repealed Eff. April 1, 2016.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02L .0106 CORRECTIVE ACTION

(a) Where groundwater quality has been degraded, the goal of any required corrective action shall be restoration to the level of the standards, or as closely thereto as is economically and technologically feasible as determined by the Department in accordance with this Rule. In all cases involving requests to the Secretary, as defined in 15A NCAC 02C .0102, for approval of corrective action plans, or termination of corrective action, the responsibility for providing all information required by this Rule lies with the person(s) making the request.

(b) Any person conducting or controlling an activity that results in the discharge of a waste or hazardous substance or oil to the groundwaters of the State, or in proximity thereto, shall take action upon discovery to terminate and control the discharge, mitigate any hazards resulting from exposure to the pollutants and notify the Department, as defined in 15A NCAC 02C .0102, of the discharge.

(c) Any person conducting or controlling an activity that has not been permitted by the Department and that results in an increase in the concentration of a substance in excess of the standard, other than agricultural operations, shall:

- (1) within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels;
- (2) respond in accordance with Paragraph (f) of this Rule;
- (3) submit a report to the Secretary assessing the cause, significance, and extent of the violation; and
- (4) implement an approved corrective action plan for restoration of groundwater quality in accordance with a schedule established by the Secretary. In establishing a schedule, the Secretary shall consider a schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties in which the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.

Any activity not permitted pursuant to G.S. 143-215.1 or G.S. 130A-294 shall, for the purpose of this Rule, be deemed not permitted by the Department and subject to the provisions of this Paragraph.

(d) Any person conducting or controlling an activity that is conducted under the authority of a permit initially issued by the Department on or after December 30, 1983 pursuant to G.S. 143-215.1 or G.S. 130A-294 and that results in an increase in concentration of a substance in excess of the standards:

- (1) at or beyond a review boundary: the person shall demonstrate, through predictive calculations or modeling, that natural site conditions, facility design and operational controls will prevent a violation of standards at the compliance boundary. Alternately, the person may submit a plan for alteration of existing site conditions, facility design, or operational controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the Secretary.
- (2) at or beyond a compliance boundary: the person shall respond in accordance with Paragraph (f) of this Rule, assess the cause, significance and extent of the violation of standards and submit the results of the investigation, and a plan and proposed schedule for corrective action to the Secretary. The permittee shall implement the plan as approved by and in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any schedule proposed by the permittee, the scope of the project, the extent of contamination, and the corrective action being proposed.
- (e) Any person conducting or controlling an activity that is conducted under the authority of a permit initially issued by the Department prior to December 30, 1983 pursuant to G.S. 143-215.1 or G.S. 130A-294, and that results in an increase in concentration of a substance in excess of the standards at or beyond the compliance boundary specified in the permit, shall:
 - (1) within 24 hours of discovery of the violation, notify the Department of the activity that has resulted in the increase and the contaminant concentration levels;
 - (2) respond in accordance with Paragraph (f) of this Rule;
 - (3) submit a report to the Secretary assessing the cause, significance and extent of the violation; and
 - (4) implement an approved corrective action plan for restoration of groundwater quality at or beyond the compliance boundary, in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider any schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties where the contamination occurs in accordance with the requirements of Rule .0114(a) in this Section.
- (f) Initial response required to be conducted prior to or concurrent with the assessment required in Paragraphs (c), (d), or (e) of this Rule shall include:
 - (1) Prevention of fire, explosion, or the spread of noxious fumes;
 - (2) Abatement, containment, or control of the migration of contaminants;

- (3) Removal, treatment, or control of any primary pollution source such as buried waste, waste stockpiles, or surficial accumulations of free products;
- (4) Removal, treatment, or control of secondary pollution sources that would be potential continuing sources of pollutants to the groundwaters, such as contaminated soils and non-aqueous phase liquids. Contaminated soils that threaten the quality of groundwaters shall be treated, contained, or disposed of in accordance with rules in this Chapter and in 15A NCAC 13 applicable to such activities. The treatment or disposal of contaminated soils shall be conducted in a manner that will not result in a violation of standards or North Carolina Hazardous Waste Management rules.

(g) The site assessment conducted pursuant to the requirements of Paragraphs (c), (d), or (e) of this Rule, shall include:

- (1) The source and cause of contamination;
- (2) Any imminent hazards to public health and safety, as defined in G.S. 130A-2, and any actions taken to mitigate them in accordance with Paragraph (f) of this Rule;
- (3) All receptors and significant exposure pathways;
- (4) The horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport; and
- (5) Geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

Reports of site assessments shall be submitted to the Department as soon as practicable or in accordance with a schedule established by the Secretary. In establishing a schedule the Secretary shall consider a proposal by the person submitting the report.

(h) Corrective action plans for restoration of groundwater quality, submitted pursuant to Paragraphs (c), (d), and (e) of this Rule shall include:

- (1) A description of the proposed corrective action and reasons for its selection;
- (2) Specific plans, including engineering details where applicable, for restoring groundwater quality;
- (3) A schedule for the implementation and operation of the proposed plan; and
- (4) A monitoring plan for evaluating the effectiveness of the proposed corrective action and the movement of the contaminant plume.

(i) In the evaluation of corrective action plans, the Secretary shall consider the extent of any violations, the extent of any threat to human health or safety, the extent of damage or potential adverse impact to the environment, technology available to accomplish restoration, the potential for degradation of the contaminants in the environment, the time and costs estimated to achieve groundwater quality restoration, and the public and economic benefits to be derived from groundwater quality restoration.

(j) A corrective action plan prepared pursuant to Paragraphs (c), (d), or (e) of this Rule shall be implemented using a remedial

technology demonstrated to provide the most effective means, taking into consideration geological and hydrogeological conditions at the contaminated site, for restoration of groundwater quality to the level of the standards. Corrective action plans prepared pursuant to Paragraphs (c) or (e) of this Rule may request an exception as provided in Paragraphs (k), (l), (m), (r), and (s) of this Rule.

(k) Any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve such a plan without requiring groundwater remediation to the standards. A request submitted to the Secretary under this Paragraph shall include a description of site-specific conditions, including information on the availability of public water supplies for the affected area; the technical basis for the request; and any other information requested by the Secretary to evaluate the request in accordance with Subparagraphs (1) through (7) of this Paragraph. The person making the request shall demonstrate:

- (1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph (f) of this Rule;
- (2) that the time and direction of contaminant travel can be predicted with reasonable certainty;
- (3) that contaminants have not and will not migrate onto adjacent properties, or that:
 - (A) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
 - (B) the owners of such properties have consented in writing to the request;
- (4) that the standards specified in Rule .0202 of this Subchapter will be met at a location no closer than one year time of travel upgradient of an existing or foreseeable receptor, based on travel time and the natural attenuation capacity of subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request;
- (5) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;
- (6) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
- (7) that the proposed corrective action plan would be consistent with all other environmental laws.

(l) Any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve such a plan based upon natural processes of degradation and attenuation of contaminants. A request submitted to the Secretary under this Paragraph shall include a description of site-specific conditions, including written documentation of projected groundwater use in the contaminated area based on current state or local government planning efforts; the technical basis for the request; and any other information

requested by the Secretary to evaluate the request in accordance with Subparagraphs (1) through (10) of this Paragraph. The person making the request shall demonstrate:

- (1) that all sources of contamination and free product have been removed or controlled pursuant to Paragraph (f) of this Rule;
- (2) that the contaminant has the capacity to degrade or attenuate under the site-specific conditions;
- (3) that the time and direction of contaminant travel can be predicted based on subsurface conditions and the contaminant's physical and chemical properties;
- (4) that contaminant migration will not result in any violation of applicable groundwater standards at any existing or foreseeable receptor;
- (5) that contaminants have not and will not migrate onto adjacent properties, or that:
 - (A) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
 - (B) the owners of such properties have consented in writing to the request;
- (6) that, if the contaminant plume is expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;
- (7) that the person making the request will put in place a groundwater monitoring program that, based on subsurface conditions and the physical and chemical properties of the contaminant, will accurately track the degradation and attenuation of contaminants and contaminant by-products within and down gradient of the plume and to detect contaminants and contaminant by-products prior to their reaching any existing or foreseeable receptor at least one year's time of travel upgradient of the receptor and no greater than the distance the groundwater at the contaminated site is predicted to travel in five years;
- (8) that all necessary access agreements needed to monitor groundwater quality pursuant to Subparagraph (7) of this Paragraph have been or can be obtained;
- (9) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
- (10) that the proposed corrective action plan would be consistent with all other environmental laws.

(m) The Department or any person required to implement an approved corrective action plan for a site subject to Paragraphs (c) or (e) of this Rule may request that the Secretary approve termination of corrective action.

- (1) A request submitted to the Secretary under this Paragraph shall include:

- (A) a discussion of the duration of the corrective action, the total project cost, projected annual cost for continuance and evaluation of the success of the corrective action;
 - (B) an evaluation of alternate treatment technologies that could result in further reduction of contaminant levels, projected capital, and annual operating costs for each technology; and
 - (C) the effects, including health and safety impacts, on groundwater users if contaminant levels remain at levels existing at the time corrective action is terminated.
- (2) In addition, the person making the request shall demonstrate:
- (A) that continuation of corrective action would not result in a significant reduction in the concentration of contaminants. This demonstration shall show the duration and degree of success of existing remedial efforts to attain standards. For the purpose of this Part, a "significant reduction" is demonstrated by showing that the asymptotic slope of the contaminants curve of decontamination is less than a ratio of 1:40 over a term of one year based on quarterly sampling;
 - (B) that contaminants have not and will not migrate onto adjacent properties, or that:
 - (i) such properties are served by an existing public water supply system dependent on surface waters or hydraulically isolated groundwater; or
 - (ii) the owners of such properties have consented in writing to the request;
 - (C) that, if the contaminant plumes are expected to intercept surface waters, the groundwater discharge will not possess contaminant concentrations that would result in violations of standards for surface waters contained in 15A NCAC 02B .0200;
 - (D) that public notice of the request has been provided in accordance with Rule .0114(b) of this Section; and
 - (E) that the proposed termination would be consistent with all other environmental laws.
- (3) The Secretary shall not authorize termination of corrective action for any area that, at the time the request is made, has been identified by a

state or local groundwater use planning process for resource development.

- (4) The Secretary may authorize the termination of corrective action, or amend the corrective action plan after considering all the information in the request. In making the authorization, the Secretary shall consider health and safety impacts on all existing and foreseeable receptors and the impacts the contaminated plume may have if it reaches them. Upon termination of corrective action, the Secretary shall require implementation of a groundwater monitoring program that, based on subsurface conditions and the physical and chemical properties of the contaminants, will accurately track the degradation and attenuation of contaminants at a location of no less than one year's predicted time of travel upgradient of any existing or foreseeable receptor. The monitoring program shall remain in effect until there is sufficient evidence that the contaminant concentrations have been reduced to the level of the standards. For the purpose of this Part, "sufficient evidence" means that sampling and analyses demonstrate that contaminant concentrations have been reduced to the level of the standards on multiple sampling events.

(n) Upon a determination by the Secretary that continued corrective action would result in no significant reduction in contaminant concentrations, and the contaminated groundwaters can be rendered potable by treatment using technologies that are in use in other applications and shown to be effective for removal of contaminants, the Secretary may designate the remaining area of degraded groundwater RS. Where the remaining degraded groundwaters cannot be made potable by such treatment, the Secretary may consider a request for reclassification of the groundwater to a GC classification as outlined in Rule .0201 of this Subchapter.

(o) If at any time the Secretary determines that a new technology is available that would remediate the contaminated groundwater to the standards specified in Rule .0202 of this Subchapter, the Secretary may require the responsible party to evaluate the economic and technological feasibility of implementing the new technology in an active groundwater corrective action plan in accordance with a schedule established by the Secretary. The Secretary's determination to utilize new technology at any site or for any particular constituent shall include a consideration of the factors in Paragraph (h) of this Rule.

(p) Where standards are exceeded as a result of the application of pesticides or other agricultural chemicals, the Secretary shall request the Pesticide Board or the Department of Agriculture and Consumer Services to assist the Department in determining the cause of the violation. If the violation is determined to have resulted from the use of pesticides, the Secretary shall request the Pesticide Board to take appropriate regulatory action to control the use of the chemical or chemicals responsible for, or contributing to, such violations, or to discontinue their use.

(q) The approval pursuant to this Rule of any corrective action plan, or modification or termination thereof, that permits the

migration of a contaminant onto adjacent property, shall not affect any private right of action by any party that may be affected by that contamination.

(r) If a discharge or release is not governed by the rules in Section .0400 of this Subchapter and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, any person required to implement an approved corrective action plan pursuant to this Rule and seeking reimbursement for the Commercial or Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds shall implement a corrective action plan meeting the requirements of Paragraph (k) or (l) of this Rule unless the person demonstrates to the Secretary that:

- (1) contamination resulting from the discharge cannot qualify for approval of a plan based on the requirements of the Paragraphs; or
- (2) the cost of making such a demonstration would exceed the cost of implementing a corrective action plan submitted pursuant to Paragraph (c) of this Rule.

(s) If a discharge or release is not governed by the rules in Section .0400 of this Subchapter and the increase in the concentration of a substance in excess of the standard resulted in whole or in part from a release from a commercial or noncommercial underground storage tank as defined in G.S. 143-215.94A, the Secretary may require any person implementing or operating a previously approved corrective action plan pursuant to this Rule to:

- (1) develop and implement a corrective action plan meeting the requirements of Paragraphs (k) and (l) of this Rule; or
- (2) seek discontinuance of corrective action pursuant to Paragraph (m) of this Rule.

History Note: Authority G.S. 143-215.1; 143-215.3; 143-215.94A; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Eff. August 1, 1989; Amended Eff. October 1, 1993; September 1, 1992; Temporary Amendment Eff. January 2, 1998; January 2, 1996; Amended Eff. October 29, 1998; Amended Eff. Pending Legislative Review.

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This Paragraph describes natural and man-made features that are found within the ocean hazard area of environmental concern.

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
 - (A) the growth of vegetation occurs; or
 - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the "dune trough.")
- (4) Frontal Dunes. The frontal dune is the first mound of sand located landward of the ocean beach that has stable and natural vegetation present.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.
- (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the "static vegetation line". The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.
- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers.
- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.
- (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(3) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(3) of this Section shall be adopted by the Commission for each area where such a

line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:

- (A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and
- (B) locating the line of stable and natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (a)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

- (10) **Development Line.** The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of Rule .0306(a)(2) of this Section.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. January 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2016; April 1, 2008; August 1, 2002;
August 1, 1998.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established below the mean high water line.
- (4) The setback distance shall be determined by both the size of development and the shoreline long-term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60

- times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
 - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the

- development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
 - (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
 - (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
 - (11) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
 - (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified owner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
 - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
 - (B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
 - (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
 - (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section is allowed oceanward of the static vegetation line; and

(E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(d) Development shall comply with minimum lot size and setback requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks may not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes

imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. September 9, 1977;

Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;

RRC Objection due to ambiguity Eff. January 24, 1992;

Amended Eff. March 1, 1992;

RRC Objection due to ambiguity Eff. May 21, 1992;

Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;

RRC Objection due to ambiguity Eff. May 18, 1995;

Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;

Temporary Amendment Eff. January 3, 2013;

Amended Eff. April 1, 2016; September 1, 2013.

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) A petitioner subject to a static vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission for an exception to the static vegetation line in accordance with the provisions of this Section. A "petitioner" shall be defined as:

- (1) Any local government;
- (2) Any group of local governments involved in a regional beach fill project;
- (3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline; or
- (4) A permit holder of a large-scale beach fill project.

(b) A petitioner shall be eligible to submit a request for a static vegetation line exception after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static vegetation line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner, including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static vegetation line exception in accordance with 15A NCAC

07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static vegetation line exception request shall be made in writing by the petitioner. A complete static vegetation line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre- and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 30 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static vegetation line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static vegetation line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static vegetation line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. March 23, 2009;

Amended Eff. April 1, 2016.

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

(a) Any local government, group of local governments involved in a regional beach fill project, or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an owner's association defined in G.S. 47F-1-103(3) that has authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

(b) A development line request applies to the entire large-scale project area as defined in 15A NCAC 07H .0305(a)(7), and at the petitioner's request may be extended to include the entire oceanfront jurisdiction or legal boundary of the petitioner.

(c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction.

(d) An existing structure that is oceanward of an approved development line may remain in place until damaged greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward of the development line, and shall meet the applicable ocean hazard setback requirements as defined in 15A NCAC 07H .0306(a).

(e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall include the following:

- (1) A detailed survey of the development line using on-ground observation and survey, or aerial imagery along the oceanfront jurisdiction or legal boundary; any local regulations associated with the development line; a record of local adoption of the development line by the petitioner; and documentation of incorporation of development line into local ordinances or rules and regulations of an owner's association.
- (2) The survey shall include the development line and static vegetation line.
- (3) Surveyed development line spatial data in a geographic information systems (GIS) format referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include Federal Geographic Data Committee (FGDC) compliant metadata.

(f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a change or reestablishment of the position of the development line.

(g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development line request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124; Eff. April 1, 2016.

15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

(a) At the meeting that the development line request is considered by the Coastal Resources Commission, the following shall occur:

- (1) A representative for the petitioner shall orally present the request described in Rule .1301 of this Section. The Chairman of the Coastal Resources Commission may limit the time allowed for oral presentations based upon the number of speakers wishing to present.
- (2) Additional persons may provide written or oral comments relevant to the development line request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments based upon the number of speakers wishing to speak.

(b) The Coastal Resources Commission shall approve a development line request if the request contains the information required and meets the standards set forth in Rule .1301 of this Section.

(c) The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(d) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-123; 113A-124; Eff. April 1, 2016.

15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

A list of development lines in place for petitioners and any conditions under which the development lines exist in accordance with 15A NCAC 07J .1300, including the date(s) the development lines were approved, shall be maintained by the Division of

Coastal Management. The list of development lines shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557, during business hours or on the Division's website nccoastalmanagement.net.

History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124; Eff. April 1, 2016.

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS

(a) Depredation permits allow the taking of undesirable or excess wildlife resources as described in Subparagraphs (1) and (2) of this Paragraph. Only employees of the Wildlife Resources Commission and Wildlife Damage Control Agents may issue depredation permits. Each permit shall be written on a form supplied by the Commission. No permit is needed for the owner or lessee of a property to take wildlife while committing depredations on the property; however the manner of taking, disposition of dead wildlife, and reporting requirements as described in this Rule still apply.

No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0105 and for alligators. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species that may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102. Depredation permits for other species shall be issued under the following conditions:

- (1) for taking wildlife that is or has been damaging or destroying property provided there is evidence of property damage. No permit may be issued for the taking of any migratory birds and other federally-protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit, if required, has been issued. The permit shall name the species allowed to be taken and may contain limitations as to age, sex, or any other condition within the species so named. The permit shall be issued to a landholder or an authorized representative of a unit of local government for depredations on public property; and the permit shall be used only by individuals named on the permit.
- (2) for taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. Cities as defined in G.S. 160A-1(2) seeking such a depredation permit shall apply to the Executive Director using a form supplied

by the Commission requesting the following information:

- (A) the name and location of the city;
- (B) the acreage of the affected property;
- (C) a map of the affected property;
- (D) the signature of an authorized city representative;
- (E) the nature of the overabundance or the threat to public safety; and
- (F) a description of previous actions taken by the city to ameliorate the problem.

(b) **Wildlife Damage Control Agents:** Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques, and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual with no record of wildlife law violations may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of 85 percent or better on a written examination provided by a representative of the Wildlife Resources Commission, in cooperation with the training course provider, shall be approved. Those persons failing to obtain a passing score shall be given one chance for re-testing without re-taking the course. Those persons approved as agents by the Commission may then issue depredation permits for depredation as defined in Subparagraph (a)(1) of this Rule to landholders and be listed as a second party to provide the control service. WDCAs may not issue depredation permits for coyotes in the counties of Beaufort, Dare, Hyde, Tyrrell, Washington; big game animals; bats; or species listed as endangered, threatened, or special concern under 15A NCAC 10I .0103, .0104 and .0105 of this Chapter. WDCAs shall report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records shall be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. WDCA status shall be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, each WDCA shall renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws, and safe, humane wildlife handling techniques within the previous 12 months or agency approved continuing education credits.

(c) Each depredation permit shall have an expiration date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and shall be retained as long as the wildlife resource is in the permittee's possession. All individuals taking wildlife resources under the authority of a depredation permit are obligated to the conditions written on the permit and the requirements specified in this Rule.

(d) **Manner of Taking:**

(1) **Taking Without a Permit.** Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season, such depredating wildlife may be taken without a permit only by the use of firearms or archery equipment as defined in 15A NCAC 10B .0116.

(2) **Taking With a Permit.** Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps shall be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping restrictions that may be contained in the permit, the method of trapping shall be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, G.S. 143, Article 52, the Structural Pest Control Act of 1955, G.S. 106, Article 4C, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another except when the individual is listed as a second party on a depredation permit.

(3) **Intentional Wounding.** It is unlawful for any landholder, with or without a depredation permit, intentionally to wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

(e) **Disposition of Wildlife Taken:**

(1) **Generally.** Except as provided by Subparagraphs (e)(2) through (5) of this Paragraph, any wildlife killed without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit shall have the depredation permit in his or her possession. Except as provided by Subparagraphs of (e)(2) through (5) of this Rule, all wildlife killed under a depredation

permit shall be buried or otherwise disposed of as stated on the permit.

- (2) Deer and feral swine. The edible portions of feral swine and deer may be retained by the landholder for consumption but shall not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of the feral swine and deer taken under the depredation permit. The receiver of the edible portions shall hold a copy of the depredation permit. The nonedible portions of any deer carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition.
- (3) Fox. Any fox killed under a depredation permit may be disposed of as described in Subparagraph (1) of this Paragraph or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer.
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license; provided further that, bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.
- (5) Animals Taken Alive. Wild animals in the order Carnivora, armadillos, groundhogs, nutria, and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Feral swine shall be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal shall be euthanized or released on property with permission of the landowner. When the relocation site is public property, written permission shall be obtained from an appropriate local, state, or federal official before any animal may be released. Animals transported or held for euthanasia shall be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit shall have the depredation permit in his or her possession.

(f) Reporting Requirements. Any landholder who kills an alligator; a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, or Washington; deer; Canada goose; bear; or wild turkey under a valid depredation permit shall report such kill on the form

provided with the permit and mail the form upon the expiration date to the Wildlife Resources Commission. Any landowner who kills a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington shall report such kill as directed on the form provided with the depredation permit. The killing and method of disposition of every alligator and bear, or coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, or Washington taken without a permit shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing.

History Note: Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337; Eff. February 1, 1976; Amended Eff. August 1, 2013; January 1, 2012; August 1 2010; July 1, 2010; May 1, 2008; August 1, 2002; July 1, 1997; July 1, 1995; January 1, 1995; January 1, 1992; August 1, 1990. Temporary Amendment Eff. August 1, 2014 and shall remain in effect until amendments expire as specified in G.S. 150B-21.1(d) or the United States District Court for the Eastern District of North Carolina's court order number 2:13-CV-60-BOs signed on May 13, 2014 is rescinded, whichever date is earlier. The court order is available at www.ncwildlife.org; Temporary Amendment Eff. February 27, 2015; Amended Eff. May 1, 2016.

15A NCAC 10B .0107 BLACK BEAR

It is unlawful to take or possess a female bear with a cub or cubs at its side, or to take or possess a cub bear. For the purpose of this Rule, a cub bear is defined as any bear weighing less than 75 pounds.

History Note: Authority G.S. 113-134; 113-291.2; 113-291.7; Eff. February 1, 1976; Amended Eff. August 1, 2016; June 1, 2005; July 1, 1985.

15A NCAC 10B .0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums, and raccoon that have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0402, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossums, and raccoon killed accidentally or taken by hunting for control of depredations shall be permitted under the conditions set forth in 15A NCAC 10B.0106(e)(4) and 15A NCAC 10B .0127.

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

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

(d) The pelt or feathers of deer, elk, fox, pheasant, quail, rabbit, or squirrel (fox and gray) may be bought or sold for the purpose of making fishing flies provided that the source of these animals

may be documented as being legally obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with 50 C.F.R. 20.91 which is hereby incorporated by reference, including subsequent amendments and editions (<https://www.gpo.gov/fdsys/granule/CFR-2000-title50-voll1/CFR-2000-title50-voll1-sec20-91>).

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

(f) Raw hides from any lawfully-taken or possessed white-tailed deer may be sold.

History Note: Authority G.S. 113-134; 113-273; 113-274; 113-276.2; 113-291.3; 113-337; 50 C.F.R. 20.91; Eff. November 9, 1980; Amended Eff. May 1, 2014; August 1, 2002; April 1, 1991; February 1, 1990; Temporary Amendment Eff. February 27, 2015; Temporary Amendment Expired Eff. December 11, 2015; Amended Eff. May 1, 2016.

15A NCAC 10B .0201 PROHIBITED TAKING AND MANNER OF TAKE

(a) It is unlawful for any person to take, or have in possession, any wild animal or wild bird listed in this Section except during the open seasons and in accordance with the limits herein prescribed, or as prescribed by 15A NCAC 10B .0300 pertaining to trapping or 15A NCAC 10D applicable to game lands managed by the Wildlife Resources Commission, unless otherwise permitted by law. Lawful seasons and bag limits for each species apply beginning with the first day of the listed season and continue through the last day of the listed season, with all dates being included. When any hunting season ends on a January 1 that falls on a Sunday, that season shall be extended to Monday, January 2.

(b) On Sundays, hunting on private lands shall be allowed under the following conditions:

- (1) archery equipment as described in 15A NCAC 10B .0116, falconry, and dogs where and when allowed the other days of the week are lawful methods of take, except as prohibited in G.S. 103-2;
- (2) firearms are lawful methods of take when used as described in G.S. 103-2; and
- (3) migratory game birds may not be taken.

(c) On Sundays, hunting on public lands is allowed with the following restrictions:

- (1) only falconry and dogs used in conjunction with falconry are lawful methods of take; and
- (2) migratory game birds may not be taken.

These restrictions do not apply to military installations under the exclusive jurisdiction of the federal government.

(d) Those animals not classified as game animals in G.S. 113-129(7c), and for which a season is set under this Section, may be

taken during the hours and methods authorized for taking game animals.

(e) Where local laws govern hunting, or are in conflict with this Subchapter, the local law shall prevail.

History Note: Authority G.S. 103-2; 113-291.1(a); 113-134; 113-291.2; 113-291.3; Eff. February 1, 1976; Amended Eff. May 1, 2016; August 1, 2012; July 10, 2010; July 1, 1996; July 1, 1987.

15A NCAC 10B .0202 BEAR

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

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of Surry, Wilkes, Caldwell, Burke, and Cleveland counties.
- (2) Second Monday in November to January 1 in all of Bladen, Carteret, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender, and Sampson counties.
- (3) First Monday in December to the third Saturday thereafter in Brunswick, Columbus, and Robeson counties.
- (4) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Camden, Chowan, Craven, Dare, Edgecombe, Greene, Halifax, Hyde, Jones, Lenoir, Martin, Nash, Northampton, Pasquotank, Pitt, Tyrrell, Washington, Wayne, and Wilson counties.
- (5) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Currituck, Gates, Hertford, and Perquimans counties.
- (6) Concurrent with the open season for all lawful weapons for hunting deer as specified in 15A NCAC 10B .0203(a)(1) in Alamance, Alexander, Anson, Cabarrus, Caswell, Catawba, Chatham, Davie, Davidson, Durham, Franklin, Forsyth, Gaston, Granville, Guilford, Harnett, Hoke, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Montgomery, Moore, Orange, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, Warren, Wake, and Yadkin counties.

(b) Restrictions

- (1) For purposes of this Paragraph, "bait" means any natural, unprocessed food product that is a grain, fruit, nut, vegetable, or other material harvested from a plant crop that is not modified from its raw components.
- (2) Bears shall not be taken with the use or aid of:
 - (A) any processed food product as defined in G.S. 113-294(r), any animal, animal

- (B) part or product, salt, salt lick, honey, sugar, sugar-based material, syrups, candy, pastry, gum, candy block, oils, spices, peanut butter, or grease;
 - (B) any extracts of substances identified in Part (A) of this Subparagraph;
 - (C) any substances modified by substances identified in Part (A) of this Subparagraph, including any extracts of those substances; or
 - (D) any bear bait attractant, including sprays, aerosols, scent balls, and scent powders.
- (3) Bears may be taken with the aid of bait from the first open Monday through the following Saturday only in the counties in Subparagraphs (a)(1) through (a)(5) of this Rule. In counties with a season split into two or more segments, this Subparagraph applies only to the first segment.
- (4) Bears shall not be taken while in the act of consuming bait.
- (5) Bears may be taken with the aid of bait during the entire open season in the counties identified in Subparagraph (a)(6) of this Rule.
- (6) Hunters shall not take bears using dogs in the following counties: Alamance south of Interstate 85, Anson west of N.C. Hwy 742, Cabarrus, Chatham, Davie, Davidson, Franklin, Forsyth, Gaston, Guilford, Lee, Lincoln, Mecklenburg, Montgomery, Orange south of Interstate 85, Randolph, Rockingham, Rowan, Stanly, Union, and Wake south of N.C. Hwy 98. In all other counties and parts of counties, hunters may take bears using dogs and may release dogs in the vicinity of bait.
- (c) No Open Season. There is no open season in those parts of counties included in the following posted bear sanctuaries:
- Avery, Burke, and Caldwell counties--Daniel Boone bear sanctuary except by permit only
 - Beaufort, Bertie, and Washington counties--Bachelor Bay bear sanctuary
 - Bladen County--Suggs Mill Pond bear sanctuary
 - Brunswick County--Green Swamp bear sanctuary
 - Buncombe, Haywood, Henderson, and Transylvania counties--Pisgah bear sanctuary
 - Carteret, Craven, and Jones counties--Croatan bear sanctuary
 - Clay County--Fires Creek bear sanctuary
 - Columbus County--Columbus County bear sanctuary
 - Currituck County--North River bear sanctuary
 - Dare County--Bombing Range bear sanctuary except by permit only
 - Haywood County--Harmon Den bear sanctuary
 - Haywood County--Sherwood bear sanctuary
 - Hyde County--Gull Rock bear sanctuary
 - Hyde County--Pungo River bear sanctuary
 - Jackson County--Panthertown-Bonas Defeat bear sanctuary

- Macon County--Standing Indian bear sanctuary
- Macon County--Wayah bear sanctuary
- Madison County--Rich Mountain bear sanctuary
- McDowell and Yancey counties--Mt. Mitchell bear sanctuary except by permit only
- Mitchell and Yancey counties--Flat Top bear sanctuary
- Wilkes County--Thurmond Chatham bear sanctuary

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

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

History Note: Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.7; 113-305; Eff. February 1, 1976; Amended Eff. July 1, 1998; September 1, 1995; July 1, 1995; July 1, 1994; April 14, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2002; Amendment Eff. August 1, 2002; Temporary Amendment Eff. September 1, 2003; Temporary Amendment Expired Eff. December 27, 2003; Amended Eff. August 1, 2016; August 1, 2015; August 1, 2014; August 1, 2012; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

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

- (a) Open Seasons (All Lawful Weapons) for hunting deer:
- (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:
 - (A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties. *Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline. **Refer to 15A NCAC 10D .0103(h) for seasons on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
 - (B) Saturday before Thanksgiving through January 1 in all of Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln,

Stokes, Surry, Watauga, Wilkes*, and Yadkin counties.

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

- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, and Yancey counties.
 - (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties.
 - (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in that part of Hyde county known as Lake Mattamuskeet National Wildlife Refuge; in those parts of Dare and Hyde counties known as Alligator River National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
 - (F) Monday of Thanksgiving week through January 1 in all of Cleveland, Polk, and Rutherford counties, except for South Mountain Game Land.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in Parts (A), (B), (C), (D), (E), (F), and (G) of this Subparagraph: (Refer to 15A NCAC 10D .0103 for either-sex deer seasons on Game Lands). Deer of either sex may be taken during the open season identified in Part (H) of this Subparagraph.
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates, and

Pasquotank counties known as the Dismal Swamp National Wildlife Refuge; in those parts of Hyde, Tyrrell, and Washington counties known as the Pocosin Lakes National Wildlife Refuge; in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge; and in those parts of Currituck County known as the Currituck National Wildlife Refuge and the Mackay Island National Wildlife Refuge.

- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either-sex deer hunts. First Saturday in October for youth either-sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission; the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission. A youth is defined as a person under 16 years of age.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe*, Haywood, Henderson, Madison, and Transylvania counties. ***Except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280
**Refer to 15A NCAC 10D .0103 for either-sex deer seasons on game lands that differ from the days identified in this Subparagraph

- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Avery, Burke, Caldwell, McDowell, Mitchell, and Yancey counties.
 - (F) The first six open days and the last seven open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland, Polk, and Rutherford counties.
 - (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln, and Gaston counties and in the following parts of counties: Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and Henderson; That part east of NC 191 and north and west of NC 280.
 - (H) The fourth Saturday in September, subject to the following restriction: only persons under the age of 16 years may hunt.
- (b) Open Seasons (Bow and Arrow) for hunting deer:
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
 - (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
 - (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
 - (C) Saturday on or nearest September 10 to the Sunday prior to the opening of the blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule; and the Sunday immediately following the closing of blackpowder firearms and bow and arrow season identified in Part (c)(1)(C) of this Rule to the Sunday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland, Polk, and Rutherford counties.
 - (2) Restrictions
 - (A) Dogs may not be used for hunting deer during the bow and arrow season, except a single dog on a leash may be used to retrieve a wounded deer in accordance with G.S. 113-291.1(k).
 - (B) Only archery equipment of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.
- (c) Open Seasons (Blackpowder Firearms and Bow and Arrow) for hunting deer:
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with blackpowder firearms and bow and arrow during the following seasons:
 - (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
 - (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.
*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
 - (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland, Polk, and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers

specified by Part C of Subparagraph (a)(1) of this Rule.

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

(2) Restrictions

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

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

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

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the State, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.
- (2) Participation. Cities that intend to participate in the urban season shall send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee at 1722 Mail Service Center, Raleigh, N.C. 27699-1722. Cities must also submit a map of the city's boundaries within which the urban season shall apply.

(3) Restrictions:

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

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

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;

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

Amended Eff. August 1, 2016; August 1, 2015; August 1, 2014; August 1, 2013; August 1, 2012; August 1, 2011; July 10, 2010; June 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10B .0225 ELK

- (a) The season for taking elk by hunting shall be October 1 to November 1.
- (b) Hunting elk shall be by permit only.
- (c) The bag limit shall be one per permit.
- (d) Elk may be taken by any legal weapon as defined in G.S. 113-291.1.

History Note: Authority G.S. 113-134; 113-291; 113-291.1; 113-291.2; Eff. August 1, 2016.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

- (a) For purposes of this Rule, the following definitions apply:
 - (1) "Natural bait" means any living or dead organism (plant or animal), or parts thereof, or prepared substances designed to attract fish by the sense of taste or smell.
 - (2) "Artificial lure" means a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell.
 - (3) "Youth anglers" are individuals under 16 years of age.
- (b) For purposes of this Rule, 15A NCAC 10C .0316, and 15A NCAC 10D .0104, the following classifications apply:
 - (1) "Public Mountain Trout Waters" are all waters included in this Rule and so designated in 15A NCAC 10D .0104.
 - (2) "Catch and Release/Artificial Flies Only Trout Waters" are Public Mountain Trout Waters where only artificial flies having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
 - (3) "Catch and Release/Artificial Lures Only Trout Waters" are Public Mountain Trout Waters where only artificial lures having one single hook may be used. No trout may be possessed or harvested while fishing these streams. Waters designated as such include tributaries unless otherwise noted.
 - (4) "Delayed Harvest Trout Waters" are Public Mountain Trout Waters where between October 1 and one-half hour after sunset on the Friday before the first Saturday of the following June it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing. From 6:00 a.m. on the first Saturday in June until noon that same day only youth anglers may fish

- (5) "Hatchery Supported Trout Waters" are Public Mountain Trout Waters that have no bait or lure restrictions. Waters designated as such do not include tributaries unless otherwise noted.
 - (6) "Special Regulation Trout Waters" are Public Mountain Trout Waters where watercourse-specific regulations apply. Waters designated as such do not include tributaries unless otherwise noted.
 - (7) "Wild Trout Waters" are Public Mountain Trout Waters which are identified as such in this Rule or 15A NCAC 10D .0104. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing these waters. Waters designated as such do not include tributaries unless otherwise noted.
 - (8) "Wild Trout Waters/Natural Bait" are Public Mountain Trout Waters where all artificial lures and natural baits, except live fish, may be used provided they are fished using only one single hook. Waters designated as such include tributaries unless otherwise noted.
 - (9) "Undesignated Waters" are all other waters in the State. These waters have no bait or lure restrictions. Trout may not be possessed while fishing these waters from March 1 until 7:00 a.m. on the first Saturday in April.
- (c) Seasons, creel and size limits. Seasons, creel and size limits for trout in all waters are listed in Rule .0316 of this Subchapter.
 - (d) Classifications. This Paragraph designates waters in each county that have a specific classification. Waters on game lands are so designated in 15A NCAC 10D .0104, unless otherwise indicated in this Paragraph. All other waters are classified as Undesignated Waters.
 - (1) Alleghany
 - (A) Delayed Harvest Trout Waters are as follows:
Little River (S.R. 1133 bridge to 275 yards downstream of the intersection of S.R. 1128 and S.R. 1129 [marked by a sign on each bank])
 - (B) Hatchery Supported Trout Waters are as follows:
Big Pine Creek
Bledsoe Creek
Brush Creek (N.C. 21 bridge to confluence with Little River, except where posted against trespassing)
Cranberry Creek
(Big) Glade Creek
Little River (275 yards downstream from the intersection of S.R. 1128 and

- S.R. 1129 [marked by a sign on each bank] to McCann Dam
- Meadow Fork
- Pine Swamp Creek
- Piney Fork
- Prathers Creek
- (C) Wild Trout Waters are as follows:
 - Big Sandy Creek (portion on Stone Mountain State Park)
 - Stone Mountain Creek (portion on Stone Mountain State Park)
- (2) Ashe County
 - (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 - Big Horse Creek (Virginia state line to Mud Creek at S.R. 1363, excluding tributaries)
 - (B) Delayed Harvest Trout Waters are as follows:
 - Big Horse Creek (S.R. 1324 bridge to North Fork New River)
 - Helton Creek (Virginia state line to New River)
 - South Fork New River (upstream end of Todd Island to the SR 1351 bridge)
 - Trout Lake
 - (C) Hatchery Supported Trout Waters are as follows:
 - Beaver Creek (N.C. 221 to South Fork New River)
 - Big Horse Creek (Mud Creek at S.R. 1363 to S.R. 1324 bridge)
 - Big Laurel Creek (S.R. 1315 bridge to confluence with North Fork New River)
 - Buffalo Creek (S.R. 1133 bridge to N.C. 194-88 bridge)
 - Cranberry Creek (Alleghany Co. line to South Fork New River)
 - Nathans Creek
 - North Fork New River (Watauga Co. line to Sharp Dam)
 - Old Fields Creek (N.C. 221 to South Fork New River)
 - Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 - Roan Creek
 - Three Top Creek
- (3) Avery County
 - (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
 - Elk River (portion on Lees-McRae College property, excluding the millpond)
 - Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 - Wilson Creek (game land portion)
- (C) Hatchery Supported Trout Waters are as follows:
 - Boyde Coffey Lake
 - Elk River (S.R. 1305 crossing immediately upstream of Big Falls to the Tennessee state line)
 - Linville River (Land Harbor line [below dam] to the Blue Ridge Parkway boundary line, except where posted against trespassing)
 - Milltimber Creek
 - North Toe River — upper (Watauga St. to Roby Shoemaker Wetlands and Family Recreational Park, except where posted against trespassing)
 - North Toe River — lower (S.R. 1164 to Mitchell Co. line, except where posted against trespassing)
 - Squirrel Creek
 - Wildcat Lake
- (D) Wild Trout Waters are as follows:
 - Birchfield Creek
 - Cow Camp Creek
 - Cranberry Creek (headwaters to U.S. 19E/N.C. 194 bridge)
 - Gragg Prong
 - Horse Creek
 - Kentucky Creek
 - North Harper Creek
 - Plumtree Creek
 - Roaring Creek
 - Rockhouse Creek
 - Shawneehaw Creek (portion adjacent to Banner Elk Greenway)
 - South Harper Creek
 - Webb Prong
- (4) Buncombe County
 - (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 - Carter Creek (game land portion)
 - (B) Hatchery Supported Trout Waters are as follows:
 - Bent Creek (headwaters to N.C. Arboretum boundary line)
 - Cane Creek (headwaters to S.R. 3138 bridge)
 - Corner Rock Creek (Little Andy Creek to confluence with Walker Branch)
 - Dillingham Creek (Corner Rock Creek to Ivy Creek)
 - Ivy Creek (Ivy River) (Dillingham Creek to U.S. 19-23 bridge)
 - Lake Powhatan

- Reems Creek (Sugar Camp Fork to U.S. 19-23 bridge, except where posted against trespassing)
 Rich Branch (downstream from the confluence with Rocky Branch)
 Stony Creek
 Swannanoa (S.R. 2702 bridge near Ridgecrest to Wood Avenue bridge [intersection of N.C. 81 and U.S. 74A in Asheville], except where posted against trespassing)
- (5) **Burke County**
- (A) Catch and Release/Artificial Lures
 Only Trout Waters are as follows:
 Henry Fork (portion on South Mountains State Park)
- (B) Delayed Harvest Trout Waters are as follows:
 Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Hatchery Supported Trout Waters are as follows:
 Carroll Creek (game land portion above S.R. 1405)
 Henry Fork (lower South Mountain State Park line downstream to S.R. 1919 at Ivy Creek)
 Linville River portion within Linville Gorge Wilderness area and portion below Lake James powerhouse from upstream bridge on S.R. 1223 to Muddy Creek)
- (D) Special Regulation Trout Waters are as follows:
 Catawba River (Muddy Creek to City of Morganton water intake dam)
- (E) Wild Trout Waters are as follows:
 All waters located on South Mountains State Park, except those waters identified in parts A and B of this Subparagraph
- (6) **Caldwell County**
- (A) Delayed Harvest Trout Waters are as follows:
 Wilson Creek (game land portion below Lost Cove Creek to Philips Branch)
- (B) Hatchery Supported Trout Waters are as follows:
 Boone Fork Pond
 Buffalo Creek (mouth of Joes Creek to McCloud Branch)
 Joes Creek (first falls upstream of S.R. 1574 to confluence with Buffalo Creek)
 Wilson Creek (Phillips Branch to Brown Mountain Beach Dam, except where posted against trespassing)
- (7) **Cherokee County**
- (A) Hatchery Supported Trout Waters are as follows:
 Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 Hyatt Creek (Big Dam Branch to Valley River)
 Junaluska Creek (Ashturn Creek to Valley River)
 Shuler Creek (Joe Brown Hwy [S.R. 1325] bridge to Tennessee state line)
 Valley River (S.R. 1359 to U.S. 19 Business bridge in Murphy)
- (B) Wild Trout Waters/Natural Bait are as follows:
 Bald Creek (game land portion)
 Dockery Creek (game land portion)
 North Shoal Creek (game land portion)
- (8) **Clay County**
- (A) Delayed Harvest Trout Waters are as follows:
 Fires Creek (USFS Rd. 340A to the foot bridge in the USFS Fires Creek Picnic Area)
- (B) Hatchery Supported Trout Waters are as follows:
 Buck Creek (game land portion downstream of U.S. 64 bridge)
 Fires Creek (foot bridge in the USFS Fires Creek Picnic Area to S.R. 1300)
 Tusquitee Creek (Compass Creek to lower S.R. 1300 bridge)
- (9) **Graham County**
- (A) Delayed Harvest Trout Waters are as follows:
 (Big) Snowbird Creek (USFS footbridge at the old railroad junction to USFS Rd. 2579)
- (B) Hatchery Supported Trout Waters are as follows:
 Calderwood Reservoir (Cheoah Dam to Tennessee state line)
 Cheoah Reservoir
 Panther Creek (confluence of Stand Creek and Rock Creek to Lake Fontana)
 Santeetlah Creek (Johns Branch to Lake Santeetlah)
- (C) Wild Trout Waters are as follows:
 Buffalo Creek (Watauga Co. line to Long Ridge Branch including game land tributaries)
 Joes Creek (Watauga Co. line to first falls upstream of the end of S.R. 1574)
 Rockhouse Creek
- Yadkin River (Happy Valley Ruritan Community Park to S.R. 1515)

- (Big) Snowbird Creek (USFS Road 2579 to S.R. 1127 bridge)
- Stecoah Creek (upper game land boundary to Lake Fontana)
- Tulula Creek (S.R. 1201 to lower bridge on S.R. 1275)
- West Buffalo Creek
- Yellow Creek (Lake Santeetlah hydropower pipeline to Cheoah River)
- (C) Wild Trout Waters are as follows:
 - Little Buffalo Creek
 - South Fork Squally Creek
 - Squally Creek
- (D) Wild Trout Waters/Natural Bait are as follows:
 - Deep Creek
 - Franks Creek
 - Long Creek (game land portion)
- (10) Haywood County
 - (A) Delayed Harvest Trout Waters are as follows:
 - West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
 - (B) Hatchery Supported Trout Waters are as follows:
 - Cold Springs Creek (Fall Branch to Pigeon River)
 - Jonathan Creek (upstream S.R. 1302 bridge to Pigeon River, except where posted against trespassing)
 - Pigeon River (Stamey Cove Branch to upstream U.S. 19-23 bridge)
 - Richland Creek (Russ Avenue [U.S. 276] bridge to U.S. 19 bridge)
 - West Fork Pigeon River (Tom Creek to Queen Creek, including portions on game lands, except Middle Prong)
 - (C) Wild Trout Waters/Natural Bait are as follows:
 - Hemphill Creek
 - Hurricane Creek
- (11) Henderson County
 - (A) Delayed Harvest Trout Waters are as follows:
 - North Fork Mills River (game land portion below the Hendersonville watershed dam)
 - (B) Hatchery Supported Trout Waters are as follows:
 - (Rocky) Broad River (end of S.R. 1611 to Rutherford County line)
 - Cane Creek (railroad bridge upstream of S.R. 1551 bridge to U.S. 25 bridge)
 - Clear Creek (Laurel Fork to S.R. 1582)
 - Green River (Lake Summit powerhouse to game land boundary)
 - (Big) Hungry River
- (12) Jackson County
 - (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 - Flat Creek
 - Tuckasegee River (upstream from the Clark property)
 - (B) Delayed Harvest Trout Waters are as follows:
 - Tuckasegee River (downstream N.C. 107 bridge to the falls located 275 yards upstream of the U.S. 23-441 bridge [marked by a sign on each bank])
 - (C) Hatchery Supported Trout Waters are as follows:
 - Balsam Lake
 - Bear Creek Lake
 - Cedar Cliff Lake
 - Cullowhee Creek (Tilley Creek to Tuckasegee River)
 - Dark Ridge Creek (Jones Creek to Scott Creek)
 - Greens Creek (Greens Creek Baptist Church on S.R. 1370 to Savannah Creek)
 - Savannah Creek (Shell Branch to Cagle Branch)
 - Scott Creek (Dark Ridge Creek to Tuckasegee River, except where posted against trespassing)
 - Tanasee Creek Lake
 - Tuckasegee River — upper (John Brown Branch to the downstream N.C. 107 bridge)
 - Tuckasegee River — lower (falls located 275 yards upstream of U.S. 23-441 bridge [marked by a sign on each bank] to S.R. 1534 bridge at Wilmot)
 - Wolf Creek Lake
 - (D) Wild Trout Waters are as follows:
 - Gage Creek
 - North Fork Scott Creek
 - Tanasee Creek
 - Whitewater River (downstream from Silver Run Creek to South Carolina state line)
 - Wolf Creek (except Balsam Lake and Wolf Creek Lake)
 - (E) Wild Trout Waters/Natural Bait are as follows:
 - Buff Creek
 - Chattooga River (S.R. 1100 bridge to the South Carolina state line)
 - Lower Fowler Creek (game land portion)
 - Scotsman Creek (game land portion)
- (13) Macon County
 - (A) Delayed Harvest Trout Waters are as follows:

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

- Little Rock Creek (Green Creek bridge to Big Rock Creek, except where posted against trespassing)
 North Toe River (Avery Co. line to S.R. 1121 bridge)
- (C) Wild Trout Waters are as follows:
 Green Creek (headwaters to Green Creek bridge, except where posted against trespassing)
 Little Rock Creek (above Green Creek bridge, including all tributaries, except where posted against trespassing)
 Wiles Creek (game land boundary to mouth)
- (17) Polk County
 (A) Delayed Harvest Trout Waters are as follows:
 Green River (Fishtop Falls Access Area to the confluence with Cove Creek)
 (B) Hatchery Supported Trout Waters are as follows:
 Green River (Mouth of Cove Creek to the natural gas pipeline crossing)
 North Pacolet River (Joels Creek to N.C. 108 bridge)
- (18) Rutherford County
 (A) Hatchery Supported Trout Waters are as follows:
 (Rocky) Broad River (Henderson Co. line to U.S. 64/74 bridge, except where posted against trespassing)
- (19) Stokes County
 (A) Hatchery Supported Trout Waters are as follows:
 Dan River (Virginia state line downstream to a point 200 yards below the end of S.R. 1421)
- (20) Surry County
 (A) Delayed Harvest Trout Waters are as follows:
 Ararat River (portion adjacent to the Ararat River Greenway)
 Mitchell River (.6 mile upstream of the end of S.R. 1333 to the S.R. 1330 bridge below Kapps Mill Dam)
 (B) Hatchery Supported Trout Waters are as follows:
 Ararat River (S.R. 1727 bridge downstream to the N.C. 103 bridge)
 Big Elkin Creek (dam 440 yards upstream of N.C. 268 bridge to a point 265 yards downstream of N.C. 268 [marked by a sign on each bank])
 Fisher River (Cooper Creek) (Virginia state line to I-77 bridge)
 Little Fisher River (Virginia state line to N.C. 89 bridge)
- (21) Swain County
 (A) Delayed Harvest Waters Trout Waters are as follows:
 Tuckasegee River (U.S. 19 bridge to Slope Street bridge)
 (B) Hatchery Supported Trout Waters are as follows:
 Alarka Creek (game land boundary to Fontana Reservoir)
 Calderwood Reservoir (Cheoah Dam to Tennessee state line)
 Cheoah Reservoir
 Connelly Creek (Camp Branch to Tuckasegee River)
 Deep Creek (Great Smoky Mountains National Park Boundary line to Tuckasegee River)
 Nantahala River (Macon Co. line to existing Fontana Lake water level)
- (22) Transylvania County
 (A) Catch and Release/Artificial Flies Only Trout Waters are as follows:
 Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
 (B) Delayed Harvest Waters Trout Waters are as follows:
 East Fork French Broad River (Glady Fork to French Broad River)
 Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
 (C) Hatchery Supported Trout Waters are as follows:
 Davidson River (Avery Creek to lower USFS boundary)
 French Broad River (confluence of North Fork French Broad River and West Fork) French Broad River to the Island Ford Rd. [S.R. 1110] Access Area
 Middle Fork French Broad River (upstream U.S. 178 bridge to French Broad River)
 West Fork French Broad River (Camp Cove Branch to confluence with North Fork French Broad River)
 (D) Wild Trout Waters are as follows:
 All waters located on Gorges State Park
 Whitewater River (downstream from Silver Run Creek to South Carolina state line)
- Lovills Creek (U.S. 52 Business bridge to Ararat River)
 Pauls Creek (Virginia state line to .3 miles below S.R. 1625 bridge)

- (E) Wild Trout Waters/Natural Bait are as follows:
 North Fork French Broad River (game land portion downstream of S.R. 1326)
 Thompson River (S.R. 1152 to South Carolina state line, except where posted against trespassing)
- (23) Watauga County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Dugger Creek (portions on Blue Ridge Mountain Club)
 Laurel Creek (portions on Blue Ridge Mountain Club and Powder Horn Mountain Development)
 Pond Creek (headwaters to Locust Ridge Rd. bridge, excluding the pond adjacent to Coffee Lake)
- (B) Delayed Harvest Trout Waters are as follows:
 Lake Coffey
 Watauga River (adjacent to intersection of S.R. 1557 and S.R. 1558 to N.C. 105 bridge and S.R. 1114 bridge to N.C. 194 bridge at Valle Crucis)
- (C) Hatchery Supported Trout Waters are as follows:
 Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of S.R. 1201 and S.R. 1203)
 Beech Creek
 Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)
 Buckeye Creek Reservoir
 Cove Creek (S.R. 1233 bridge at Zionville to S.R. 1233 bridge at Amantha)
 Dutch Creek (second bridge on S.R. 1134 to mouth)
 Elk Creek (S.R. 1510 bridge at Triplett to Wilkes Co. line, except where posted against trespassing)
 Laurel Creek (S.R. 1123 bridge at S.R. 1157 intersection to Watauga River)
 Meat Camp Creek (S.R. 1340 bridge at S.R. 1384 intersection to N.C. 194)
 Middle Fork New River (Lake Chetola dam to South Fork New River)
 Norris Fork Creek
 South Fork New River (canoe launch 70 yards upstream of U.S. 421 bridge to lower boundary of Brookshire Park)
 Stony Fork (S.R. 1500 bridge at S.R. 1505 intersection to Wilkes Co. line)
- (D) Wild Trout Waters are as follows:
 Dutch Creek (headwaters to second bridge on S.R. 1134)
 Howard Creek
 Maine Branch (headwaters to North Fork New River)
 North Fork New River (from confluence with Maine and Mine branches to Ashe Co. line)
 Watauga River (Avery Co. line to S.R. 1580 bridge)
 Winkler Creek (lower bridge on S.R. 1549 to confluence with South Fork New River)
- (24) Wilkes County
- (A) Catch and Release/Artificial Lures Only Trout Waters are as follows:
 Dugger Creek (portions on Blue Ridge Mountain club)
 Harris Creek (portion on Stone Mountain State Park)
- (B) Delayed Harvest Trout Waters are as follows:
 East Prong Roaring River (Bullhead Creek downstream to Stone Mountain State Park lower boundary)
 Elk Creek — upper (Watauga Co. line to lower boundary of the Blue Ridge Mountain Club)
 Elk Creek — lower (portion on Leatherwood Mountains development)
 Reddies River (Town of North Wilkesboro water intake dam to confluence with the Yadkin River)
 Stone Mountain Creek (from falls at Alleghany Co. line to confluence with East Prong Roaring River and Bullhead Creek)
- (C) Hatchery Supported Trout Waters are as follows:
 Bell Branch Pond
 Cub Creek (.5 mile upstream of S.R. 2460 bridge to S.R. 1001 bridge)
 Darnell Creek (North Prong Reddies River) (downstream ford on S.R. 1569 to confluence with North Fork Reddies River)
 East Prong Roaring River (Stone Mountain State Park lower boundary to S.R. 1002 bridge)
 Fall Creek (S.R. 1300 bridge to confluence with South Prong Lewis Fork, except where posted against trespassing)
 Middle Fork Reddies River (Clear Prong) (headwaters to bridge on S.R. 1580)
 Middle Prong Roaring River (headwaters to bridge on S.R. 1736)

North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on S.R. 1559)

Pike Creek

Pike Creek Pond

South Fork Reddies River (S.R. 1355 bridge to confluence with Middle Fork Reddies River)

South Prong Lewis Fork (Fall Creek to S.R. 1155 bridge)

(D) Wild Trout Waters are as follows:

Big Sandy Creek (portion on Stone Mountain State Park)

Garden Creek (portion on Stone Mountain State Park)

Widow Creek (portion on Stone Mountain State Park)

(25) Yancey County

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

South Toe River (headwaters to Upper Creek)

Upper Creek

(B) Delayed Harvest Trout Waters are as follows:

Cane River (Blackberry Ridge Rd. to downstream boundary of Cane River County Park)

(C) Hatchery Supported Trout Waters are as follows:

Bald Mountain Creek (except where posted against trespassing)

Cane River (Bee Branch [S.R. 1110] to Bowlens Creek)

Price Creek (junction of S.R. 1120 and S.R. 1121 to Indian Creek)

South Toe River (Clear Creek to lower boundary line of Yancey Co. Recreation Park, except where posted against trespassing)

(D) Wild Trout Waters are as follows:

Cattail Creek (bridge at Mountain Farm Community Rd. to N.C. 197 bridge)

Lickskilllet Creek

Middle Creek (game land boundary to mouth)

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

Amended Eff. August 1, 2016; August 1, 2015; August 1, 2014; August 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10C .0305 BLACK BASS

(a) The daily creel limit for Largemouth, Smallmouth, and Spotted Bass — collectively known as Black Bass - is five fish, except in waters identified in Paragraphs (b), (c), and (d) of this Rule. There is no minimum size limit for these fish, but only two of them may be less than 14 inches except in waters identified in Paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k) and (l) of this Rule. There is no closed season, except for waters identified in Paragraph (l) of this Rule.

(b) In Lake Cammack in Alamance County, and Lake Holt in Granville County the daily creel limit for Largemouth Bass is 10 fish and no more than two fish greater than 14 inches may be possessed.

(c) In Lake Santeetlah in Graham County, there is no daily creel limit for Black Bass less than 14 inches. The daily creel limit for Black Bass greater than 14 inches is five fish.

(d) In Lake Chatuge in Clay County, the daily creel limit for Black Bass is 10 fish, the minimum size limit for Largemouth Bass is 12 inches, and there is no minimum size limit for Smallmouth Bass and Spotted Bass.

(e) The minimum size limit for Black Bass is 14 inches in the following:

- (1) Lake Raleigh in Wake County;
- (2) Lake Mattamuskeet and associated canals in Hyde County;
- (3) Pungo Lake in Washington and Hyde counties;
- (4) New Lake in Hyde County; and
- (5) Currituck, Roanoke, Croatan, Albemarle sounds, and all their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Chowan River, Yeopim River, Pasquotank River, Perquimans River, North River, Northwest River, Scuppernong River, and Alligator River (including the Alligator/Pungo Canal east of the NC Hwy 264/45 bridge).

(f) In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties, the minimum size limit for Largemouth Bass is 16 inches.

(g) In Lake Phelps in Tyrrell and Washington counties, the minimum size limit is 14 inches, and no fish between 16 and 20 inches may be possessed.

(h) In Shearon Harris Reservoir and Lake Hampton in Yadkin County, there is no minimum size limit for Black Bass, but only two Black Bass less than 14 inches and no Black Bass between 16 and 20 inches may be possessed.

(i) In Randleman Reservoir, there is no minimum size limit for Largemouth Bass, but only two Largemouth Bass less than 14 inches and only one Largemouth Bass greater than 20 inches may be possessed.

(j) In Lake Thom-A-Lex in Davidson County, the minimum size limit for Black Bass is 18 inches.

History Note: Authority G.S. 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 6/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003;

(k) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) there is no minimum size limit for Black Bass, but no fish between 14 and 22 inches in length may be possessed and only one Black Bass greater than 22 inches may be possessed.

(l) In Sutton Lake, the minimum size limit for Black Bass is 14 inches and no Black Bass may be possessed from December 1 through March 31.

(m) For purposes of this Rule, creel limits apply to Largemouth, Smallmouth, and Spotted Bass in aggregate unless otherwise specified.

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

Eff. February 1, 1976;

Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;

Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;

Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;

Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;

Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

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

Temporary Amendment Eff. November 1, 1998;

Amended Eff. April 1, 1999;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001;

Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];

Amended Eff. August 1, 2002 (approved by RRC in April 2002);

Temporary Amendment Eff. June 1, 2003;

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

Amended Eff. August 1, 2016; November 1, 2013; August 1, 2012; March 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; July 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

15A NCAC 10C .0306 CRAPPIE

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

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

(c) In Lake Chatuge in Clay County, the daily creel limit is 30 fish.

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

- (1) B. Everett Jordan Reservoir;
- (2) Roanoke River and its tributaries downstream of Roanoke Rapids dam;
- (3) Cashie River and its tributaries;

(4) Middle River and its tributaries; and

(5) Eastmost River and its tributaries.

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

- (1) Pee Dee River from Blewett Falls Dam to the South Carolina state line;
- (2) Badin Lake;
- (3) Falls Lake (Stanly and Montgomery counties);
- (4) Lake Tillery;
- (5) Blewett Falls Lake;
- (6) Lake Norman;
- (7) Lake Hycos;
- (8) Lake Ramseur;
- (9) Cane Creek Lake;
- (10) Lake Hampton (Yadkin County);
- (11) Tar River downstream of Tar River Reservoir Dam;
- (12) Neuse River downstream of Falls Lake Dam;
- (13) Haw River downstream of Jordan Lake Dam;
- (14) Deep River downstream of Lockville Dam;
- (15) Cape Fear River;
- (16) Waccamaw River downstream of Lake Waccamaw Dam;
- (17) Lumber River including Drowning Creek;
- (18) all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and waters listed in Paragraph (d) of this Rule; and
- (19) all public waters west of Interstate 77, except Lake Chatuge.

For waters in Subparagraphs (11) through (19), the restrictions apply to all tributaries.

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

Eff. November 1, 2013;

Amended Eff. August 1, 2016; August 1, 2015.

15A NCAC 10C .0314 STRIPED BASS

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

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

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

(d) In Lake Norman, Arrowhead Lake (Anson Co.), High Rock Pond (Caswell Co.), Moss Lake, Mountain Island Reservoir, Oak Hollow Lake, Lake Thom-A-Lex, Lake Townsend, and Salem

Lake the minimum size limit for Striped Bass and its hybrids is 16 inches.

(e) In Lake Chatuge in Clay County, the daily creel limit is 15 in the aggregate. There is no minimum size limit, but only two may be greater than 22 inches.

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

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

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

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

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

(k) In accordance with G.S. 113-292, the Executive Director may, by proclamation, suspend, or extend the hook-and-line season for Striped Bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

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

Eff. November 1, 2013;

Amended Eff. August 1, 2016; August 1, 2015; August 1, 2014.

15A NCAC 10C .0319 WHITE PERCH

(a) There is no daily creel limit and no minimum limit size for White Perch. There is no closed season for White Perch.

(b) In and west of Haywood, Buncombe, and Rutherford counties, it is unlawful to transport, possess, or release live White Perch.

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

Eff. November 1, 2013;

Amended Eff. August 1, 2016.

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

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

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.
- (2) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback) that are greater than six inches in length, or possess such herring regardless of origin in:
 - (A) Roanoke River downstream of Roanoke Rapids Dam;
 - (B) Tar River downstream of Rocky Mount Mill Dam;
 - (C) Neuse River downstream of Milburnie Dam;
 - (D) Cape Fear River downstream of Buckhorn Dam;
 - (E) Pee Dee River downstream of Blewett Falls Dam;
 - (F) Lumber River including Drowning Creek;
 - (G) all the tributaries to the rivers listed above; and
 - (H) all other inland fishing waters east of I-95.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir, Lake Wylie, and John H. Kerr Reservoir, except that one fish per day may be taken with archery equipment.
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
- (6) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits, and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations

issued by the Fisheries Director in adjacent joint or coastal fishing waters.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters is the same as the trout fishing season. Trout seasons are designated in 15A NCAC 10C .0316.

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

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

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

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

(f) The daily creel limit for blue catfish greater than 32 inches is one fish in the following reservoirs:

- (1) Lake Norman;
- (2) Mountain Island Lake;
- (3) Lake Wylie;
- (4) Badin Lake; and
- (5) Lake Tillery.

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

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992; Temporary Amendment Eff. December 1, 1994; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2002; July 1, 2001; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003); Amended Eff. August 1, 2016; August 1, 2015; August 1, 2014; August 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

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

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

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

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

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

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

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

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

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

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

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

History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 2000; July 1, 1998; July 1, 1993; July 1, 1992; May 1, 1992; July 1, 1989; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 18, 2002; Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003); Amended Eff. August 1, 2016; August 1, 2015; August 1, 2014; August 1, 2013; August 1, 2010; May 1, 2008; May 1, 2007; May 1, 2006.

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

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

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

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

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

are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.

- (6) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.
- (7) Restricted Deer Hunting Zone. On portions of game lands posted as "Restricted Deer Hunting Zones" the use of dogs for taking deer is prohibited, except as allowed by permit as provided in G.S. 113-264(d).
- (8) Day Use Only Zone. On portions of game lands posted as "Day Use Only Zones" for use by the general public shall be prohibited from sunset to sunrise.

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

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

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

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

No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, except shotgun shells containing lead buckshot may be used while deer hunting. Every individual carrying a concealed handgun shall adhere to the requirements set forth in G.S. 14-415.11, even if the state issuing the concealed handgun permit is not North Carolina. On Butner-Falls of Neuse, Jordan, Kerr Scott, and Vance game lands, no person shall possess loaded firearms, ammunition, bows and arrows, crossbows, or other weapons except as provided in the Code of Federal Regulations, Title 36, Chapter III, Part 327.13, and may be found at: [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=75b0c14fb2c26906cf64a267eb69b052&mc=true&node=se36.3.327_113&rgn=div8)

[idx?SID=75b0c14fb2c26906cf64a267eb69b052&mc=true&node=se36.3.327_113&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=75b0c14fb2c26906cf64a267eb69b052&mc=true&node=se36.3.327_113&rgn=div8), in accordance with G.S. 150B-21.6. On Buckhorn, Chatham, Harris, Hyco, Lee, Mayo, and Sutton Lake game lands; Pee Dee River Game Land north of U.S. 74; and that portion of R. Wayne Bailey- Caswell Game Land that is located north of U.S. 158 and east of N.C. 119, no person shall possess a firearm during closed hunting seasons or closed hunting days for game birds or game animals, except under the following conditions:

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

(e) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (4) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, running dogs, or training dogs using wildlife shall have in his or her possession a game lands license in addition to the appropriate hunting or trapping license, or a license that conveys the game land use privilege.
- (2) For commission-sanctioned field trials, active participants (as defined in 15A NCAC 10B .0114) in a field trial using wildlife shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege, except non-residents may substitute hunting licenses from their state(s) of residence.
- (3) For any other field trial using wildlife occurring on game lands, judges and active participants shall possess a game lands license in addition to the appropriate North Carolina hunting license, or a license that conveys the game land use privilege.
- (4) Exceptions:
 - (A) a person under 16 years of age may hunt on game lands on the license of his parent or legal guardian;
 - (B) on the game lands described in Rule .0103(e)(1) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(f) Field Trials and Training Dogs. Any individual or organization sponsoring a field trial on the Sandhills Field Trial area or the Laurinburg Fox Trial facility, shall file with the Commission an application to use the area and facility accompanied by the facility use fee computed at the rate of two hundred dollars (\$200.00) for each scheduled day of the trial. The

total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of seventy-five dollars (\$75.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Sandhills Field Trial area or the Laurinburg Fox Trial facility without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approved use. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays, and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities, and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the mission of the agency.

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

- (1) on the field trial course of the Sandhills Game Land;

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

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

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

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

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

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

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

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

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

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

Each program participant may be accompanied by one companion provided such companion has in his possession the companion card issued by the Commission. Hunters who qualify under the

Disabled Sportsman Program and their companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

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

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (k) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but shall comply with the terms of their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act (42 U.S.C. 126) may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted for wildlife food or cover. One companion, who is identified by a companion card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle where it can easily be seen by Commission staff outside the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (k) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the

purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(p) Shooting Ranges. On public shooting ranges managed by the Commission, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills, or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except for activities that have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede, or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post, or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range shall obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard shall leave the shooting range if directed to by law enforcement officers or to leave by Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Open days and hours of operation shall be designated on signs and at least one of such signs will be posted at the entrance to each shooting range. No person, when using any shooting range, shall do any act that is prohibited or neglect to do any act that is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

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

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

Eff. February 1, 1976;

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

Temporary Amendment Eff. October 11, 1993;

Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002;
Amended Eff. June 1, 2004; (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. January 1, 2013; January 1, 2012; June 1, 2011;
August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; November 1, 2005;
Temporary Amendment Eff. July 1, 2014;
Amended Eff. August 1, 2016; May 1, 2015; August 1, 2014.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

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

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

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

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

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

On designated youth waterfowl days occurring after the end of the regular waterfowl seasons only, youths may hunt on managed waterfowl impoundments from ½ hour before sunrise to sunset. Restrictions (1), (3), and (5) in this Paragraph shall apply. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No

person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

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

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

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

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

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan, and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county, and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davidson, Davie, Rowan, and Stanly counties.
 - (C) On the Lick Creek Tract, deer and bear hunting is archery only.
- (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area

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- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (4) Bachelor Bay Game Land in Bertie, Martin, and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except for blackpowder firearms, rifles larger than .22 caliber rimfire shall not be used.
 - (D) On the Singletary Lake Tract the use of dogs for hunting deer and bear is prohibited.
 - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
 - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (G) The use of dogs for pursuing or taking foxes is prohibited March 15 through July 15.
- (7) Brinkleyville Game Land in Halifax County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (8) Brunswick County Game Land in Brunswick County
 - (A) Hunting is by permit only.
- (B) The use of dogs for hunting deer is prohibited.
- (9) Buckhorn Game Land in Orange County
 - (A) Hunting is by permit only.
 - (B) Horseback riding is prohibited.
- (10) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.
 - (D) Target shooting is prohibited.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers Season. Deer may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville, and Wake counties
 - (A) Six Days per Week Area

- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays, Thursdays, and Saturdays of the applicable waterfowl seasons.

On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
 - (D) Horseback riding is prohibited.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
 - (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
 - (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
 - (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
 - (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.
 - (E) Target shooting is prohibited.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is allowed only during June, July, and August, and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic and on those gated roads and trails that are posted for equestrian use. People age 16 or older horseback riding on this game land shall possess a Game Lands license.
 - (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting, and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
 - (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
 - (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.

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- (G) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.
- (18) Chatham Game Land in Chatham County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) Horseback riding is allowed only during June, July, and August; and on Sundays during the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
- (19) Cherokee Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (20) Chowan Game Land in Chowan County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
 - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (E) Horseback riding is prohibited except during May 16 through August 31 and on Sundays only September 1 through May 15 on those roads that are open to vehicular traffic and on those gated roads and trails posted for equestrian use.
- (22) Cold Mountain Game Land in Haywood County
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (23) Columbus County Game Land in Columbus County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (24) Croatan Game Land in Carteret, Craven, and Jones counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Beginning on the first open waterfowl day in October through the end of the waterfowl season, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
 - (E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (25) Currituck Banks Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.
 - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.
 - (D) The boundary of the game land shall extend 5 yards from the edge of the marsh or shoreline.

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- (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
 - (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
 - (G) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- (26) Dare Game Land in Dare County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) No hunting is allowed on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (27) Dover Bay Game Land in Craven County
- (28) DuPont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by permit only.
 - (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- (29) Elk Knob Game Land in Watauga County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (30) Embro Game Land in Halifax and Warren counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (31) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.
- (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
- (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.
- (32) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (33) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (34) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl season.

- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
 - (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (35) Harris Game Land in Chatham, Harnett, and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on the following days:
 - (i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds shall be prohibited.
 - (E) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (F) Target shooting is prohibited.
 - (G) Horseback riding is prohibited.
- (36) Holly Shelter Game Land in Pender County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
 - (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited:
- (i) all open days on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road; and
 - (ii) on Tuesdays, Thursdays, and Fridays, with the exception of Thanksgiving, Christmas, and New Year's days, and except for the area north of Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, where the use of dogs for deer and bear hunting is by permit only.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (I) Target shooting is prohibited, except on the Holly Shelter Shooting Range.
- (J) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.
- (37) Hyco Game land in Person County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (38) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (39) Johns River Game Land in Burke County
- (A) Hunting is by permit only.
 - (B) During permitted deer hunts, deer of either sex may be taken by permit holders.
 - (C) Entry on posted waterfowl impoundments is prohibited October 1

- through March 31, except by lawful waterfowl hunting permit holders and only on those days written on the permits.
- (40) Jordan Game Land in Chatham, Durham, Orange, and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on:
 - (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, and New Year's Days; and
 - (iii) the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July, and August, and on Sundays the remainder of the year except during open turkey and deer seasons. People age 16 or older who ride horseback on trails occurring entirely within the game land boundaries shall possess a Game Lands license.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
 - (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (41) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
 - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (42) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
 - (B) Use of centerfire rifles is prohibited.
 - (C) Use of blackpowder firearms, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
 - (D) Tree stands shall not be left overnight; and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
 - (E) Deer of either sex may be taken on all open days of the applicable Deer With Visible Antlers season.
 - (F) Hunting on posted waterfowl impoundments is by permit only.
 - (G) The use of firearms for hunting wild turkey is prohibited.
- (43) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
 - (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (44) Lee Game Land in Lee County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (45) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (46) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (47) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.

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

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- (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
 - (D) Target shooting is prohibited.
 - (E) Horseback riding is allowed only on roads opened to vehicular traffic and only during the following times:
 - (i) during June, July, and August; and
 - (ii) on Sundays during the other months or parts of months when deer and turkey seasons are closed.
- (58) Perkins Game Land in Davie County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited from November 1 through January 1.
- (59) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (60) Pond Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails from May 16 through August 31 and Sundays from September 1 through October 31. All horseback riding is prohibited from November 1 through May 15.
 - (D) Deer and bear hunting is by permit only.
- (61) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (62) Rhodes Pond Game Land in Cumberland and Harnett counties
- (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
- (63) Roanoke River Wetlands in Bertie, Halifax, Martin, and Northampton counties
- (A) Hunting is by Permit only.
- (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
- (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (64) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (65) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (66) Rockfish Creek Game Land in Hoke County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
 - (H) Taking fox squirrels is prohibited.
 - (I) Target shooting is prohibited.
- (67) Rocky Run Game Land in Onslow County: Hunting is by permit only.
- (68) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (69) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area

- (B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
- (i) deer may be taken with archery equipment on all the open days of the bow-and-arrow season through the fourth Friday before Thanksgiving; with blackpowder firearms and archery equipment all the open days of the blackpowder firearms season through the second Saturday before Thanksgiving; and with all legal weapons from the second Monday before Thanksgiving through the Saturday following Thanksgiving;
 - (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
 - (iii) squirrel (gray and fox) may be taken all the open days from second Monday before Thanksgiving, through the Saturday following Thanksgiving;
 - (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving through the Saturday following Thanksgiving;
 - (v) waterfowl may be taken on open days during any waterfowl season;
 - (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt; and
 - (vii) raccoon and opossum may be taken on open days from sunrise Monday on or nearest October 15 through the last day of February.
- (C) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving, except on the J. Robert Gordon Field Trial Grounds.
- (D) The bow-and-arrow season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with archery equipment on all open hunting days during the bow and arrow season, the Deer with Visible antlers season, and the blackpowder firearms season as stated in this Subparagraph.
- (E) Blackpowder firearms season is all the open days from the fourth Saturday preceding Thanksgiving through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving through January 1. Deer may be taken with blackpowder firearms on all open hunting days during the blackpowder firearms season and the Deer With Visible Antlers season.
- (F) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
- (G) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
- (H) Wild turkey hunting is by permit only.
- (I) The following areas are permit-only for all quail and woodcock hunting, and dog training on birds:
- (i) In Richmond County: that part east of US 1;
 - (ii) In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
- (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (K) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (L) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.
- (70) Sandy Creek Game Land in Nash and Franklin Counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (71) Sandy Mush Game Land in Buncombe and Madison counties.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays, and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (72) Second Creek Game Land in Rowan County-hunting is by permit only.
- (73) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (74) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse hunting, quail hunting, woodcock hunting, and all bird dog training.
- (75) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
 - (D) Swimming in all lakes is prohibited.
 - (E) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (F) Target shooting is prohibited.
 - (G) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.
- (76) Suggs Mill Pond Game Land in Bladen and Cumberland counties
 - (A) Hunting and trapping is by permit only.
 - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
 - (C) Entry is prohibited on scheduled hunt or trapping days except for:
 - (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (77) Sutton Lake Game Land in New Hanover and Brunswick counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (78) Tar River Game Land in Edgecombe County – hunting is by permit only.

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- (79) Texas Plantation Game Land in Tyrrell County - hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. People age 16 or older horseback riding on this game land shall possess a Game Lands license.
 - (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
 - (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery, and Randolph counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (C) On the posted waterfowl impoundment, waterfowl may be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
- (85) Vance Game Land in Vance County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles, and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
 - (E) The Huggins Tract and Morton Tracts have the following restrictions:

- (i) access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d);
 - (ii) hunting is by permit only; and
 - (iii) the use of dogs for hunting deer is prohibited.
- (88) (F) Wild turkey hunting is by permit only.
- (A) Hunting and trapping is by permit only.
- (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (i) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications shall be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill shall validate the kill and report the kill to a wildlife cooperator agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands;
 - (2) Bertie County—Roanoke River National Wildlife Refuge;
 - (3) Bladen County—Suggs Mill Pond Game Lands;
 - (4) Burke County—John's River Waterfowl Refuge;
 - (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting);
 - (6) Dare County—Roanoke Sound Marshes Game Lands; and
 - (7) Henderson and Transylvania counties—DuPont State Forest Game Lands.
- (k) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission may be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (l) Feral swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons. Dogs may not be used to hunt feral

- swine except on game lands that allow the use of dogs for hunting deer or bear, and during the applicable deer or bear season.
- (m) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where prohibited in Paragraph (h) of this Rule.
- (n) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the hunt has a limited weapon choice, the allowed weapons shall be stated on each permit.
- (o) As used in this Rule, horseback riding includes all equine species.
- (p) When waterfowl hunting is specifically permitted in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305; Eff. February 1, 1976; Temporary Amendment Eff. October 3, 1991; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994; Temporary Amendment Eff. October 1, 1999; July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2002; July 1, 2001; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003); Amended Eff. August 1, 2016; May 1, 2015; August 1, 2014; January 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; October 1, 2006; August 1, 2006; May 1, 2006; February 1, 2006; June 1, 2005; October 1, 2004.

15A NCAC 10F .0330 CARTERET COUNTY

- (a) Regulated Areas. This Rule applies to the following waters in Carteret County:
- (1) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
 - (2) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;
 - (3) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the Intracoastal Waterway and ending at U.S. Highway 70;
 - (4) the waters of Bogue Sound Harbor Channel in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackelford Streets and bounded on the east by the State Ports Authority and on the

- (5) west by the eastern right-of-way margin of South 13th Street extended;
- (6) the waters of Gallant's Channel from the US 70 crossing over the Grayden Paul bridge to Taylor's Creek;
- (7) the waters of Cedar Island Bay and Harbor from N.C. Highway 12 to Cedar Island Bay Channel Light 8;
- (8) the waters of the small cove on the west side of Radio Island south of Old Causeway Road;
- (9) the waters of the Newport River beginning at the north side of the Beaufort Drawbridge and ending at marker #6;
- (10) the waters of Spooners Creek within the territorial limits of the Town of Morehead City as delineated by appropriate markers;
- (11) the waters of Taylor's Creek from the eastern end of the current no wake zone eastward to Channel Marker #1A;
- (12) the waters of the Newport River at Bogue Sound including all waters surrounding the Port of Morehead City to Brandt Island as delineated by appropriate markers;
- (13) the waters of Morgans Creek as delineated by appropriate markers;
- (14) the waters of Cannonsgate Marina and the Cannonsgate Marina Channel, beginning at its intersection with Bogue Sound at 34.70163 N, 76.98157 W as delineated by appropriate markers;
- (15) the waters of the Newport River within 200 yards of the Newport River Beach Access Boat Ramp, beginning at the shore north of the U.S. 70 bridge at a point at 34.72141 N, 76.68707 W, west to a point at 34.72128 N, 76.68893 W, north to a point at 34.72376 N, 76.68911 N, then east to the shore at 34.72371 N, 76.68631 W; and

(b) Speed Limit. It is unlawful to operate a motorboat or vessel at a speed greater than no-wake speed while on the waters of the regulated areas designated in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Carteret County, with respect to the regulated areas designated in Subparagraphs (1), (3), (5), (6), (7), (8), (10), (12) and (13) of Paragraph (a) of this Rule; the Board of Commissioners of the Town of Beaufort, with respect to the regulated area designated in Subparagraph (2) of Paragraph (a) of this Rule; the North Carolina State Ports Authority, with respect to the regulated area designated in Subparagraph (11) of Paragraph (a) of this Rule; and the Board of Commissioners of the Town of Cedar Point with respect to the regulated area designated in Subparagraph (15) of Paragraph (a) of this Rule shall be designated as suitable agencies for placement and maintenance of

the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15; Eff. March 4, 1979; Amended Eff. October 1, 1997; May 1, 1995; June 1, 1994; February 1, 1994; July 1, 1993; Temporary Amendment Eff. February 1, 1998; Amended Eff. July 1, 1998; Temporary Amendment Eff. March 1, 1999; November 1, 1998; Amended Eff. May 1, 2016; July 1, 2012; September 1, 2010; July 1, 2000.

15A NCAC 10F .0377 JACKSON COUNTY

(a) This Rule applies to the public swimming area known as the Pines Recreation Swim Area on Lake Glenville. The public swimming area shall be marked with four no-boats buoys set at the following locations: 35.19789 N, 83.16094 W; 35.19758 N, 83.16064 W; 35.19742 N, 83.16031 W; and 35.19742 N, 83.15983 W.

(b) No person operating or responsible for the operation of a vessel shall permit it to enter the marked public swimming area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Jackson County or Duke Energy Carolinas, LLC shall be designated as suitable entities for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15; Eff. May 1, 2016.

15A NCAC 10I .0103 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife shall be designated as federally-listed endangered species:

- (1) Amphibians:
None Listed At This Time.
- (2) Birds:
 - (A) Bachman's warbler (Vermivora bachmanii);
 - (B) Ivory-billed woodpecker (Campephilus principalis);
 - (C) Kirtland's warbler (Dendroica kirtlandii);
 - (D) Piping plover (Charadrius melodus circumcinctus);
 - (E) Red-cockaded woodpecker (Picoides borealis);
 - (F) Roseate tern (Sterna dougallii dougallii); and
 - (G) Wood stork (Mycteria americana).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
 - (A) Cape Fear shiner (Notropis mekistocholas);
 - (B) Roanoke logperch (Percina rex);

- (C) Shortnose sturgeon (*Acipenser brevirostrum*), when found in inland fishing waters as defined in G.S. 113-129(9a) and (9b); and
 - (D) Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), when found in inland fishing waters.
- (5) Mammals:
- (A) Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*);
 - (B) Eastern cougar (*Puma concolor*);
 - (C) Gray bat (*Myotis grisescens*);
 - (D) Indiana bat (*Myotis sodalis*);
 - (E) Manatee (*Trichechus manatus*), when found in inland fishing waters; and
 - (F) Virginia big-eared bat (*Corynorhinus townsendii virginianus*).
- (6) Mollusks:
- (A) Appalachian elktoe (*Alasmidonta raveneliana*);
 - (B) Carolina heelsplitter (*Lasmigona decorata*);
 - (C) Dwarf wedge mussel (*Alasmidonta heterodon*);
 - (D) James spinymussel (*Pleurobema collina*);
 - (E) Little-wing pearlymussel (*Pegias fabula*);
 - (F) Tan riffleshell (*Epioblasma florentina walkeri*); and
 - (G) Tar River spinymussel (*Elliptio steinstansana*).
- (7) Reptiles:
- (A) Kemp's ridley seaturtle (*Lepidochelys kempii*);
 - (B) Atlantic hawksbill seaturtle (*Eretmochelys imbricata imbricata*); and
 - (C) Leatherback seaturtle (*Dermochelys coriacea*).
- (G) Rustyside sucker (*Thoburnia hamiltoni*); and
- (H) Stonecat (*Noturus flavus*).
- (5) Mammals: None Listed At This Time.
- (6) Mollusks:
- (A) Atlantic pigtoe (*Fusconaia masoni*);
 - (B) Barrel floater (*Anodonta couperiana*);
 - (C) Brook floater (*Alasmidonta varicosa*);
 - (D) Carolina creekshell (*Villosa vaughaniana*);
 - (E) Fragile glyph (*Glyphyalinia clingmani*);
 - (F) Green floater (*Lasmigona subviridis*);
 - (G) Greenfield rams-horn (*Helisoma eucosmium*);
 - (H) Knotty elimia (*Elimia christyi*);
 - (I) Magnificent rams-horn (*Planorbella magnifica*);
 - (J) Neuse spike (*Elliptio judithae*);
 - (K) Purple wartyback (*Cyclonaias tuberculata*);
 - (L) Savannah lilliput (*Toxolasma pullus*);
 - (M) Slippershell mussel (*Alasmidonta viridis*);
 - (N) Tennessee clubshell (*Pleurobema oviforme*);
 - (O) Tennessee heelsplitter (*Lasmigona holstonia*);
 - (P) Tennessee pigtoe (*Fusconaia barnesiana*);
 - (Q) Yellow lampmussel (*Lampsilis cariosa*); and
 - (R) Yellow lance (*Elliptio lanceolata*).
- (7) Reptiles:
- (A) Eastern coral snake (*Micrurus fulvius fulvius*); and
 - (B) Eastern diamondback rattlesnake (*Crotalus adamanteus*).
- (b) The following species of resident wildlife shall be designated as state-listed endangered species:
- (1) Amphibians: Green salamander (*Aneides aeneus*).
 - (2) Birds:
 - (A) American peregrine falcon (*Falco peregrinus anatum*); and
 - (B) Bewick's wren (*Thryomanes bewickii*).
 - (3) Crustacea: Bennett's Mill cave water slater (*Caecidotea carolinensis*).
 - (4) Fish:
 - (A) Blotchside logperch (*Percina burtoni*);
 - (B) Bridle shiner (*Notropis bifrenatus*);
 - (C) Dusky darter (*Percina sciera*);
 - (D) Orangefin madtom (*Noturus gilberti*);
 - (E) Paddlefish (*Polyodon spathula*);
 - (F) Robust redhorse (*Moxostoma robustum*);

History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333; Eff. June 11, 1977; Amended Eff. August 1, 2016; May 1, 2008; April 1, 2001; February 1, 1994; November 1, 1991; April 1, 1991; June 1, 1990.

15A NCAC 10I .0104 THREATENED SPECIES LISTED

- (a) The following species of resident wildlife shall be designated as federally-listed threatened species:
- (1) Amphibians: None Listed At This Time.
 - (2) Birds:
 - (A) Piping plover (*Charadrius melodus melodus*); and
 - (B) Red Knot (*calidris canutus rufa*).
 - (3) Crustacea: None Listed At This Time.
 - (4) Fish:
 - (A) Spotfin chub (*Cyprinella monacha*); and

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- (B) Waccamaw silverside (*Menidia extensa*).
- (5) Mammals: Northern Long-eared Bat (*Myotis septentrionalis*)
- (6) Mollusks: Noonday globe (*Patera clarki nantahala*).
- (7) Reptiles:
 - (A) Bog turtle (*Glyptemys muhlenbergii*);
 - (B) American alligator (*Alligator mississippiensis*);
 - (C) Green sea turtle (*Chelonia mydas*); and
 - (D) Loggerhead sea turtle (*Caretta caretta*).

(b) The following species of resident wildlife are designated as state-listed threatened species:

- (1) Amphibians:
 - (A) Carolina gopher frog (*Rana capito capito*);
 - (B) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*);
 - (C) Junaluska salamander (*Eurycea junaluska*); and
 - (D) Wehrle's salamander (*Plethodon wehrlei*).
- (2) Birds:
 - (A) Bald eagle (*Haliaeetus leucocephalus*);
 - (B) Gull-billed tern (*Sterna nilotica aranea*); and
 - (C) Northern saw-whet owl (*Aegolius acadicus*).
- (3) Crustacea: None Listed At This Time.
- (4) Fish:
 - (A) American brook lamprey (*Lampetra appendix*);
 - (B) Banded sculpin (*Cottus carolinae*);
 - (C) Bigeye jumprock (*Scartomyzon ariommus*);
 - (D) Blackbanded darter (*Percina nigrofasciata*);
 - (E) Carolina madtom (*Noturus furiosus*);
 - (F) Carolina pygmy sunfish (*Elassoma boehlkei*);
 - (G) Carolina redhorse (*Moxostoma sp.*) (Pee Dee River and its tributaries and Cape Fear River and its tributaries);
 - (H) Least brook lamprey (*Lampetra aepyptera*);
 - (I) Logperch (*Percina caprodes*);
 - (J) Rosyface chub (*Hybopsis rubrifrons*);
 - (K) Sharphead darter (*Etheostoma acuticeps*);
 - (L) Sicklefin redhorse (*Moxostoma sp.*) (Hiwassee River and its tributaries and Little Tennessee River and its tributaries);
 - (M) Turquoise darter (*Etheostoma inscriptum*); and
 - (N) Waccamaw darter (*Etheostoma perlongum*).

- (5) Mammals:
 - (A) Eastern woodrat (*Neotoma floridana floridana*);
 - (B) Rafinesque's big-eared bat (*Corynorhinus rafinesquii rafinesquii*); and
 - (C) Red wolf (*Canis rufus*).
- (6) Mollusks:
 - (A) Alewife floater (*Anodonta implicata*);
 - (B) Big-tooth covert (*Fumonelix jonesiana*);
 - (C) Cape Fear threetooth (*Triodopsis soelneri*);
 - (D) Carolina fatmucket (*Lampsilis radiata conspicua*);
 - (E) Clingman covert (*Fumonelix wheatleyi clingmanicus*);
 - (F) Eastern lampmussel (*Lampsilis radiata radiata*);
 - (G) Eastern pondmussel (*Ligumia nasuta*);
 - (H) Engraved covert (*Fumonelix orestes*);
 - (I) Mountain creekshell (*Villosa vanuxemensis*);
 - (J) Roan supercoil (*Paravitrea varidens*);
 - (K) Roanoke slabshell (*Elliptio roanokensis*);
 - (L) Sculpted supercoil (*Paravitrea ternaria*);
 - (M) Seep mudalia (*Leptoxis dilatata*);
 - (N) Smoky Mountain covert (*Inflectarius ferrissi*);
 - (O) Squawfoot (*Strophitus undulatus*);
 - (P) Tidewater mucket (*Leptodea ochracea*);
 - (Q) Triangle floater (*Alasmidonta undulata*);
 - (R) Waccamaw ambersnail (*Catinella waccamawensis*);
 - (S) Waccamaw fatmucket (*Lampsilis fullerkei*); and
 - (T) Waccamaw spike (*Elliptio waccamawensis*).
- (7) Reptiles: None Listed At This Time.

History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333; Eff. March 17, 1978; Amended Eff. June 1, 2008; April 1, 2001; November 1, 1991; April 1, 1991; June 1, 1990; September 1, 1989; Temporary Amendment Eff. February 27, 2015; Amended Eff. August 1, 2016.

15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED

The following species of resident wildlife shall be designated as state-listed special concern species:

- (1) Amphibians:
 - (a) Crevice salamander (*Plethodon longicrus*);

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| <p>(b) Dwarf salamander (<i>Eurycea quadridigitata</i>);</p> <p>(c) Eastern hellbender (<i>Cryptobranchus alleganiensis alleganiensis</i>);</p> <p>(d) Four-toed salamander (<i>Hemidactylium scutatum</i>);</p> <p>(e) Longtail salamander (<i>Eurycea longicauda longicauda</i>);</p> <p>(f) Mole salamander (<i>Ambystoma talpoideum</i>);</p> <p>(g) Mountain chorus frog (<i>Pseudacris brachyphona</i>);</p> <p>(h) Mudpuppy (<i>Necturus maculosus</i>);</p> <p>(i) Neuse River waterdog (<i>Necturus lewisi</i>);</p> <p>(j) River frog (<i>Rana heckscheri</i>);</p> <p>(k) Southern zigzag salamander (<i>Plethodon ventralis</i>); and</p> <p>(l) Weller's salamander (<i>Plethodon welleri</i>).</p> <p>(2) Birds:</p> <p>(a) American oystercatcher (<i>Haematopus palliatus</i>);</p> <p>(b) Bachman's sparrow (<i>Aimophila aestivalis</i>);</p> <p>(c) Black-capped chickadee (<i>Poecile atricapillus</i>);</p> <p>(d) Black rail (<i>Laterallus jamaicensis</i>);</p> <p>(e) Black skimmer (<i>Rynchops niger</i>);</p> <p>(f) Brown creeper (<i>Certhia americana nigrescens</i>);</p> <p>(g) Cerulean warbler (<i>Dendroica cerulea</i>);</p> <p>(h) Common tern (<i>Sterna hirundo</i>);</p> <p>(i) Glossy ibis (<i>Plegadis falcinellus</i>);</p> <p>(j) Golden-winged warbler (<i>Vermivora chrysoptera</i>);</p> <p>(k) Henslow's sparrow (<i>Ammodramus henslowii</i>);</p> <p>(l) Least bittern (<i>Ixobrychus exilis</i>);</p> <p>(m) Least tern (<i>Sterna antillarum</i>);</p> <p>(n) Little blue heron (<i>Egretta caerulea</i>);</p> <p>(o) Loggerhead shrike (<i>Lanius ludovicianus</i>);</p> <p>(p) Olive-sided flycatcher (<i>Contopus cooperi</i>);</p> <p>(q) Painted bunting (<i>Passerina ciris</i>);</p> <p>(r) Red crossbill (<i>Loxia curvirostra</i>);</p> <p>(s) Snowy egret (<i>Egretta thula</i>);</p> <p>(t) Tricolored heron (<i>Egretta tricolor</i>);</p> <p>(u) Vesper sparrow (<i>Poocetes gramineus</i>);</p> <p>(v) Wilson's plover (<i>Charadrius wilsonia</i>); and</p> <p>(w) Yellow-bellied sapsucker (<i>Sphyrapicus varius appalachiensis</i>).</p> <p>(3) Crustacea:</p> <p>(a) Broad River spiny crayfish (<i>Cambarus spicatus</i>);</p> | <p>(b) Carolina skistodiaptomus (<i>Skistodiaptomus carolinensis</i>);</p> <p>(c) Carolina well diacyclops (<i>Diacyclops jeannelli putei</i>);</p> <p>(d) Chowanoke crayfish (<i>Orconectes virginienis</i>);</p> <p>(e) Graceful clam shrimp (<i>Lynceus gracilicornis</i>);</p> <p>(f) Greensboro burrowing crayfish (<i>Cambarus catagius</i>);</p> <p>(g) Hiwassee headwaters crayfish (<i>Cambarus parrishi</i>);</p> <p>(h) Little Tennessee River crayfish (<i>Cambarus georgiae</i>);</p> <p>(i) North Carolina spiny crayfish (<i>Orconectes carolinensis</i>);</p> <p>(j) Oconee stream crayfish (<i>Cambarus chaugaensis</i>); and</p> <p>(k) Waccamaw crayfish (<i>Procambarus braswelli</i>).</p> <p>(4) Fish:</p> <p>(a) Bluefin killifish (<i>Lucania goodei</i>);</p> <p>(b) Blue Ridge sculpin (<i>Cottus caeruleomentum</i>);</p> <p>(c) Blueside darter (<i>Etheostoma jessiae</i>);</p> <p>(d) Broadtail madtom (<i>Noturus sp.</i>) (Lumber River and its tributaries and Cape Fear River and its tributaries);</p> <p>(e) Carolina darter (<i>Etheostoma collis</i>);</p> <p>(f) Cutlip minnow (<i>Exoglossum maxillingua</i>);</p> <p>(g) Freshwater drum (<i>Aplodinotus grunniens</i>) (French Broad River);</p> <p>(h) Highfin carpsucker (<i>Carpiodes velifer</i>) (Cape Fear River and its tributaries);</p> <p>(i) Kanawha minnow (<i>Phenacobius teretulus</i>);</p> <p>(j) Lake sturgeon (<i>Acipenser fulvescens</i>);</p> <p>(k) Least killifish (<i>Heterandria formosa</i>);</p> <p>(l) Longhead darter (<i>Percina macrocephala</i>);</p> <p>(m) Mooneye (<i>Hiodon tergisus</i>);</p> <p>(n) Mountain madtom (<i>Noturus eleutherus</i>);</p> <p>(o) Olive darter (<i>Percina squamata</i>);</p> <p>(p) Pinewoods darter (<i>Etheostoma mariaae</i>);</p> <p>(q) River carpsucker (<i>Carpiodes carpio</i>);</p> <p>(r) Riverweed darter (<i>Etheostoma podostemone</i>);</p> <p>(s) Sandhills chub (<i>Semotilus lumbee</i>);</p> <p>(t) Sharpnose darter (<i>Percina oxyrhynchus</i>);</p> <p>(u) Smoky dace (<i>Clinostomus sp.</i>) (Little Tennessee River and tributaries);</p> <p>(v) Striped shiner (<i>Luxilus chrysocephalus</i>);</p> |
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| <p>(w) Tennessee snubnose darter (Etheostoma simoterum);</p> <p>(x) Thinlip chub (Cyprinella zanema) (Lumber River and its tributaries and Cape Fear River and its tributaries);</p> <p>(y) Waccamaw killifish (Fundulus waccamensis);</p> <p>(z) Wounded darter (Etheostoma vulneratum); and</p> <p>(aa) Yellowfin shiner (Notropis lutipinnis) (Savannah River and its tributaries);</p> <p>(5) Mammals:</p> <p>(a) Allegheny woodrat (Neotoma magister);</p> <p>(b) Buxton Woods white-footed mouse (Peromyscus leucopus buxtoni);</p> <p>(c) Coleman's oldfield mouse (Peromyscus polionotus colemani);</p> <p>(d) Eastern big-eared bat (Corynorhinus rafinesquii macrotis);</p> <p>(e) Eastern small-footed bat (Myotis leibii leibii);</p> <p>(f) Florida yellow bat (Lasiurus intermedius floridanus);</p> <p>(g) Pungo white-footed mouse (Peromyscus leucopus easti);</p> <p>(h) Southeastern bat (Myotis austroriparius);</p> <p>(i) Southern rock shrew (Sorex dispar blitchi);</p> <p>(j) Southern rock vole (Microtus chrotorrhinus carolinensis);</p> <p>(k) Southern water shrew (Sorex palustris punctulatus); and</p> <p>(l) Star-nosed mole (Condylura cristata parva).</p> <p>(6) Mollusks:</p> <p>(a) Appalachian gloss (Zonitoides patuloides);</p> <p>(b) Bidentate dome (Ventridens coelaxis);</p> <p>(c) Black mantleslug (Pallifera hemphilli);</p> <p>(d) Blackwater ancyliid (Ferrissia hendersoni);</p> <p>(e) Blue-foot lancetooth (Haplotrema kendeighi);</p> <p>(f) Cape Fear spike (Elliptio marsupiobesa);</p> <p>(g) Dark glyph (Glyphyalinia junaluskana);</p> <p>(h) Dwarf proud globe (Patera clarki clarki);</p> <p>(i) Dwarf threetooth (Triodopsis fulciden);</p> <p>(j) Fringed coil (Helicodiscus fimbriatus);</p> <p>(k) Glossy supercoil (Paravitrea placentula);</p> | <p>(l) Great Smoky slitmouth (Stenotrema depilatum);</p> <p>(m) High mountain supercoil (Paravitrea andrewsae);</p> <p>(n) Honey glyph (Glyphyalinia vanattai);</p> <p>(o) Lamellate supercoil (Paravitrea lamellidens);</p> <p>(p) Mirey Ridge supercoil (Paravitrea clappi);</p> <p>(q) Notched rainbow (Villosa constricta);</p> <p>(r) Open supercoil (Paravitrea umbilicaris);</p> <p>(s) Pink glyph (Glyphyalinia pentadelphia);</p> <p>(t) Pod lance (Elliptio folliculata);</p> <p>(u) Queen crater (Appalachina chilhoweensis);</p> <p>(v) Rainbow (Villosa iris);</p> <p>(w) Ramp Cove supercoil (Paravitrea lacteodens);</p> <p>(x) Saw-tooth disc (Discus bryanti);</p> <p>(y) Spike (Elliptio dilatata);</p> <p>(z) Spiral coil (Helicodiscus bonamicus);</p> <p>(aa) Velvet covert (Inflectarius subpalliatius);</p> <p>(bb) Waccamaw amnicola (Amnicola sp.);</p> <p>(cc) Waccamaw lampmussel (Lampsilis crocata);</p> <p>(dd) Waccamaw siltsnail (Cincinnati sp.); and</p> <p>(ee) Wavy-rayed lampmussel (Lampsilis fasciola).</p> <p>(7) Reptiles:</p> <p>(a) Carolina pigmy rattlesnake (Sistrurus miliarius miliarius);</p> <p>(b) Carolina watersnake (Nerodia sipedon williamengelsi);</p> <p>(c) Diamondback terrapin (Malaclemys terrapin);</p> <p>(d) Eastern smooth green snake (Opheodrys vernalis vernalis);</p> <p>(e) Eastern spiny softshell (Apalone spinifera spinifera);</p> <p>(f) Mimic glass lizard (Ophisaurus mimicus);</p> <p>(g) Northern pine snake (Pituophis melanoleucus melanoleucus);</p> <p>(h) Outer Banks kingsnake (Lampropeltis getula sticticeps);</p> <p>(i) Southern hognose snake (Heterodon simus);</p> <p>(j) Stripeneck musk turtle (Sternotherus minor peltifer); and</p> <p>(k) Timber rattlesnake (Crotalus horridus).</p> |
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History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333; Eff. September 1, 1989;

Amended Eff. August 1, 2016; May 1, 2008; July 18, 2002; April 1, 2001; November 1, 1991; April 1, 1991; June 1, 1990.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 07B .1201 TAXABILITY OF GROSS RECEIPTS

History Note: Authority G.S. 105-164.4; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991; August 1, 1988; July 1, 1984; Repealed Eff. April 1, 2016.

17 NCAC 07B .1401 PRESCRIPTION DRUGS

History Note: Authority G.S. 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. July 1, 2000; October 1, 1993; May 1, 1990; August 1, 1988; Repealed Eff. April 1, 2016.

17 NCAC 07B .2208 FRATERNITY AND SORORITY MEALS

History Note: Authority G.S. 105-164.13; 105-262; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. May 1, 2009; October 1, 1993; Repealed Eff. April 1, 2016.

17 NCAC 07B .2211 COVER CHARGE

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1993; Repealed Eff. April 1, 2016.

17 NCAC 07B .2602 CONTRACTORS, SUBCONTRACTORS, AND RETAILER-CONTRACTORS

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264; Article 39; Article 40; Article 42; Article 43; Article 44; Article 46; Eff. February 1, 1976; Amended Eff. October 1, 2009; August 1, 2002; October 1, 1993; June 1, 1992; October 1, 1991; February 8, 1981; Repealed Eff. April 1, 2016.

17 NCAC 07B .2608 PLUMBING: HEATING CONTRACTORS: PURCHASES

History Note: Authority G.S. 105-164.4; 105-164.6; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 2009; October 1, 1993; October 1, 1991; Repealed Eff. April 1, 2016.

17 NCAC 07B .4407 LEASES FOR OUT OF STATE USE

History Note: Authority G.S. 105-164.4; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1993; July 5, 1980; Repealed Eff. April 1, 2016.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 160 .0301 NITROUS OXIDE SEDATION
"Nitrous oxide sedation" means the use of nitrous oxide for controlling pain or apprehension without rendering the patient unconscious. A sedation permit shall not be required to administer nitrous oxide, without any other drugs, for the purpose of anxiolysis. A sedation permit shall be required if nitrous oxide is administered in combination with other sedative agents.

History Note: Authority G.S. 90-29(b)(6); 90-48; 90-223; Eff. July 16, 1980; Amended Eff. April 1, 2016.

21 NCAC 160 .0302 NITROUS OXIDE MONITORING
"Monitoring" means observation of the patient during the flow of nitrous oxide and includes reducing the flow of nitrous oxide or shutting off equipment controlling such flow. Monitoring does not include starting or increasing the flow of nitrous oxide.

History Note: Authority G.S. 90-29(b)(6); 90-48; 90-223; Eff. July 16, 1980; Amended Eff. April 1, 2016; May 1, 1989.

21 NCAC 160 .0401 NON-DELEGABLE FUNCTIONS
Nitrous oxide sedation shall not be induced by anyone other than a dentist or a lawfully qualified nurse who does so under the supervision and direction of a dentist.

History Note: Authority G.S. 90-29(b)(6); 90-48; 90-223; Eff. July 16, 1980; Amended Eff. April 1, 2016; May 1, 1989.

21 NCAC 160 .0402 EDUCATIONAL REQUIREMENTS

A Dental Assistant may aid and assist a licensed dentist in the monitoring of nitrous oxide-oxygen inhalant sedation by completing a Board-approved course totaling at least seven hours that covers the following topics:

- (1) definitions and descriptions of physiological and psychological aspects of pain and anxiety;
- (2) the states of drug-induced central nervous system depression through all levels of consciousness and unconsciousness, with special emphasis on the distinction between the conscious and unconscious state;

- (3) respiratory and circulatory physiology, and related anatomy;
- (4) pharmacology of agents used in the nitrous oxide techniques being taught, including drug interaction and incompatibility;
- (5) patient monitoring, with particular attention to vital signs and reflexes related to consciousness;
- (6) prevention, recognition, and management of complications and life threatening situations that may occur during the use of the nitrous oxide techniques, including cardio pulmonary resuscitation;
- (7) description and use of ventilation sedation equipment; and
- (8) potential health hazards of trace anesthetics, and proposed techniques for elimination of these potential health hazards.

- (6) "ASA" – American Society of Anesthesiologists.
- (7) "Auxiliaries" – non-dentist staff members involved in general anesthesia or sedation procedures.
- (8) "BLS" – Basic life support.
- (9) "Behavior control" – the use of pharmacological techniques to control behavior to a level that dental treatment may be performed without injury to the patient or dentist.
- (10) "Behavioral management" – the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment may be performed without injury to the patient or dentist.
- (11) "Competent" – displaying special skill or knowledge derived from training and experience.
- (12) "Conscious sedation" - an induced state of a depressed level of consciousness that retains the patient's ability to maintain an airway without assistance and respond to physical stimulation and obey verbal commands, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. All dentists who perform conscious sedation shall have an unexpired sedation permit from the Dental Board.
- (13) "CRNA" – certified registered nurse anesthetist.
- (14) "Deep sedation" – an induced state of a depressed level of consciousness accompanied by partial loss of protective reflexes, including the ability to maintain an airway without assistance or respond to verbal command, produced by pharmacological agents. All dentists who perform deep sedation shall have an unexpired general anesthesia permit from the Dental Board.
- (15) "Deliver" – to assist a permitted dentist in administering sedation or anesthesia drugs by providing the drugs to the patient pursuant to a direct order from the dentist and while under the dentist's direct supervision.
- (16) "Direct supervision" – the dentist responsible for the sedation or anesthesia procedure shall be immediately available and shall be aware of the patient's physical status and well being at all times.
- (17) "Emergencies manual" – a written manual that documents:
 - (A) the location of all emergency equipment and medications in each facility;
 - (B) each staff member's role during medical emergencies; and
 - (C) the appropriate treatment for laryngospasm, bronchospasm, emesis

History Note: Authority G.S. 90-29(b)(6); 90-29(c)(13); 90-48; 90-223; Eff. July 16, 1980; Amended Eff. April 1, 2016; May 1, 1989.

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purpose of these Rules relative to the administration of moderate conscious sedation, moderate pediatric conscious sedation, or general anesthesia by or under the direction of a dentist, the following definitions shall apply:

- (1) "Analgesia" – the diminution or elimination of pain.
- (2) "Anti-anxiety sedative" – a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.
- (3) "Anxiolysis" - pharmacological reduction of anxiety through the administration of a single dose of any anti-anxiety drug within a 24 hour period, or nitrous oxide to children or adults prior to commencement of treatment on the day of the appointment that allows for uninterrupted interactive ability in an awake patient with no compromise in the ability to maintain a patent airway without assistance. The patient shall be able to respond to tactile stimulation and verbal commands and walk, if applicable. A dentist may perform anxiolysis without obtaining a permit from the Dental Board.
- (4) "ACLS" – Advanced cardiac life support.
- (5) "Administer"—to direct, manage, supervise, control, and have charge of all aspects of selection, dosage, timing, and method of delivery to the patient of any pharmacologic agent intended to reduce anxiety or depress consciousness.

- and aspiration, respiratory depression and arrest, angina pectoris, myocardial infarction, hypertension, hypotension, allergic reactions, convulsions, syncope, bradycardia, insulin shock, cardiac arrest, and airway obstruction.
- (18) "ET CO2" —end tidal carbon dioxide.
- (19) "Facility" - the location where a permit holder practices dentistry and provides anesthesia or sedation services.
- (20) "Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia or sedation is supplied, equipped, staffed, and maintained in a condition to support provision of anesthesia or sedation services. in compliance with the Dental Practice Act set forth in Article 2 of G.S. 90 and the Board's rules of this Chapter.
- (21) "General anesthesia" - the intended controlled state of a depressed level of consciousness that is produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond to physical stimulation and obey verbal commands.
- (22) "Good standing" – a licensee whose license is not suspended or revoked and who is not subject to a current disciplinary order imposing probationary terms.
- (23) "Immediately available" – on-site in the facility and available for use without delay.
- (24) "Itinerant general anesthesia provider" - a permittee who has complied with Rule .0206 of this Subchapter and who administers general anesthesia at another practitioner's facility.
- (25) "Local anesthesia" – the elimination of sensations, including pain, in one part of the body by the regional application or injection of a drug.
- (26) "Moderate conscious sedation" – conscious sedation characterized by a drug induced depression of consciousness, during which patients obey verbal commands, either alone or accompanied by light tactile stimulation, provided to patients 13 years of age or older, by oral, nasal, rectal, or parenteral routes of administration of single or multiple pharmacological agents, in single or multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Moderate conscious sedation may be provided for behavior control by licensed dentists who comply with the terms of Rule .0301 of this Subchapter. A moderate conscious sedation provider shall not use the following:
- (a) drugs designed by the manufacturer for use in administering general anesthesia or deep sedation; or
- (b) drugs contraindicated for use in moderate conscious sedation.
- (27) "Moderate pediatric conscious sedation" - conscious sedation characterized by a drug induced depression of consciousness, during which patients obey verbal commands, either alone or accompanied by light tactile stimulation, provided to patients up to 18 years of age, or special needs patients, by oral, nasal, rectal, or parenteral routes of administration of single or multiple pharmacological agents, in single or multiple doses, within a 24 hour period, including the time of treatment, possibly in combination with nitrous oxide. Moderate pediatric conscious sedation may be provided for behavior control by licensed dentists who comply with the terms of Rule .0404 of this Subchapter. A moderate pediatric conscious sedation permit holder shall not use the following:
- (a) drugs designed by the manufacturer for use in administering general anesthesia or deep sedation; or
- (b) drugs contraindicated for use in moderate pediatric conscious sedation.
- (28) "Parenteral" - the administration of pharmacological agents intravenously, intraosseously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally.
- (29) "PALS" – Pediatric Advanced Life Support.
- (30) "Protective reflexes" – includes the ability to swallow and cough.
- (31) "RN" – Registered Nurse licensed by the North Carolina Board of Nursing.
- (32) "Special needs patients" – patients with diminished mental and or physical capacity who are unable to cooperate to receive ambulatory dental care without sedation or anesthesia.
- (33) "Supplemental dosing" – the oral administration of a pharmacological agent that results in an enhanced level of conscious sedation when added to the primary sedative agent administered for the purpose of oral moderate conscious sedation, and when added to the primary agent, does not exceed the maximum safe dose of either agent, separately or synergistically.
- (34) "Vested adult" – a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a patient following the administration of general anesthesia or conscious sedation.

History Note: Authority G.S. 90-30.1; 90-48; Eff. February 1, 1990; Temporary Amendment Eff. December 11, 2002;

Amended Eff. Pending Legislative Review.

21 NCAC 16Q .0202 GENERAL ANESTHESIA EQUIPMENT AND CLINICAL REQUIREMENTS

(a) A dentist administering general anesthesia shall be responsible to ensure that the facility where the general anesthesia is administered meets the following requirements:

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures, and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive pressure oxygen delivery system, including full face masks for small, medium, and large patients, and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) blood pressure monitoring device;
 - (H) EKG monitor; electrocardiograph;
 - (I) pulse oximeter;
 - (J) defibrillator;
 - (K) capnograph;
 - (L) thermometer;
 - (M) vascular access as necessary for specific procedures, including hardware and fluids;
 - (N) laryngoscope with working batteries;
 - (O) intubation forceps and advanced airway devices;
 - (P) tonsillar suction with back-up suction;
 - (Q) syringes as necessary for specific procedures; and
 - (R) tourniquet and tape.
- (2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:
 - (A) ephinephrine;
 - (B) Atropine;
 - (C) antiarrhythmic;
 - (D) antihistamine;
 - (E) antihypertensive;
 - (F) [bronchodilator;
 - (G) antihypoglycemic agent;
 - (H) vasopressor;
 - (I) corticosteroid;
 - (J) anticonvulsant;
 - (K) muscle relaxant;
 - (L) appropriate reversal agents;

- (M) nitroglycerine; and
 - (N) antiemetic.
 - (3) The permit holder shall maintain written emergency and patient discharge protocols and training to familiarize auxiliaries in the treatment of clinical emergencies shall be provided;
 - (4) The permit holder shall maintain the following records for 10 years:
 - (A) Patient's current written medical history, including a record of known allergies and previous surgeries;
 - (B) Consent to general anesthesia, signed by the patient or guardian, identifying the risks and benefits, level of anesthesia, and date signed;
 - (C) Consent to the procedure, signed by the patient or guardian identifying the risks, benefits, and date signed; and
 - (D) Patient base line vital signs, including temperature, SPO2, blood pressure and pulse;
 - (5) The anesthesia record shall include:
 - (A) base line vital signs, blood pressure (unless patient behavior prevents recording); oxygen saturation, ET CO2, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
 - (B) procedure start and end times;
 - (C) gauge of needle and location of IV on the patient, if used;
 - (D) status of patient upon discharge; and
 - (E) documentation of complications or morbidity; and
 - (6) The facility shall be staffed with at least two BLS certified auxiliaries who shall be present at all times during the procedure and at least one of whom shall be dedicated to patient monitoring and recording general anesthesia or sedation data.
- (b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of anesthesia while the evaluator observes, and shall demonstrate competency in the following areas:
- (1) monitoring of blood pressure, pulse, ET CO2, and respiration;
 - (2) drug dosage and administration;
 - (3) treatment of untoward reactions including respiratory or cardiac depression;
 - (4) sterile technique;
 - (5) use of BLS certified auxiliaries;;
 - (6) monitoring of patient during recovery; and
 - (7) sufficiency of patient recovery time.
- (c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency in the treatment of the following clinical emergencies:
- (1) laryngospasm;
 - (2) bronchospasm;

- (3) emesis and aspiration;
- (4) respiratory depression and arrest;
- (5) angina pectoris;
- (6) myocardial infarction;
- (7) hypertension and hypotension;
- (8) syncope;
- (9) allergic reactions;
- (10) convulsions;
- (11) bradycardia;
- (12) insulin shock;
- (13) cardiac arrest; and
- (14) airway obstruction.

(d) A general anesthesia permit holder shall evaluate a patient for health risks before starting any anesthesia procedure.

(e) Post-operative monitoring and discharge shall include the following:

- (1) vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation and circulation are stable and the patient is recovered as defined by Subparagraph (e)(2) of this Rule and is ready for discharge from the office.
- (2) recovery from general anesthesia shall include documentation of the following:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for the special needs patient or a patient incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that patient shall be achieved.
- (3) before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (e)(2) of this Rule and the following discharge criteria:
 - (A) oxygenation, circulation, activity, skin color, and level of consciousness are sufficient, stable, and have been documented;
 - (B) explanation and documentation of written postoperative instructions have been provided to the patient or a responsible adult at time of discharge; and
 - (C) a vested adult is available to transport the patient after discharge.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0203 TEMPORARY APPROVAL PRIOR TO SITE EVALUATION

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. August 1, 2002; Repealed Eff. April 1, 2016.

21 NCAC 16Q .0204 PROCEDURE FOR GENERAL ANESTHESIA EVALUATION OR INSPECTION AND RE-INSPECTION

- (a) When an evaluation or on-site inspection is required, the Board shall designate two or more qualified persons to serve as evaluators, each of whom has administered general anesthesia for at least three years preceding the inspection. Training in general anesthesia shall not be counted in the three years. When an on-site inspection involves only a facility and equipment check and not an evaluation of the dentist, the inspection may be accomplished by one evaluator.
- (b) An inspection fee of three hundred seventy five dollars (\$375.00) shall be due 10 days after the dentist receives notice of the inspection of each additional location at which the dentist administers general anesthesia.
- (c) Any dentist-member of the Board may observe or consult in any evaluation or inspection.
- (d) The inspection team shall determine compliance with the requirements of the Rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail."
- (e) Each evaluator shall report his or her recommendation to the Board's Anesthesia and Sedation Committee, setting forth the details supporting his or her conclusion. The Committee shall not be bound by these recommendations. The Committee shall determine whether the applicant has passed the evaluation or inspection and shall notify the applicant in writing of its decision.
- (f) An applicant who fails an inspection or evaluation shall not receive a permit to administer general anesthesia. If a permit holder fails an evaluation, the permit shall be summarily suspended as provided by G.S. 150B-3(c). If a permit holder's facility fails an inspection, no further anesthesia procedures shall be performed at the facility until it passes a re-inspection by the Board.
- (g) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and shall include a statement of the grounds supporting the re-evaluation or re-inspection. The Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.
- (h) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.

History Note: Authority G.S. 90-28; 90-30.1; 90-39; Eff. February 1, 1990; Amended Eff. February 1, 2009; December 4, 2002; January 1, 1994; Amended Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0205 RESULTS OF SITE EVALUATION AND REEVALUATION

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. August 1, 2002; Repealed Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0206 ITINERANT (MOBILE) GENERAL ANESTHESIA PERMIT, EQUIPMENT AND EVALUATION

(a) A dentist who holds a general anesthesia permit from the Board and who wishes to provide general anesthesia or other sedation services in the office of another practitioner shall obtain a mobile general anesthesia permit from the Board. The application form may be obtained on the Board's website: www.ncdentalboard.org and shall be accompanied by a one hundred (\$100.00) fee. No mobile permit shall be required to administer general anesthesia in a hospital or credentialed surgery center.

(b) Before a mobile general anesthesia permit may be issued, a general anesthesia permit holder appointed by the Board shall inspect the applicant's equipment and medications to ensure that they comply with Paragraphs (c) and (d) of this Rule.

- (c) The permit holder shall maintain the following equipment:
- (1) positive pressure ventilation system and back-up E cylinder portable oxygen tank;
 - (2) standard ASA monitors with back-up power;
 - (3) EKG monitor;
 - (4) capnograph;
 - (5) small, medium, and large oral airways and nasal trumpets;
 - (6) small, medium, and large laryngoscope blades and back-up laryngoscope;
 - (7) small, medium, and large nasal and oral endotracheal tubes;
 - (8) Magill forceps;
 - (9) small, medium, and large supraglottic airway devices;
 - (10) back-up suction;
 - (11) defibrillator with pediatric capability;
 - (12) small, medium, and large anesthesia circuits;
 - (13) back-up lighting;
 - (14) gastric suction device;
 - (15) endotracheal tube and pulmonary suction device;
 - (16) equipment for performing emergency cricothyrotomies and delivering positive pressure ventilation;
 - (17) back-up ventilation measurement;
 - (18) rebreathing device;
 - (19) scavenging system;
 - (20) intermittent compression devices;

- (21) CPR board or dental chair without enhancements suitable for providing emergency treatment;
 - (22) laryngoscope with working batteries; and
 - (23) tourniquet and tape.
- (d) The following unexpired medications shall be immediately accessible to the permit holder:
- (1) ephinephrine;
 - (2) Atropine;
 - (3) antiarrhythmic;
 - (4) antihistamine;
 - (5) antihypertensive;
 - (6) bronchodilator;
 - (7) antihypoglycemic agent;
 - (8) vasopressor;
 - (9) corticosteroid;
 - (10) anticonvulsant;
 - (11) muscle relaxant;
 - (12) appropriate reversal agents;
 - (13) nitroglycerine;
 - (14) antiemetic;
 - (15) neuromuscular blocking agent; and
 - (16) anti-malignant hyperthermia agent.
- (e) The evaluation and on-site inspection shall be conducted as set out in Rule .0204 of this Section.
- (f) Before administering general anesthesia or sedation at another provider's office, the mobile permit holder shall inspect the host facility to ensure that:
- (1) the operator's size and design permit emergency management and access of emergency equipment and personnel;
 - (2) there is a CPR board or dental chair without enhancements suitable for providing emergency treatment;
 - (3) there is lighting to permit performance of all procedures planned for the facility;
 - (4) there is suction equipment, including non-electrical back-up suction; and
 - (5) at least two BLS certified auxiliaries are present during all procedures.
- (g) At least 24 hours before the procedure is scheduled to begin, the mobile permit holder shall send written notice to the Board office confirming that the facility where the general anesthesia or sedation will be performed meets the requirements of Paragraph (f) of this Rule and documenting when the inspection was conducted. The permit holder shall retain a copy of the written notice for 10 years following the procedure. No procedure shall be performed until the report required by this Paragraph is filed.
- (h) The mobile general anesthesia permit shall be displayed in the host facility where it is visible to patients receiving treatment.
- (i) All applicants for mobile general anesthesia permit shall be in good standing with the Board.

History Note: Authority G.S. 90-28; 90-30.1; 90-39; 90-48; Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0207 ANNUAL RENEWAL OF GENERAL ANESTHESIA AND ITINERANT (MOBILE) GENERAL ANESTHESIA PERMIT REQUIRED

(a) General anesthesia permits shall be renewed by the Board annually at the same time as dental licenses by paying a one hundred dollar (\$100.00) fee and completing an application available from the Board's website: www.ncdentalboard.org . If the completed renewal application and renewal fee are not received before January 31 of each year, a one hundred dollar (\$100.00) late fee shall be paid.

(b) Itinerant general anesthesia permits shall be renewed by the Board annually at the same time as dental licenses by paying a one hundred dollar (\$100.00) fee and completing an application available from the Board's website: www.ncdentalboard.org . If the completed itinerant general sedation permit and renewal fee are not received before January 31 of each year, a one hundred dollar (\$100.00) late fee shall be paid.

(c) Any dentist who fails to renew a general anesthesia permit or itinerant general anesthesia permit before March 31 of each year shall complete a reinstatement application, pay the renewal fee, late fee, and comply with all conditions for renewal set out in this Rule. Dentists whose anesthesia permits or itinerant general anesthesia permits have been lapsed for more than 12 calendar months shall pass an inspection and an evaluation as part of the reinstatement process.

(d) A dentist who administers general anesthesia in violation of this Rule shall be subject to the penalties prescribed by Rule .0701 of this Subchapter.

(e) As a condition for renewal of the general anesthesia and itinerant general anesthesia permit, the permit holder shall maintain the clinical equipment and requirements set out in Rules .0202 and .0206 of this Section and shall document the following:

- (1) six hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in general anesthesia and IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) airway management;
- (2) unexpired ACLS certification, which shall not count towards the six hours required in Subparagraph (e)(1) of this Rule;
- (3) that the permit holder and all auxiliaries involved in anesthesia or sedation procedures have practiced responding to dental emergencies as a team at least once every six months in the preceding year;
- (4) that the permit holder and all auxiliaries involved in anesthesia or sedation procedures have read the practice's emergency manual in the preceding year; and

- (5) that all auxiliaries involved in sedation procedures have completed BLS certification and six hours of continuing education in medical emergencies annually.

History Note: Authority G.S. 90-28; 90-30.1; 90-31; 90-39(12); 90-48;

Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE CONSCIOUS SEDATION

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a CRNA employed to administer or RN employed to deliver moderate conscious sedation, the dentist shall obtain a permit from the Board by completing an application form and paying a fee of three hundred seventy five dollars (\$375.00). The application form is available on the Board's website: www.ncdentalboard.org. The permit shall be renewed annually and shall be displayed with the current renewal at all times in the facility of the permit holder where it is visible to patients receiving treatment.

(b) The permit holder shall provide direct supervision to any CRNA employed to administer or RN employed to deliver sedation, and shall ensure that the level and duration of the sedation does not exceed the permit holder's permit.

(c) A dentist applying for a permit to administer moderate conscious sedation shall document the following:

- (1) Completion of 60 hours of Board approved didactic training (in intravenous conscious sedation, and 30 hours of clinical training, that shall include successful management of a minimum of 20 live patients, under supervision of the course instructor, using intravenous sedation. Training shall be provided by one or more individuals who meet the American Dental Association Guidelines For Teaching Pain Control and Sedation to Dentists that is hereby incorporated by reference, including subsequent amendments and editions. The guidelines may be found at www.ada.org/coda.
- (2) Completion of a pre-doctoral dental or postgraduate program that included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule;
- (3) Unexpired ACLS certification; and
- (4) That all auxiliaries involved in sedation procedures have unexpired BLS certification.

(d) All applicants for a moderate conscious sedation permit shall be in good standing with the Board.

(e) Prior to issuance of a moderate conscious sedation permit, the applicant shall pass an evaluation and a facility inspection. The applicant shall be responsible for passing the evaluation and inspection of his or her facility within 90 days of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one by contacting the Board in writing.

(f) A dentist who holds a moderate conscious sedation permit shall not intentionally administer deep sedation.

History Note: Authority G.S. 90-30.1; 90-39(12); 90-48; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994; Temporary Amendment Eff. December 11, 2002; Amended Eff. July 1, 2010; July 3, 2008; August 1, 2004; Amended Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0302 MODERATE CONSCIOUS SEDATION CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate conscious sedation or supervising the delivery of moderate conscious sedation by a CRNA or RN shall be responsible to ensure that the facility in where the sedation is administered meets the following requirements:

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting; and
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive oxygen delivery system, including full face masks for small, medium, and large patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) small, medium, and large oral and nasal airways;
 - (G) blood pressure monitoring device;
 - (H) pulse oximeter; and
 - (I) automatic external defibrillator AED;
 - (J) EKG monitor;
 - (K) capnograph;
 - (L) thermometer;
 - (M) vascular access set-up as necessary for specific procedures, including hardware and fluids;
 - (N) syringes as necessary for specific procedures;
 - (O) tourniquet and tape;
 - (P) advanced airway devices; and
 - (Q) tonsillar suction with back-up suction.
- (2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:
 - (A) injectable epinephrine;
 - (B) injectable Atropine;
 - (C) injectable appropriate reversal agents;
 - (D) injectable antihistamine;
 - (E) injectable corticosteroid;
 - (F) nitroglycerine;

- (G) bronchodilator;
- (H) injectable antiemetic;
- (I) injectable 50% Dextrose; and
- (J) injectable anti-arrythmic.
- (3) The permit holder shall maintain written emergency and patient discharge protocols and training to familiarize auxiliaries in the treatment of clinical emergencies shall be provided; and
- (4) The dentist shall maintain the following records for at least 10 years:
 - (A) Patient's current written medical history and pre-operative assessment; and
 - (B) Drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;
- (5) The sedation record shall include:
 - (A) base line vital signs, blood pressure (unless patient behavior prevents recording); oxygen saturation, ET CO2, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
 - (B) procedure start and end times;
 - (C) gauge of needle and location of IV on the patient, if used;
 - (D) status of patient upon discharge;
 - (E) documentation of complications or morbidity; and
 - (F) Consent form, signed by the patient or guardian, identifying the procedure, risks and benefits, level of sedation, and date signed.
- (6) The following conditions shall be satisfied during a sedation procedure:
 - (A) two BLS certified auxiliaries shall be present at all times during the procedure, one of whom shall be dedicated to continuous patient monitoring and recording sedation data; and
 - (B) if IV sedation is used, IV infusion shall be administered before the start of the procedure and maintained until the patient is ready for discharge.
- (b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:
 - (1) monitoring blood pressure, pulse, ET CO2, and respiration;
 - (2) drug dosage and administration;
 - (3) treatment of untoward reactions including respiratory or cardiac depression if applicable;
 - (4) sterile technique;

- (5) use of BLS certified auxiliaries;
 - (6) monitoring of patient during recovery; and
 - (7) sufficiency of patient recovery time.
- (c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) laryngospasm;
- (2) bronchospasm;
- (3) emesis and aspiration;
- (4) respiratory depression and arrest;
- (5) angina pectoris;
- (6) myocardial infarction;
- (7) hypertension and hypotension;
- (8) syncope;
- (9) allergic reactions;
- (10) convulsions;
- (11) bradycardia
- (12) insulin shock;
- (13) cardiac arrest; and
- (14) airway obstruction.

(d) A moderate conscious sedation permit holder shall evaluate a patient for health risks before starting any sedation procedure as follows:

- (1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use or;
- (2) a patient who is not medically stable or who are ASA III or higher shall be evaluated by a consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the procedure.

(e) Post-operative monitoring and discharge:

- (1) vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation and circulation are stable and the patient is recovered as defined in Subparagraph (e)(2) of this Rule and is ready for discharge from the office.
- (2) recovery from moderate conscious sedation shall include documentation of the following:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for special needs patients or patients incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as

- possible for that patient shall be achieved.
- (3) before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (e)(2) of this Rule and the following discharge criteria:
 - (A) oxygenation, circulation, activity, skin color, and level of consciousness are stable, and have been documented;
 - (B) explanation and documentation of written postoperative instructions have been provided to the patient or a responsible adult at time of discharge; and
 - (C) a vested adult is available to transport the patient after discharge.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. August 1, 2002; August 1, 2000; Temporary Amendment Eff. December 11, 2002; Amended Eff. November 1, 2013; July 1, 2010; July 3, 2008; August 1, 2004; Amended Eff. Pending Delayed Effective Date.

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

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. August 1, 2002; January 1, 1994; Temporary Amendment Eff. December 11, 2002; Amended Eff. September 1, 2014; February 1, 2009; July 3, 2008; August 1, 2004; Repealed Eff. April 1, 2016.

21 NCAC 16Q .0304 OFF SITE USE OF MODERATE CONSCIOUS SEDATION PERMITS

The holder of a moderate conscious sedation permit may travel to the office of a licensed dentist and provide moderate conscious sedation for the patients of that dentist who are undergoing dental procedures. The permit holder shall be responsible to ensure that the facility where the sedation is administered has passed inspection by the Board and meets the requirements set out in Rule .0302 of this Section. The permit holder shall be responsible to ensure that two BLS certified auxiliaries are available for each procedure.

History Note: Authority G.S. 90-28; 90-30; 90-30.1; 90-48; Recodified from 21 NCAC 16Q .0302(e)(f), Eff. November 1, 2013; Amended Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0305 ANNUAL RENEWAL OF MODERATE CONSCIOUS SEDATION PERMIT REQUIRED

- (a) Moderate conscious sedation permits shall be renewed by the Board annually at the same time as dental licenses by paying a one hundred dollar (\$100.00) fee and completing an application available from the Board's website: www.ncdentalboard.org.
- (b) If the completed permit renewal application and renewal fee are not received before January 31 of each year, a one hundred dollar (\$100.00) late fee shall be paid.
- (c) Any dentist who fails to renew a moderate conscious sedation permit before March 31 of each year shall complete a reinstatement application, pay the renewal fee, late fee, and comply with all conditions for renewal set out in this Rule. Dentists whose sedation permits have been lapsed for more than 12 calendar months shall pass an inspection and an evaluation as part of the reinstatement process.
- (d) A dentist who administers moderate conscious sedation in violation of this Rule shall be subject to the penalties prescribed by Rule .0701 of this Subchapter.
- (e) As a condition for renewal of the moderate conscious sedation permit, the permit holder shall meet the clinical and equipment requirements of Rule .0302 of this Section and shall document the following:

- (1) six hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) airway management;
- (2) unexpired ACLS certification, which shall not count towards the six hours of continuing education required in Subparagraph (e)(1) of this Rule;
- (3) that the permit holder and all auxiliaries involved in sedation procedures have practiced responding to dental emergencies as a team at least once every six months in the preceding year;
- (4) that the permit holder and all auxiliaries involved in sedation procedures have read the practice's emergency manual in the preceding year; and
- (5) that all auxiliaries involved in sedation procedures have completed BLS certification and six hours of continuing education in medical emergencies annually.

(f) All permit holders applying for renewal of a moderate conscious sedation permit shall be in good standing with the Board.

History Note: Authority G.S. 90-28; 90-30.1; 90-31; 90-39(12); 90-48;
Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0306 PROCEDURE FOR MODERATE CONSCIOUS SEDATION EVALUATION OR INSPECTION AND RE-INSPECTION

- (a) When an evaluation or on-site inspection is required, the Board shall designate one or more qualified persons to serve as evaluators [each of whom has administered moderate conscious sedation for at least three years preceding the inspection. Training in moderate conscious sedation shall not be counted in the three years.
- (b) An inspection fee of three hundred seventy five dollars (\$375.00) shall be due 10 days after the dentist receives notice of the inspection of each additional location at which the dentist administers moderate conscious sedation.
- (c) Any dentist-member of the Board may observe or consult in any evaluation or inspection.
- (d) The inspection team shall determine compliance with the requirements of the rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail."
- (e) Each evaluator shall report his or her recommendation to the Board's Anesthesia and Sedation Committee, setting forth the details supporting his or her conclusion. The Committee shall not be bound by these recommendations. The Committee shall determine whether the applicant has passed the evaluation or inspection and shall notify the applicant in writing of its decision.
- (f) An applicant who fails an inspection or evaluation shall not receive a permit to administer moderate conscious sedation. If a permit holder fails an evaluation, the permit shall be summarily suspended as provided by G.S. 150B-3(c). If a permit holder's facility fails an inspection, no further sedation procedures shall be performed at the facility until it passes a re-inspection by the Board.
- (g) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and shall include a statement of the grounds supporting the re-evaluation or re-inspection. The Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.
- (h) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.

History Note: Authority G.S. 90-30.1; 90-39; 90-48;
Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0401 MINIMAL CONSCIOUS SEDATION CREDENTIALS, EVALUATION AND PERMIT

21 NCAC 16Q .0402 MINIMAL CONSCIOUS SEDATION PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

*History Note: Authority G.S. 90-28; 90-30.1.
Temporary Adoption Eff. March 13, 2003; December 11, 2002;
Eff. August 1, 2004;
Amended Eff. February 1, 2009; July 3, 2008;
Repealed Eff. Pending Delayed Effective Date.*

**21 NCAC 16Q .0403 TEMPORARY APPROVAL
PRIOR TO SITE INSPECTION**

*History Note: Authority G.S. 90-28; 90-30.1.
Temporary Adoption Eff. March 13, 2003; December 11, 2002;
Eff. August 1, 2004;
Amended Eff. February 1, 2009; July 3, 2008;
Repealed Eff. April 1, 2016.*

**21 NCAC 16Q .0404 CREDENTIALS AND PERMITS
FOR MODERATE PEDIATRIC CONSCIOUS SEDATION**

(a) Before a dentist licensed to practice in North Carolina may administer moderate pediatric conscious sedation, the dentist shall obtain a general anesthesia or moderate pediatric conscious sedation permit from the Board by completing an application form and paying a fee of three hundred seventy-five dollars (\$375.00). The application form is available on the Board's website: www.ncdentalboard.org. The permit shall be renewed annually and shall be displayed with the unexpired renewal at all times in the permit holder's facility where it is visible to patients receiving treatment.

(b) A dentist applying for a permit to administer moderate pediatric conscious sedation shall meet at least one of the following criteria:

- (1) completion of a postgraduate program that included pediatric intravenous conscious sedation training;
- (2) completion of a Council On Dental Accreditation (CODA) approved pediatric residency that included intravenous conscious sedation training; or
- (3) completion of a pediatric degree or pediatric residency at a CODA approved institution that includes training in the use and placement of IVs or intraosseous vascular access. A list of CODA approved institutions that is hereby incorporated by reference, including subsequent amendments and editions, appears at www.ada.org/coda.

(c) All applicants for moderate pediatric conscious sedation permits shall have completed the training required by Paragraph (b) of this Rule within the last two years or show evidence of moderate pediatric conscious sedation practice within the last two years in another state or U.S. Territory.

(d) All applicants for moderate pediatric conscious sedation permits shall be in good standing with the Board.

(e) A dentist who holds a moderate pediatric conscious sedation permit shall not intentionally administer deep sedation.

*History Note: Authority G.S. 90-30.1; 90-39(12); 90-48;
Eff. Pending Delayed Effective Date.*

**21 NCAC 16Q .0405 MODERATE PEDIATRIC
CONSCIOUS SEDATION CLINICAL REQUIREMENTS
AND EQUIPMENT**

(a) A dentist administering moderate pediatric conscious sedation shall be responsible to ensure that the facility where the sedation is administered meets the following requirements:

- (1) The facility shall be equipped with the following:
 - (A) an operatory of size and design to permit access of emergency equipment and personnel and to permit emergency management;
 - (B) a CPR board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) lighting as necessary for specific procedures and back-up lighting;
 - (D) suction equipment as necessary for specific procedures, including non-electrical back-up suction;
 - (E) positive oxygen delivery system, including full face masks for small, medium, and large patients, and back-up E-cylinder portable oxygen tank apart from the central system;
 - (F) oral and nasal airways of various sizes;
 - (G) blood pressure monitoring device;
 - (H) pulse oximeter;
 - (I) capnograph;
 - (J) defibrillator;
 - (K) EKG monitor;
 - (L) thermometer;
 - (M) vascular access set-up as necessary for specific procedures, including hardware and fluids;
 - (N) syringes as necessary for specific procedures;
 - (O) advanced airways; and
 - (P) tourniquet and tape.
- (2) The following unexpired drugs shall be maintained in the facility and with access from the operatory and recovery rooms:
 - (A) epinephrine;
 - (B) Atropine;
 - (C) appropriate reversal agents;
 - (D) antihistamine;
 - (E) corticosteroid;
 - (F) nitroglycerine;
 - (G) bronchodilator;
 - (H) antiemetic; and
 - (I) 50% Dextrose.
- (3) The permit holder shall maintain written emergency and patient discharge protocols and training to familiarize auxiliaries in the treatment of clinical emergencies shall be provided;
- (4) The following records are maintained for at least 10 years:

- (A) patient's current written medical history and pre-operative assessment;
 - (B) drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;
 - (C) a sedation record;
 - (D) a consent form, signed by the patient or a guardian, identifying the procedure, risks and benefits, level of sedation and date signed.
- (5) The sedation record shall include:
- (A) base line vital signs, blood pressure (unless patient behavior prevents recording); oxygen saturation, ET CO₂, pulse and respiration rates of the patient recorded in real time at 15 minute intervals;
 - (B) procedure start and end times;
 - (C) gauge of needle and location of IV on the patient, if used;
 - (D) status of patient upon discharge; and
 - (E) documentation of complications or morbidity; and
- (6) The following conditions shall be satisfied during a sedation procedure:
- (A) two BLS certified auxiliaries shall be present at all times during the procedure, one of whom shall be dedicated to patient monitoring and recording sedation data.
 - (B) when IV sedation is used, IV infusion shall be administered before the commencement of the procedure and maintained until the patient is ready for discharge.
- (b) During an inspection or evaluation, applicants and permit holders who use intravenous sedation shall demonstrate the administration of moderate pediatric conscious sedation on a live patient, including the deployment of an intravenous delivery system, while the evaluator observes. Applicants and permit holders who do not use IV sedation shall describe the proper deployment of an intravenous delivery system to the evaluator and shall demonstrate the administration of moderate pediatric conscious sedation on a live patient while the evaluator observes.
- (c) During the demonstration, all applicants and permit holders shall demonstrate competency in the following areas:
- (1) monitoring blood pressure, pulse, and respiration;
 - (2) drug dosage and administration;
 - (3) treatment of untoward reactions including respiratory or cardiac depression if applicable;
 - (4) sterile technique;
 - (5) use of BLS certified auxiliaries;
 - (6) monitoring of patient during recovery; and
 - (7) sufficiency of patient recovery time.
- (d) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency in the treatment of the following clinical emergencies:
- (1) laryngospasm;
 - (2) bronchospasm;
 - (3) emesis and aspiration;
 - (4) respiratory depression and arrest;
 - (5) angina pectoris;
 - (6) myocardial infarction;
 - (7) hypertension and hypotension;
 - (8) allergic reactions;
 - (9) convulsions;
 - (10) syncope;
 - (11) bradycardia;
 - (12) insulin shock;
 - (13) cardiac arrest;
 - (14) airway obstruction; and
 - (15) vascular access.
- (e) a moderate pediatric conscious sedation permit holder shall evaluate patients for health risks before starting any sedation procedure as follows:
- (1) a patient who is medically stable and who is ASA I or II shall be evaluated by reviewing the patient's current medical history and medication use; or
 - (2) a patient who is not medically stable or who is ASA III or higher shall be evaluated by a consultation with the patient's primary care physician or consulting medical specialist regarding the potential risks posed by the procedure.
- (f) Patient monitoring:
- (1) Patients who have been administered moderate pediatric conscious sedation shall be monitored for alertness, responsiveness, breathing, and skin coloration during waiting periods before operative procedures.
 - (2) Vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation and circulation are stable and the patient is recovered as defined in Subparagraph (f)(3) of this Rule and is ready for discharge from the office.
 - (3) Recovery from moderate pediatric conscious sedation shall include documentation of the following:
 - (A) cardiovascular function stable;
 - (B) airway patency uncompromised;
 - (C) patient arousable and protective reflexes intact;
 - (D) state of hydration within normal limits;
 - (E) patient can talk, if applicable;
 - (F) patient can sit unaided, if applicable;
 - (G) patient can ambulate, if applicable, with minimal assistance; and
 - (H) for the special needs patient or a patient incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as

close as possible for that patient shall be achieved.

- (4) Before allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Subparagraph (f)(3) of this Rule and the following discharge criteria:
- (A) oxygenation, circulation, activity, skin color, and level of consciousness are sufficient and stable, and have been documented;
 - (B) explanation and documentation of written postoperative instructions have been provided to a responsible adult at time of discharge;
 - (C) a vested adult is available to transport the patient after discharge; and
 - (D) a vested adult shall be available to transport patients for whom a motor vehicle restraint system is required and an additional responsible individual shall be available to attend to the patients.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0406 OFF SITE USE OF MODERATE PEDIATRIC CONSCIOUS SEDATION PERMITS

The holder of a moderate pediatric conscious sedation permit may travel to the office of a licensed dentist and provide moderate pediatric conscious sedation. The permit holder shall be responsible to ensure that the facility where the sedation is administered has been inspected by the Board as required by Rule .0404 of this Section, and that the equipment, facility, and auxiliaries meet the requirements of Rule .0405 of this Section.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0407 ANNUAL RENEWAL OF MODERATE PEDIATRIC CONSCIOUS SEDATION PERMIT REQUIRED

- (a) Moderate pediatric conscious sedation permits shall be renewed by the Board annually at the same time as dental licenses by paying a one hundred (\$100.00) fee and completing an application available from the Board's website: www.ncdentalboard.org.
- (b) If the completed renewal application and renewal fee are not received before January 31 of each year, a one hundred (\$100.00) late fee shall be paid.
- (c) Any dentist who fails to renew a moderate pediatric conscious sedation permit before March 31 of each year shall complete a reinstatement application, pay the renewal fee, late fee, and comply with all conditions for renewal set out in this Rule. Dentists whose sedation permits have been lapsed for more than 12 calendar months shall pass an inspection and an evaluation as part of the reinstatement process.

(d) A dentist who administers moderate pediatric conscious sedation in violation of this Rule shall be subject to the penalties prescribed by Rule .0701 of this Subchapter.

(e) As a condition for renewal of the moderate pediatric conscious sedation permit, the permit holder shall meet the clinical and equipment requirements of Rule .0405 of this Section and shall document the following:

- (1) six hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:
 - (A) sedation;
 - (B) medical emergencies;
 - (C) monitoring IV sedation and the use of monitoring equipment;
 - (D) pharmacology of drugs and agents used in IV sedation;
 - (E) physical evaluation, risk assessment, or behavioral management; or
 - (F) airway management;
- (2) unexpired PALS certification which shall not count towards the six hours of continuing education required in Subparagraph (e)(1) of this Rule;
- (3) that the permit holder and all auxiliaries involved in sedation procedures have practiced responding to dental emergencies as a team at least once every six months in the preceding year.
- (4) that the permit holder and all auxiliaries involved in sedation procedures have read the practice's emergency manual in the preceding year.
- (5) that all auxiliaries involved in sedation procedures have completed BLS certification and six hours of continuing education in medical emergencies annually.

(f) All permit holders applying for renewal of a moderate pediatric conscious sedation permit shall be in good standing with the Board.

History Note: Authority G.S. 90-28; 90-30.1; 90-31; 90-39(12); 90-48; Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0408 PROCEDURE FOR MODERATE PEDIATRIC SEDATION EVALUATION OR INSPECTION AND RE-INSPECTION

- (a) When an evaluation or on-site inspection is required, the Board shall designate one or more qualified persons to serve as evaluators, each of whom has administered moderate pediatric sedation for at least three years preceding the evaluation or inspection. Training in moderate pediatric sedation shall not count toward the three years.
- (b) An inspection fee of three hundred seventy five dollars (\$375.00) shall be due 10 days after the dentist receives notice of the inspection of each additional location at which the dentist administers moderate pediatric sedation.

(c) Any dentist-member of the Board may observe or consult in any evaluation or inspection.

(d) The inspection team shall determine compliance with the requirements of the rules in this Subchapter, as applicable, by assigning a grade of "pass" or "fail."

(e) Each evaluator shall report his or her recommendation to the Board's Anesthesia and Sedation Committee, setting forth the details supporting his or her conclusion. The Committee shall not be bound by these recommendations. The Committee shall determine whether the applicant has passed the evaluation or inspection and shall notify the applicant in writing of its decision.

(f) An applicant who fails an inspection or evaluation shall not receive a permit to administer moderate pediatric sedation. If a permit holder fails an evaluation, the permit shall be summarily suspended as provided by G.S. 150B-3(c). If a permit holder's facility fails an inspection, no further sedation procedures shall be performed at the facility until it passes a re-inspection by the Board.

(g) An applicant who fails an inspection or evaluation may request a re-evaluation or re-inspection within 15 days of receiving the notice of failure. The request shall be directed to the Board in writing and include a statement of the grounds supporting the re-evaluation or re-inspection. The Board shall require the applicant to receive additional training prior to the re-evaluation to address the areas of deficiency determined by the evaluation. The Board shall notify the applicant in writing of the need for additional training.

(h) Re-evaluations and re-inspections shall be conducted by Board-appointed evaluators not involved in the failed evaluation or inspection.

History Note: Authority G.S. 90-30.1; 90-39; 90-48; Eff. Pending Delayed Effective Date.

- 21 NCAC 16Q .0501 ANNUAL RENEWAL REQUIRED**
- 21 NCAC 16Q .0502 PAYMENT OF FEES**
- 21 NCAC 16Q .0503 INSPECTION AUTHORIZED**

History Note: Authority G.S. 90-28; 90-30.1; 90-48 Eff. February 1, 1990; Amended Eff. August 1, 2002; January 1, 1994; Transferred and Recodified from 16Q .0401 to 16Q .0501; Transferred and Recodified from 16Q .0402 to 16Q .0502; Transferred and Recodified from 16Q .0403 to 16Q .0503; Temporary Amendment Eff. December 11, 2002; Amended Eff. November 1, 2013; July 3, 2008; August 1, 2004; Repealed Eff. Pending Delayed Effective Date.

- 21 NCAC 16Q .0601 REPORTS OF ADVERSE OCCURRENCES**
- 21 NCAC 16Q .0602 FAILURE TO REPORT**

History Note: Authority G.S. 90-28; 90-30.1; 90-41; Eff. February 1, 1990; Transferred and Recodified from 16Q .0501 to 16Q .0601; Transferred and Recodified from 16Q .0502 to 16Q .0602; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004;

Repealed Eff. Pending Delayed Effective Date.

21 NCAC 16Q .0703 REPORTS OF ADVERSE OCCURRENCES

(a) A dentist who holds a permit to administer general anesthesia or sedation shall report to the Board within 72 hours after each adverse occurrence related to the administration of general anesthesia or sedation that results in the death of a patient within 24 hours of the procedure. Sedation permit holders shall cease administration of sedation until the Board has investigated the death and approved resumption of permit privileges. General anesthesia permit holders shall cease administration of general anesthesia and sedation until the Board has reviewed the incident report and approved resumption of permit privileges.

(b) A dentist who holds a permit to administer general anesthesia or sedation shall report to the Board within 30 days after each adverse occurrence related to the administration of general anesthesia or sedation that results in permanent organic brain dysfunction of a patient occurring within 24 hours of the procedure or that results in physical injury or severe medical emergencies, causing hospitalization of a patient occurring within 24 hours of the procedure.

(c) The adverse occurrence report shall be in writing and shall include the following:

- (1) dentist's name, license number and permit number;
- (2) date and time of the occurrence;
- (3) facility where the occurrence took place;
- (4) name and address of the patient;
- (5) surgical procedure involved;
- (6) type and dosage of sedation or anesthesia utilized in the procedure;
- (7) circumstances involved in the occurrence; and
- (8) anesthesia records.

(d) Upon receipt of any such report, the Board shall investigate and shall take disciplinary action if the evidence demonstrates that a licensee has violated the Dental Practice Act set forth in Article 2 of G.S. 90 or the Board's rules of this Chapter.

History Note: Authority G.S. 90-28; 90-30.1; 90-41; 90-48; Eff. Pending Delayed Effective Date.

21 NCAC 16W .0101 DIRECTION DEFINED

(a) Pursuant to G.S. 90-233(a), a public health hygienist may perform clinical procedures "under the direction of a licensed dentist," as defined by 21 NCAC 16Y .0104(c) of this Chapter, who is employed by a State government dental public health program or a local health department as a public health dentist.

(b) The specific clinical procedures delegated to the hygienist shall be completed, in accordance with a written order from the dentist, within 120 days of the dentist's in-person evaluation of the patient.

(c) The dentist's evaluation of the patient shall include a comprehensive oral examination, medical and dental health history, and diagnosis of the patient's condition.

(d) Direction of a licensed dentist is not required for public health hygienists who provide only educational information, such as instruction in brushing and flossing.

History Note: Authority G.S. 90-223; 90-233(a);
Temporary Adoption Eff. October 1, 1999;
Eff. April 1, 2001;
Amended Eff. April 1, 2016; July 1, 2015.

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32M .0117 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board of Nursing") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

- (1) falls within the top one percent of those prescribing 100 milligrams of morphine equivalents ("MME") per patient per day; or
- (2) falls within the top one percent of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board of Nursing information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid poisoning.

(c) The Department may submit these reports to the Board of Nursing upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board of Nursing shall remain confidential pursuant to G.S. 90-16 and G.S. 90-113.74.

History Note: Authority G.S. 90-18.2; 90-113.74;
Eff. April 1, 2016.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0815 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the North Carolina Board of Nursing ("Board") information regarding the prescribing practices of those nurse practitioners ("prescribers") whose prescribing:

- (1) falls within the top one percent of those prescribing 100 milligrams of morphine equivalents ("MME") per patient per day; or
- (2) falls within the top one percent of those prescribing 100 MME's per patient per day in combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

(b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding 12 months due to opioid poisoning.

(c) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).

(d) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-113.74.

History Note: Authority G.S. 90-113.74;
Eff. April 1, 2016.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

25 NCAC 01C .0303 PUBLIC INSPECTION
25 NCAC 01C .0304 CONFIDENTIAL
INFORMATION IN PERSONNEL FILES

History Note: Authority G.S. 126-23; 126-26; 126-29;
Eff. February 1, 1976;
Amended Eff. May 1, 2008; October 1, 2004; November 1, 1988;
December 1, 1978; October 1, 1977;
Repealed Eff. April 1, 2016.

25 NCAC 01C .0405 TEMPORARY APPOINTMENT

(a) A temporary appointment is an appointment for a limited term to a permanent or temporary position, not to exceed 12 consecutive months, subject to the following exemptions:

- (1) Students shall be exempt from the 12-months maximum limit. "Students" include those undergraduate students taking at least 12 semester hours or graduate students taking at least nine semester hours.
- (2) Retired employees may have temporary appointments for more than 12 months if he or she signs a statement that he or she is not available for, nor seeking permanent employment. "Retired employees" include those drawing a retirement income or social security benefits.

(b) Employees with a temporary appointment shall not earn or accrue leave, or receive total state service credit, retirement credit, severance pay, or priority reemployment consideration.

History Note: Authority G.S. 126-4;
Eff. February 1, 1976;
Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978;
Readopted Eff. April 1, 2016.

25 NCAC 01C .0407 TEMPORARY PART-TIME
APPOINTMENT

(a) A temporary part-time appointment is an appointment of less than full-time for a limited term not to exceed 12 consecutive months, subject to the following exemptions:

- (1) Students shall be exempt from the 12-months maximum limit. "Students" include those undergraduate students taking at least 12 semester hours or graduate students taking at least nine semester hours.

- (2) Retired employees may have temporary appointments for more than 12 months if he or she signs a statement that he or she is not available for, nor seeking permanent employment. "Retired employees" include those drawing a retirement income or social security benefits.

(b) Employees with a temporary part-time appointment shall not earn or accrue leave, or receive total state service credit, retirement credit, severance pay, or priority reemployment consideration.

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. August 1, 1995; November 1, 1991; December 1, 1978; Readopted Eff. April 1, 2016.

25 NCAC 01C .0504 LIMITATIONS

(a) An employee who arrives later than scheduled, may be permitted by his or her supervisor to make up the deficit of working hours by working that much longer at the end of the workday if this is consistent with the work need of the agency. Otherwise, the tardiness shall be charged to the employee's leave in accordance with 25 NCAC 01E .0207. Supervisors shall be responsible for taking action to correct any abuse or misuse of this privilege which may include deductions from the employee's pay or a disciplinary action in accordance with 25 NCAC 01J .0604.

(b) If an employee reports to work early he or she may be permitted by his or her supervisor to begin work at that time and leave at a correspondingly early hour if this is consistent with the work need of the agency. Otherwise, the employee shall wait in a designated area away from the work station.

(c) If an employee leaves work early without permission from his or her supervisor, the time shall be deducted from the employee's pay or may be charged to the employee's leave account.

(d) An employee may not work later than scheduled unless permitted by his or her supervisor if this is consistent with the work need of the agency.

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. October 1, 1992; November 1, 1988; August 1, 1985; February 1, 1983; Readopted Eff. April 1, 2016.

**25 NCAC 01C .0902 AGENCY RESPONSIBILITY
25 NCAC 01C .0903 ELIGIBILITY REQUIREMENTS**

History Note: Authority G.S. 126-4(10); Eff. February 1, 1976; Amended Eff. July 1, 1983; Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire on June 29, 1989; Amended Eff. December 1, 1995; May 1, 1989; March 1, 1989; Rule .0902 was recodified from 25 NCAC 01J .0404 Eff. December 29, 2003; Rule .0903 was recodified from 25 NCAC 01J .0406 Eff. December 29, 2003;

*Amended Eff. October 1, 2006;
Repealed Eff. April 1, 2016.*

25 NCAC 01C .1007 SEPARATION

- (a) An employee may be separated when:
 - (1) the employee remains unavailable for work after all applicable leave credits and leave benefits have been exhausted and agency management does not grant leave without pay, as defined in 25 NCAC 01E .1101, if the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's condition;
 - (2) notwithstanding any unexhausted applicable leave credits and leave benefits, the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a court order, due to a loss of required credentials, due to a loss of other required certification, or due to other extenuating circumstances that renders the employee unable to perform the position's essential duties as set forth in the employee's job description or designated work schedule, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's situation; or
 - (3) notwithstanding any unexhausted applicable leave credits and leave benefits, when an employee is on workers' compensation leave of absence, and the employee is unable to return to all of the position's essential duties as set forth in the employee's job description or designated work schedule due to a medical condition or the vagueness of a medical prognosis, and the employee and the agency are unable to reach agreement on a return to work arrangement that meets both the needs of the agency and the employee's medical condition, a separation may occur on the earliest of the following dates:
 - (A) after the employee has reached maximum medical improvement for the work related injury for which the employee is on workers' compensation leave of absence and the agency is unable to accommodate the employee's permanent work restrictions related to such injury; or
 - (B) 12 months after the date of the employee's work related injury.

(b) The employing agency shall send the employee written notice of the proposed separation in a Pre Separation Letter. The letter shall include the employing agency's planned date of separation, the efforts undertaken to avoid separation, and why the efforts were unsuccessful. This letter shall be sent to the employee at least 15 calendar days prior to the employing agency's planned date of separation. This letter shall include a deadline for the employee to respond in writing no less than five calendar days prior to the employing agency's planned date of separation.

(c) If the agency and employee are unable to agree on terms of continued employment or the employee does not respond to the Pre Separation letter, the employing agency shall send the employee written notice in a Letter of Separation. The letter shall be sent no earlier than 20 calendar days after the Pre Separation letter is sent to the employee. The Letter of Separation shall state the actual date of separation, specific reasons for the separation and set forth the employee's right of appeal. Such a separation shall not be considered a disciplinary dismissal as described in G.S. 126-34.02 or G.S. 126-35. It is an involuntary separation and may be grieved or appealed. The burden of proof on the agency in the event of a grievance is not to demonstrate just cause as that term exists in G.S. 126-34.02 or G.S. 126-35. Rather, the agency's burden shall be to prove that the employee was unavailable, that efforts were undertaken to avoid separation, and why the efforts were unsuccessful.

(d) "Applicable leave credits and benefits" is defined as the sick, vacation, bonus, incentive, and compensatory leave that the employee may earn, but does not include short-term or long-term disability.

History Note: Authority G.S. 126-4(7a); 126-35; Eff. November 1, 1989; Recodified from 25 NCAC 01D .0519 Eff. December 29, 2003; Amended Eff. April 1, 2015; January 1, 2007; October 1, 2004; Readopted Eff. April 1, 2016.

25 NCAC 01O .0101 POLICY

History Note: Authority G.S. 126-4; 126-7; Eff. January 1, 1990; Amended Eff. August 1, 2007; March 1, 2005; Repealed Eff. April 1, 2016.

- 25 NCAC 01O .0102 PURPOSE**
- 25 NCAC 01O .0103 COMPONENTS OF A PERFORMANCE MANAGEMENT SYSTEM**
- 25 NCAC 01O .0104 RATING SCALE**
- 25 NCAC 01O .0105 DISPUTE RESOLUTION**
- 25 NCAC 01O .0106 MONITORING, EVALUATING, REPORTING**

History Note: Authority G.S. 126-4; 126-7; Eff. August 1, 2007; Repealed Eff. April 1, 2016.

25 NCAC 01O .0107 PERFORMANCE MANAGEMENT POLICY

It is the policy of North Carolina State Government to provide an integrated performance management system that evaluates

employees' accomplishments and behaviors related to goals and organizational values to achieve organizational mission, goals, and business objectives. An integrated performance management system enables employees to develop and enhance individual performance while contributing to the achievement of organizational mission, goals, and business objectives.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 01O .0108 PERFORMANCE MANAGEMENT COVERED EMPLOYEES

- (a) Rules in this Subchapter shall apply to the following:
- (1) probationary, time-limited and permanent employees;
 - (2) employees appointed to exempt policy-making positions, exempt managerial positions, confidential secretary, confidential assistant, and all chief deputy positions; and
 - (3) employees in trainee classifications.
- (b) Rules in this Subchapter shall not apply to temporary employees.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 01O .0109 PERFORMANCE MANAGEMENT DEFINITIONS

The following definitions shall apply to all rules in this Subchapter:

- (1) "Annual Performance Evaluation" means the comprehensive review of the employee's performance, relative to the goals and values throughout the entire performance cycle as defined in 25 NCAC 01O .0110. The annual performance evaluation contains a final overall rating.
- (2) "Calibration Session" means a confidential discussion between same-level managers or supervisors facilitated by the next-level manager, supervisor or designated Human Resources representative, to evaluate work distribution, goal alignment, goal validity, results, and final ratings.
- (3) "Coaching Session" means either a formal discussion with documentation or an informal discussion without documentation between a manager or supervisor and employee to provide feedback and reinforce desired work actions and behavior.
- (4) "Counseling Session" means a formal discussion with documentation between a manager or supervisor and an employee to provide specific feedback and initiate a Performance Improvement Plan to develop a strategy for an employee to raise his or her performance to a minimum of "Meets Expectation."

- (5) "Formal Discussion" means a discussion with documentation between a manager or supervisor and employee.
- (6) "Goals" means organizational, division, work unit, and individual level outcomes that support the strategic mission of the organization. All goals must be relevant to agency goals/mission.
- (7) "Individual Development Plan" means a plan used to identify areas of development so an employee will have the skills, knowledge and abilities he or she needs to meet the organization's goals and objectives, and is given an opportunity to develop competencies that will allow him or her to be successful in the future.
- (8) "Informal Discussion" means a discussion without documentation between a manager or supervisor and employee.
- (9) "Interim Review" means a formal discussion with documentation of such at the mid-point of the performance cycle between a manager or supervisor and an employee to review the employee's progress and make any necessary adjustments (e.g., adding new goals and tasks or canceling existing goals and tasks if priorities have changed, changing the weights assigned to goals and tasks) or initiate additional performance-related documentation.
- (10) "Permanent Employee" means an employee who is in a permanent position and has attained career status by being continuously employed by the State in a position subject to the State Human Resources Act for the immediate 12 preceding months.
- (11) "Performance Expectation" means a goal, value, or both, defining outcomes and behaviors that are documented on a performance plan to identify results to be accomplished and how the work should be accomplished.
- (12) "Performance Improvement Plan" means a written document issued to an employee by a manager or supervisor that provides instructions to the employee about the action or actions the employee shall take to improve performance or conduct deficiencies to the "Meets Expectations" level of performance. A performance improvement plan is issued to an employee who maintains employment and serves as a disciplinary action.
- (13) "Performance Plan" means a description of the goals and values to be accomplished by the employee within the performance cycle, with emphasis on the goals and results to be achieved and how those results will be measured.
- (14) "Position Description" means a statement or set of duties and responsibilities that represents the major functions of a job that must be performed to meet the agency's needs.
- (15) "Probationary Employee" means an employee who is in a permanent position but has not attained career status by being continuously employed by the State in a position subject to the State Human Resources Act for the immediate 12 preceding months.
- (16) "Satisfactory Performance" means performance for which the employee consistently meets expectations and occasionally exceeds expectations.
- (17) "Time-Limited Employee" means an employee who is in a time-limited position and is not eligible for career status.
- (18) "University" means the constituent institutions of the University of North Carolina.
- (19) "Values" means qualitative behavioral attributes that document how work actions should be accomplished. Values reflect core organizational beliefs that guide and motivate actions supporting the accomplishment of the agency mission and goals.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 010 .0110 PERFORMANCE CYCLE

- (a) The standard State government performance cycle shall be from July 1 through June 30, with the exception of the universities who shall have a standard performance cycle from April 1 through March 31.
- (b) The annual performance evaluation shall be completed (i.e., documentation provided and ratings assigned), approved, discussed with employees, and entered into the system of record within 60 calendar days of the cycle end date.
- (c) The State Human Resources Director may change the dates of the standard performance cycle for business-related reasons with a statewide impact; however, all covered employees shall be notified a minimum of 60 calendar days prior to the start of the new performance cycle. The need to change the dates of the standard performance cycle will be determined through consultation with the statewide Performance Management Program Manager.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 010 .0111 DOCUMENTATION OF PERFORMANCE

- (a) The Office of State Human Resources shall provide a standard annual performance evaluation template, performance planning template, interim review template, individual development plan template, documented coaching session template, and Performance Improvement Plan template to be utilized by all agencies, universities and individuals covered by this Subchapter.
- (b) The State Human Resources Director shall publish and communicate the standardized templates a minimum of 90 calendar days prior to the start of the performance cycle. These templates shall be available in the performance management system through an employee's online portal.

*History Note: Authority G.S. 126-4;
Eff. April 1, 2016.*

**25 NCAC 010 .0112 PERFORMANCE
MANAGEMENT RESOURCES AND TRAINING**

Each agency and university shall:

- (1) designate a person as its performance management coordinator, with responsibility for coordinating the development, implementation, and ongoing administration of performance management within the organization;
- (2) provide performance management training, made available by the Office of State Human Resources, to all newly hired or promoted managers or supervisors, to be completed within the first three months of the manager's or supervisor's new role; and
- (3) provide annual refresher training, made available by the Office of State Human Resources, to all employees.

*History Note: Authority G.S. 126-4;
Eff. April 1, 2016.*

**25 NCAC 010 .0113 CONFIDENTIALITY AND
RECORDS RETENTION**

- (a) Performance evaluations shall be confidential documents under G.S. 126-22.
- (b) To promote communication and coordination during calibration sessions, agency management may make some version of performance plans visible internally to management; however, any information shared during calibration sessions shall be treated as confidential and shall not be shared outside of the calibration session.
- (c) A breach of confidentiality shall be considered personal misconduct and may result in disciplinary action up to and including dismissal as defined in 25 NCAC 01J .0604.
- (d) Annual performance evaluations and supporting documentation shall be retained for three years, and maintained according to Article 7 of G.S. 126.
- (e) Hiring supervisors and managers shall be able to inspect and examine performance management documents of final job candidates who are current or former State employees during the hiring process.

*History Note: Authority G.S. 126-4; 126-24;
Eff. April 1, 2016.*

**25 NCAC 010 .0114 PERFORMANCE
MANAGEMENT COMPLIANCE**

- (a) The Office of State Human Resources shall monitor and evaluate performance management records and data to ensure agency compliance with rules in this Subchapter.
- (b) If an employee believes his or her manager or supervisor is failing to adhere to the performance management in accordance with this Subchapter, the employee shall notify the next-level manager or supervisor or the agency's Human Resources office.

(c) The failure of a manager or supervisor to carry out the performance management process shall be addressed as a performance deficiency and shall result in one or more of the following:

- (1) counseling from the next-level manager or supervisor to determine the cause(s) of the deficiency and implementation of a Performance Improvement Plan;
- (2) participating in skills enhancement training;
- (3) monitoring and documentation of manager or supervisor progress towards improving implementation of performance management; or
- (4) the issuing of disciplinary action, up to and including dismissal.

*History Note: Authority G.S. 126-4;
Eff. April 1, 2016.*

**25 NCAC 010 .0115 PERFORMANCE RATING
DISPUTE**

Career State employees, as defined in G.S. 126-1.1, or former career State employees may grieve an overall performance rating of "Does Not Meet Expectations" using the agency's or university's internal employee grievance process.

*History Note: Authority G.S. 126-4;
Eff. April 1, 2016.*

**25 NCAC 010 .0207 FREQUENCY OF
PERFORMANCE REVIEWS**

A performance review shall be required in the following instances:

- (1) For permanent State employees, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of the performance cycle. The manager or supervisor shall conduct an interim review at the mid-point of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the end of the performance cycle. The permanent employee shall have been functioning under an issued performance plan for at least six months to receive an annual performance evaluation.
- (2) For probationary employees, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of employment. The manager or supervisor shall review the probationary employee's performance by conducting quarterly documented performance feedback discussions during the first 12 months of employment. If a probationary employee "Meets Expectations" or "Exceeds Expectations" on all individual goals and individual values, at the end of the first performance cycle, then quarterly documented performance feedback discussions are no

longer required. The manager or supervisor shall establish a performance plan for the probationary employee during the first 60 calendar days of the next performance cycle. The manager or supervisor shall conduct an interim review at the mid-point of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the end of the performance cycle. The probationary employee shall have been functioning under an issued performance plan for at least six months to receive his or her first annual performance evaluation.

- (3) For time-limited employees, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of employment. The manager or supervisor shall review the time-limited employee's performance by conducting quarterly documented performance feedback discussions. The time-limited employee shall have been functioning under an issued performance plan for at least six months to receive his or her first annual performance evaluation. If the employee's performance indicates he or she is not suited for the position and cannot be expected to meet satisfactory performance standards, the employee shall be separated. If he or she meets satisfactory performance standards, the manager or supervisor shall establish a performance plan for the employee during the first 60 calendar days of the next performance cycle. The manager or supervisor shall conduct an interim review at the mid-point of the performance cycle and shall conduct a final performance evaluation annually, within 60 calendar days of the end of the performance cycle.

- (4) When an employee transfers to another position within state government, the existing manager or supervisor shall assess performance and document progress and ratings prior to the transfer. If the transfer occurs within 30 calendar days of the end of the interim review or annual performance evaluation, then a copy of the completed and signed interim review or the completed (i.e., documentation provided and ratings assigned) and signed annual performance evaluation shall be sent to the receiving manager or supervisor. If the transfer occurs more than 30 calendar days prior to the interim review or annual performance evaluation, the existing manager or supervisor shall provide written performance information accountable for ensuring continuity of performance documentation specific to the employee's achievement of established goals and values to the receiving manager or supervisor.

- (5) When there is a change in the manager or supervisor, the existing manager or supervisor shall provide written performance information specific to the employee's achievement of established goals and values to the receiving manager or supervisor. If the change in the manager or supervisor occurs within 30 calendar days of the interim review or annual performance evaluation, then the existing manager or supervisor shall complete the interim review or formal performance evaluation.

- (6) When an employee separates from state government, the manager or supervisor shall assess performance and assign a final overall performance rating, unless the employee's separation is due to a documented disciplinary action, retirement, disability, illness, or death. The separating employee shall have been functioning under an issued performance plan for at least six months to be assigned a final overall performance rating. For an employee who is separated for any reason other than documented disciplinary action, retirement, disability, illness, or death, any final overall performance rating of "Does Not Meet Expectations" must be approved by the agency Human Resources Director or his or her designee, based on performance documentation provided by the separating employee and his or her manager or supervisor.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 010 .0208 PERFORMANCE PLANNING

(a) An employee shall have an annual Performance Plan to include at least three, but not more than five, strategically aligned critical individual goals, a description of how goals will be measured, and the level of performance required to meet expectations and values. Goals shall be written at the "Meets Expectation" level. The agency or university shall facilitate calibration discussions to assess goal validity and ensure organizational consistency.

(b) Within 90 calendar days of the onset of a performance management cycle, the Office of State Human Resources (OSHR) will publish and communicate two to four organizational values, which will be standard for all employees subject to this Subchapter. Each agency or university may choose to add up to five additional organizational values, selected from a predefined list published and communicated by OSHR within 90 calendar days of the onset of the performance management cycle.

(c) Organizational values must be 50 percent of the total weight relative to overall performance and shall be equally weighted. Individual agencies or universities may determine weight of specific goals; however, goal weight shall be no more than 50 percent of the total weight relative to overall performance.

(d) A manager or supervisor shall hold a performance planning discussion with each employee and put a performance plan in place with each employee within 60 calendar days of:

- (1) the beginning of the performance management cycle;
- (2) the employee's entry into a position;
- (3) a new probationary or time-limited employee's date of employment; or
- (4) any significant change to the performance expectations of the current Performance Plan.

(e) Once signed by the manager or supervisor and next-level manager or supervisor, the employee shall review, sign, and date the performance plan. If the employee refuses to sign the performance plan, the manager or supervisor shall document the employee's refusal on the performance plan.

(f) An employee shall have physical or electronic access to his or her performance plan.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 010 .0209 PERFORMANCE FEEDBACK

(a) Throughout the performance cycle, the manager or supervisor shall document and validate, based on observation or feedback from others, employee performance results and behaviors. In addition, the manager or supervisor shall provide feedback to the employee, both positive and corrective, when appropriate. Both the manager or supervisor and employee shall document activities and accomplishments related to goals and behaviors during the performance cycle.

(b) A manager or supervisor shall conduct a minimum of three formal performance discussions annually for an employee and timed accordingly as follows:

- (1) the initial planning discussion, at the beginning of the performance cycle;
- (2) an interim review at the performance cycle midpoint; and
- (3) the annual performance evaluation, at the end of the performance cycle.

The formal discussions shall provide a manager or supervisor and the employee with an opportunity to discuss any changes in organizational priorities or employee development goals, review progress, and if necessary, revise performance plans, initiate individual development plans, or address performance problems and identify steps the employee shall take to improve or adjust priorities through the remainder of the performance cycle. Additional formal and informal discussions shall also be conducted as needed throughout the performance cycle to adjust cycle goals, document progression, or address a change in business requirements.

(c) All formal coaching sessions, formal counseling sessions, and formal performance discussions shall be documented.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 010 .0210 ADDRESSING UNSATISFACTORY JOB PERFORMANCE

(a) If at any time during the performance cycle an employee is not meeting expectations, the manager or supervisor shall conduct a documented coaching session to:

- (1) discuss ways to improve the employee's performance or behavior;
- (2) seek input from the employee about whether the performance issue can be corrected through a process change or if the employee needs to receive additional training on current procedures or processes;
- (3) outline the steps to be taken to improve performance, including the specific timeframe for improvement;
- (4) identify the consequences, including progressive disciplinary action, of failure to improve; and
- (5) define a follow up date.

(b) If employee performance or behavior improves to the "Meets Expectations" level during the specific timeframe and performance or behavior is maintained as determined by management, no further action is necessary.

(c) If employee performance or behavior does not improve to the "Meet Expectations" level during the specific timeframe, the manager or supervisor shall consult the agency Human Resources representative, prepare a Performance Improvement Plan (PIP), and conduct and document a formal counseling session to review the PIP with the employee.

(d) The PIP shall be considered equivalent to a disciplinary action as defined in 25 NCAC 01J .0604 and shall:

- (1) be in writing and state that it is a disciplinary action;
- (2) state the specific performance or behavior problem that is the reason for the disciplinary action;
- (3) state the specific steps to be taken to improve performance, including the specific timeframe for improvement;
- (4) state the consequences, including progressive disciplinary action, of failure to make the required improvements or corrections;
- (5) define a follow-up date or dates;
- (6) tell the employee of any appeal rights provided by State law; and
- (7) discuss the Employee Assistance Program (EAP) when appropriate.

(e) If employee performance or behavior improves to the "Meet Expectations" level after review of the PIP during the specific timeframe and performance or behavior is maintained as determined by agency management, no further action is necessary.

(f) If employee performance or behavior does not improve to the "Meets Expectations" level after review of the PIP during the specific timeframe or if the employee performance or behavior fails to be maintained at the "Meets Expectations" level, the manager or supervisor shall continue the formal progressive disciplinary action process as outlined in 25 NCAC 01J .0613 and contact the agency Human Resources representative.

(g) If an employee receives a performance-based disciplinary action during the performance cycle, corrects, and maintains performance at the "Meets Expectations" level, then the employee shall be considered to have met expectations for the performance expectation(s) associated with the disciplinary action.

(h) If an employee receives a performance-based disciplinary action during the performance cycle, corrects, and maintains performance at the "Meets Expectations" level, then the employee shall be considered to have met expectations for the goal or organizational value associated with the disciplinary action.

(i) If an employee receives a "Meets Expectations" for the goal or organizational value cited in the warning or other disciplinary action and a "Meets Expectations" in the overall performance evaluation rating, the performance-based disciplinary action shall become inactive.

(j) If the written warning is based on an employee's failure to complete tasks listed in the job description or is based on an employee's failure to respond to a direct order from the manager or supervisor, but these warnings are not linked to the goals or organizational values of the performance plan, then the written warning shall remain active.

(k) At the conclusion of the performance cycle, if an employee has not satisfied the terms of the PIP or has an active performance-based disciplinary action, the employee shall be considered not to have met expectations during the current cycle for the performance expectation(s) associated with the disciplinary action.

History Note: Authority G.S. 126-4; Eff. April 1, 2016.

25 NCAC 010 .0211 ANNUAL PERFORMANCE EVALUATION

(a) At the end of the performance cycle, the manager or supervisor shall evaluate employee performance relative to the three to five individual goals as well as the selected organizational values. The manager or supervisor shall use quantitative and qualitative information collected throughout the cycle and documented by various sources, including information documented by the employee, to determine the extent to which the employee's actual performance has met the expectations defined in the performance plan. The manager or supervisor shall evaluate performance based on the collected performance information and assign ratings to each goal and value to determine an overall annual performance evaluation rating. Agency or University Human Resources personnel shall facilitate calibration discussions to systematically assess rating validity and ensure organizational consistency.

(b) Each individual goal and value shall be rated using the standardized rating scale. The standardized rating scale will consist of three levels defined as follows:

- (1) "Exceeds Expectations" means performance consistently exceeds documented expectations and measurements. The employee consistently does work going far beyond what is expected in terms such as quantity, quality, timeliness, cost, and customer satisfaction. Performance that "Exceeds Expectations" is due to the effort and skills of the employee. Performance is

consistently characterized by high quality work that requires little or no improvements or corrections. An employee at the "Exceeds Expectations" level repeatedly makes exceptional or unique contributions to the organization that are above the requirements of his/her duties and responsibilities. An employee performing at the "Exceeds Expectations" level should be recognized by their organization as an outstanding contributor to the organization's mission.

- (2) "Meets Expectations" means performance consistently meets and occasionally exceeds the documented job expectations and measurements. The employee performs according to expectations. The employee does the job at the level expected for this position and consistently meets what is expected in terms such as quantity, quality, timeliness, cost and customer satisfaction. Performance that "Meets Expectations" is due to the employee's own effort and skills. An employee performing at this level is dependable and makes valuable contributions to the organization. His or her judgments are sound, and he or she demonstrates knowledge and mastery of duties and responsibilities. Most employees should meet expectations in a functional, performing work unit.

- (3) "Does Not Meet Expectations" means performance does not meet job expectations and measurements and supervisory attempts to encourage performance improvement in accordance with 25 NCAC 010 .0210 are unsuccessful.

The employee is performing the job at an unsatisfactory performance level in terms such as quantity, quality, timeliness, cost, and customer satisfaction and performance improvement counseling by the manager or supervisor has not resulted in employee performance improvement. The manager or supervisor shall continue to address performance issues with the employee with this rating level, document management efforts to encourage satisfactory performance, and document subsequent results on a Performance Improvement Plan. Failure to perform is due to the employee's lack of effort or skills. Performance counseling sessions shall be guided by next-level management or Human Resources, and may result in additional disciplinary action for the employee who fails to demonstrate improvement.

- (c) The employee's final annual performance evaluation rating shall be based on results achieved relative to the employee's individual goals and organizational values. The final annual performance evaluation rating must reflect both quantity and quality of job performance relative to established goals and

identified values. A final annual performance evaluation rating of "Exceeds Expectations" shall be supported by documented results and accompanied by demonstrated adherence to organizational values. A final annual performance evaluation rating of "Does Not Meet Expectations" shall be supported by documented failure to achieve results and accompanied by lack of demonstrated adherence to organizational values. An employee who does not "Meet Expectations" or "Exceeds Expectations" on all organizational values shall not be awarded a final annual performance evaluation rating of "Exceeds Expectations," regardless of level of results achieved on goals. An employee who receives a "Does Not Meet" on any goal or value shall not be awarded an annual performance evaluation rating of "Exceeds Expectations," regardless of the level of results achieved or adherence to values.

(d) Upon completion of calibration, the manager or supervisor shall hold an annual performance evaluation meeting with each employee, and a final annual performance evaluation rating shall

be assigned and entered into the system of record. The manager or supervisor shall not submit a final annual performance rating for an employee unless an annual performance plan, supported by ongoing performance documentation, has been completed in compliance with this Subchapter.

(e) The manager or supervisor and the next-level manager or supervisor shall sign the annual performance evaluation. The employee shall review, sign, and date the annual performance evaluation. If the employee refuses to sign the annual performance evaluation, the manager or supervisor shall document the refusal on the annual performance evaluation.

(f) The employee shall have physical or electronic access to the employee's annual performance evaluation.

*History Note: Authority G.S. 126-4;
Eff. April 1, 2016.*

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
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RULES REVIEW COMMISSION MEETING DATES

May 19, 2016 June 16, 2016
July 21, 2016 August 18, 2016

AGENDA

**RULES REVIEW COMMISSION
THURSDAY, MAY 19, 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. Pesticide Board – 02 NCAC 09L .0504, .0505, .0507, .0522, .1102, .1104, .1108 (Reeder)
 - B. 911 Board – 09 NCAC 06C .0111, .0112, .0113, .0114, .0205, .0216 (Reeder)
 - C. Social Services Commission – 10A NCAC 71P .0101, .0102, .0103, .0201, .0202, .0301, .0302, .0303, .0304, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0504, .0505, .0506, .0507, .0508, .0601, .0602, .0603, .0604, .0608, .0701, .0702, .0704, .0705, .0801, .0802, .0803, .0804, .0805, .0902, .0903, .0904, .0905, .0906 (Thomas)
 - D. Coastal Resources Commission - 15A NCAC 07H .0308, .1704, .1705 (Thomas)
 - E. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
- IV. Review of Log of Filings (Permanent Rules) for rules filed March 22, 2016 through April 20, 2016
 - Social Services Commission (Hammond)
 - Radiation Protection Commission (Hammond)
 - Public Safety – Division of Emergency Management (Reeder)
 - Public Safety - State Capitol Police (Reeder)
 - Department of Revenue (Hammond)
 - Appraisal Board (Thomas)
 - Building Code Council (Hammond)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports
 - 1. 01 NCAC 05 – Department of Administration (Hammond)

2. 10A NCAC 23 - DHHS/Division of Medical Assistance (Hammond)
 3. 10A NCAC 25 - DHHS/Division of Medical Assistance (Hammond)
 4. 21 NCAC 12 - Licensing Board for General Contractors (Thomas)
 5. 21 NCAC 38 - Board of Occupational Therapy (Hammond)
 6. 26 NCAC 01 - Office of Administrative Hearings (Hammond)
 7. 26 NCAC 02 - Office of Administrative Hearings (Hammond)
 8. 26 NCAC 03 - Office of Administrative Hearings (Hammond)
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- Reoption
10. 11 NCAC 18 - Department of Insurance (Reeder)
- VII Commission Business
Review of Amendments to 26 NCAC 05 .0211
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-

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SOCIAL SERVICES COMMISSION

The rules in Chapter 10 concern subsidized child care and include identifying and general information (.0100); requirements for the purchase of child care (.0200); requirements for child care service funds (.0300); start-up funds (.0400); requirements for contracts with private agencies (.0500); requirements for child care centers (.0600); requirements for family child care homes (.0700); requirements for nonlicensed child care homes (.0800); general policies for provision of subsidized child care services (.0900); eligibility for services (.1000); and client fees for child care services (.1100).

<u>Definitions</u>	10A NCAC 10 .0102
Amend/*	
<u>Support to Employment: Training for Employment</u>	10A NCAC 10 .0905
Amend/*	
<u>Requirements for Determination and Redetermination of Eli...</u>	10A NCAC 10 .1007
Amend/*	

RADIATION PROTECTION COMMISSION

The rules in Chapter 15 are from the Radiation Protection Commission and include general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); x-rays in the healing arts (.0600); use of radioactive sources in the healing arts (.0700); requirements for analytical x-ray equipment (.0800); requirements for particle accelerators (.0900); notices, instructions, reports and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); requirements for wire-line service operators and subsurface-tracer studies (.1300); tanning facilities (.1400); licenses for disposal site access (.1500); and standards for protections against radiation (.1600).

<u>Additional Requirements for Licensees Possessing Category...</u>	10A NCAC 15 .1701
Adopt/*	

PUBLIC SAFETY - EMERGENCY MANAGEMENT, DIVISION OF

The rules in Chapter 3 concern emergency management including general provisions (.0100); and manuals: forms and assistance (.0200).

<u>Location and Hours of Operation</u>	14B NCAC 03 .0101
Amend/*	

<u>Purpose and Objectives</u> Amend/*	14B NCAC 03 .0102
<u>Definitions</u> Amend/*	14B NCAC 03 .0103
<u>Organization</u> Amend/*	14B NCAC 03 .0104
<u>Where to Obtain Manuals/Forms and Assistance</u> Amend/*	14B NCAC 03 .0202

PUBLIC SAFETY - STATE CAPITOL POLICE

The rules in Chapter 13 concern the State Capitol Police including general provisions (.0100); and functions (.0200).

<u>Authority</u> Amend/*	14B NCAC 13 .0102
<u>Arrests</u> Amend/*	14B NCAC 13 .0201
<u>Traffic Collisions</u> Amend/*	14B NCAC 13 .0202
<u>State Parking Lots</u> Repeal/*	14B NCAC 13 .0203

REVENUE, DEPARTMENT OF

The rules in Chapter 7 are 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 personalty 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>Bookbinders</u> Repeal/*	17 NCAC 07B .4710
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APPRAISAL BOARD

The rules in Subchapter 57A cover licensing, certification and practice rules for appraisers including application procedures (.0100); licensing and certification (.0200); examination (.0300); general practice requirements (.0400); appraisal standards (.0500); and experience credit (.0600).

<u>Applicants Certified in Another State</u> Amend/*	21	NCAC 57A .0211
<u>Appraisal Standards</u> Amend/*	21	NCAC 57A .0501
<u>Experience Credit to Upgrade</u> Adopt/*	21	NCAC 57A .0601
<u>Acceptable Experience - Residential Category</u> Adopt/*	21	NCAC 57A .0602
<u>Acceptable Experience - General Category</u> Adopt/*	21	NCAC 57A .0603
<u>Types of Appraisal Experience</u> Adopt/*	21	NCAC 57A .0604
<u>Reporting Appraisal Experience</u> Adopt/*	21	NCAC 57A .0605

The rules in Subchapter 57B cover real estate appraisal education including the courses required for licensure or certification (.0100); course sponsor standards for pre-licensing or pre-certification courses (.0200); pre-licensing and pre-certification course standards (.0300); course sponsor fees (.0400); fees for private real estate appraisal education schools (.0500); and continuing education course standards (.0600).

<u>Course Completion Standards</u> Amend/*	21	NCAC 57B .0303
<u>Course Scheduling</u> Amend/*	21	NCAC 57B .0304
<u>Instructors for the Trainee/Supervisor Course Required by...</u> Amend/*	21	NCAC 57B .0614

The rules in Subchapter 57D concern appraisal management companies including application for appraisal management registration (.0100); appraisal management company registration (.0200); appraisal management company procedures (.0300); and appraisal management company general practices (.0400).

<u>Complaints Against Appraisers</u> Amend/*	21	NCAC 57D .0309
<u>Criminal Background Checks</u> Adopt/*	21	NCAC 57D .0403

BUILDING CODE COUNCIL

<u>2012 NC Existing Building Code/Accessibility for Detached...</u> Amend/*	101.11
<u>2012 NC Existing Building Code/Conformance</u> Amend/*	407.1
<u>2012 NC Plumbing Code/Condensate Drains</u> Amend/*	307.2.1.1, 701.7, 715.6, 802.1.5
<u>2014 NC Electrical Code/Raceways in Wet Locations Above G...</u> Repeal/*	300.9

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>
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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	
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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	
NC Alcoholic Beverage Control Commission v. S and J Tobacco and Food Mart T/A S and J Tobacco and Food Mart	15 ABC 06629	12/14/15	
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NC Alcoholic Beverage Control Commission v. CCS Charlotte Enterprise LLC, T/A Caldwell Corner Store	15 ABC 06636	12/02/15	
NC Alcoholic Beverage Control Commission v. Fast Track Inc T/A Country Market And Deli	15 ABC 06643	02/22/16	
NC Alcoholic Beverage Control Commission v. Pablo Juarez Aguilar T/A La Cueva	15 ABC 07135	02/22/16	

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NC Alcoholic Beverage Control Commission v. Santiago Torres Fuentes TA Sabor Latino Restaurante	15 ABC 07251	02/17/16	
NC Alcoholic Beverage Control Commission v. Jeannine W. Santiago T/A Baileys Tavern	15 ABC 08595	02/10/16	
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Jack Norris v. Victims Compensation Commission	14 CPS 06019	03/30/15	30:01 NCR 89
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Deborah H. Justice v. University of North Carolina Hospitals	15 UNC 02347	05/21/15	
John Walker v. UNC Hospitals	15 UNC 02639	07/16/15	
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OFFICE OF ADMINISTRATIVE HEARINGS
02/02/2016 10:43 AM

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 01536

Joseph Larry Wyatt Petitioner, v. N C Sheriffs' Education And Training Standards Commission Respondent. Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on November 11, 2015 before Administrative Law Judge Selina M. Brooks in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Daniel P. Roberts, Esq.
Goodman, Carr, Laughrun, Levine & Greene
301 S. McDowell Street, Suite 602
Charlotte, North Carolina 28204

Respondent: Matthew L. Boyatt
Assistant Attorney General
N.C. Department of Justice
Law Enforcement Liaison Section
P.O. Box 629
Raleigh, N.C. 27602-0629

ISSUE

Is the proposed revocation of Petitioner's certification supported by the preponderance of the evidence presented at the administrative hearing?

APPLICABLE RULES

12 NCAC 10B .0204(a)
12 NCAC 10B .0204(b)(2)
12 NCAC 10B .0301(a)(8)

WITNESSES

For Petitioner: Joseph Larry Wyatt, Petitioner
Sergeant Steven Buchanan, Mecklenburg County Sheriff's Office
Captain C.S. McGee, Mecklenburg County Sheriff's Office

For Respondent: Special Agent Derek G. Wiles, NC Office of the Secretary of State
Captain Kevin Bullard, Sanford Police Department
Special Agent Thomas DeAngelo, NC Office of the Secretary of State

EXHIBITS

Petitioner's Exhibits (hereinafter "P Ex _") 1 through 4 were admitted into evidence.

Respondent's Exhibits (hereinafter "R Ex _") 1 through 11 were admitted into evidence.

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

FINDINGS OF FACT

1. Petitioner currently holds certification through the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the "Respondent Commission" or "Sheriffs' Commission") as a detention officer with the Mecklenburg County Sheriff's Office (hereinafter "MCSO"). Petitioner has held certification since approximately 2002.

2. Petitioner began his work as a detention officer in 2000 and worked as a juvenile detention officer at Gatling Juvenile Center from 2000 through 2009. Petitioner became employed by the Mecklenburg County Sheriff in 2002 when the MCSO took over operations at the juvenile detention center. (P Ex 3)

3. In 2009, Petitioner transferred from Gatling Juvenile Center to Jail North, where he currently works as a detention officer with the MCSO. (P Ex 3) Petitioner's performance reviews from 2001 through 2014 have all been characterized as either "successful", "exemplary", or "meets expectations". (P Ex 1)

4. On January 5, 2015, Respondent sent Petitioner a Notification Of Probable Cause To Revoke Justice Officer Certification on the ground that Petitioner had engaged in unlawful conduct while he was off-duty. (R Ex 1)

5. Petitioner timely appealed and a contested case hearing was held before the Undersigned on November 11, 2015. (R Ex 2)

6. Petitioner testified that he learned of a sports jersey website in China from a friend in 2007.

7. From 2007 to 2013, Petitioner would access this website once a month and would order numerous sports jerseys from China at the cost of \$20.00 to \$25.00 per jersey. Petitioner's typical monthly order would cost approximately \$850.00. For example, in July 2013, Petitioner purchased seven Clowney #7 Gamecock jerseys and three Bryant #88 Dallas Cowboys jerseys among other items for a total cost of \$869.00. (R Ex 4)

8. Petitioner knew when he was purchasing these jerseys for \$20.00 and \$25.00 a piece that they sold individually at retail for between \$100.00 and \$150.00, and that certain jerseys could be valued as high as \$300.00.

9. Petitioner testified that he was only purchasing the jerseys for himself and for his family and friends.

10. Petitioner denies that he was selling the jerseys for profit or that he was trafficking in counterfeit jerseys.

11. On cross-examination, Petitioner admitted that he had sold jerseys he obtained from China for a profit on at least two (2) occasions.

12. The first occasion occurred when Petitioner was in a bar and another patron kept inquiring about Petitioner's jersey. Petitioner admittedly sold this jersey to the stranger for \$100.00. Petitioner had purchased the jersey from his Chinese source for \$25.00.

13. Petitioner also admitted to selling a jersey to a friend of his for a profit. His friend continually asked him for a specific jersey, so Petitioner sold it to him for \$35.00. Petitioner had obtained the jersey from China for \$20.00 or \$25.00.

14. Petitioner testified that he believed that the jerseys were damaged goods and did not know that the jerseys were counterfeit, claiming that during a telephone call someone in China told him that the jerseys were "seconds".

15. Petitioner testified that he would not purchase the sports jerseys with a credit card but, rather, he would wire-transfer money to China through a Western Union office. The jerseys would then be shipped to Petitioner at his residence in Mecklenburg County. (R Ex 4)

16. Petitioner testified that he discarded invoices and erased invoices from his email account.

17. Special Agent Derek Wiles (hereinafter "Agent Wiles") is currently employed at the North Carolina Department of the Secretary of State, has been involved in counterfeit interdiction since approximately 2005 and handles approximately 500 counterfeit cases annually. Agent Wiles has been a sworn law enforcement officer since 1989.

18. On July 29, 2013, Agent Wiles was conducting a counterfeit interdiction at the DHL international hub located on Yorkmont Road in Charlotte, North Carolina. Agent Wiles identified a suspicious package from China that had been addressed to Petitioner Larry Wyatt at his home address.

19. Agent Wiles inspected the contents of the package, and immediately identified and seized 35 counterfeit sports jerseys. The jerseys contained fake or imitation marks of corporations, such as Nike and Adidas, to make the jerseys appear to be authentic sports jerseys from teams such as the Dallas Cowboys, Carolina Panthers, Miami Dolphins, and the Kansas City Royals. (R Ex 11)

20. Agent Wiles opined that authentic sports jerseys from companies such as Nike and Adidas can cost \$150.00 and even more for the rarer jerseys.

21. On July 29, 2013, Agent Wiles met Petitioner at a neutral location. Petitioner appeared at their meeting wearing a sports jersey. Agent Wiles advised Petitioner that counterfeit sports jerseys addressed to him from China were seized. Petitioner denied knowing that the sports jerseys were counterfeit. (R Ex 11)

22. Petitioner voluntarily surrendered the seized jerseys to Agent Wiles. (R Ex 11)

23. Petitioner told Agent Wiles that he had been importing sports jerseys for approximately two years and suggested that a MCSO Sergeant was also involved in purchasing the jerseys. (R Ex 6)

24. Agent Wiles opined that it is a local policy to give a verbal warning to first offenders rather than charge them with a crime.

25. Agent Wiles told Petitioner that he was not criminally charged because this was Petitioner's first offense but that he would be charged in the future for a second offense. (R Ex 6)

26. Captain McGee informed his chain of command and the Respondent of the allegation of misconduct by Petitioner via email on July 30, 2013. (R Ex 6 & 7) He interviewed Petitioner on July 31, 2013 concerning the allegation. (R Ex 10)

27. Captain McGee also interviewed Sergeant Buchanan on August 2, 2013 concerning his purchase of jerseys from the Petitioner. Sergeant Buchanan had purchased two jerseys in a two-year period and did not know that they were counterfeit. (R Ex 8)

28. On August 13, 2013, Petitioner forwarded an invoice dated July 20, 2013 to Captain McGee. (R Ex 4)

29. Captain McGee prepared a Case Summary of his interviews of Petitioner and Sergeant Buchanan. (R Ex 8)

30. On August 23, 2013, Captain McGee sent a memorandum to Major Pummell concerning the allegation of misconduct against Petitioner stating that although the incident “did not result in an arrest [] his conduct brings disrepute and reflects unfavorably as a member of the Mecklenburg County Sheriff’s Office.” He requested that Petitioner receive a documented general counseling “to make him aware that this is a serious issue and future occurrences of this nature will result in further Administrative Action which could result in Termination of his Employment.” (P Ex 4 & R Ex 9)

31. On August 27, 2013, Petitioner received a Verbal Reprimand by the Mecklenburg County Sheriff’s Office regarding his conduct in ordering counterfeit goods from China which was memorialized in writing. (P Ex 2)

32. On June 16, 2014, Agent Tom DeAngelo with the Sanford Police Department conducted an undercover operation in an attempt to purchase counterfeit jerseys. Agent DeAngelo posed as a woman named LaTasha Williams and corresponded with Petitioner via Petitioner’s email address, jerseymanwyatt@yahoo.com. (P Ex 3 & R Ex 5)

33. Through email correspondence, “Ms. Williams” indicated that she obtained Petitioner’s information from a guy who knew Petitioner and that she was looking to sell jerseys at a flea market booth in Miami, Florida and inquired whether Petitioner could help her. Petitioner responded to Ms. Williams’ email, stating “I can. How many you looking for?” (P Ex 3 & R Ex 5)

34. Petitioner continued to correspond with Ms. Williams via email, inquiring as to who told her about Petitioner and asking whether Ms. Williams had a Facebook page. Petitioner then advised Ms. Williams that “I usually don’t deal with people unless I know who referred them to me.....I might be able to help you but I have to be cautious because of issues I have had in the past.” (P Ex 3 & R Ex 5)

35. Petitioner further advised Ms. Williams that “I’m not going to be able to help you unless I know who told you about me. If you are selling anything like jerseys at flea markets in NC just be careful. State is really starting to crack down.” (P Ex 3 & R Ex 5)

36. Agent DeAngelo opined that it was apparent that Petitioner was engaged in the trafficking of counterfeit goods, but that Petitioner was attempting to verify Ms. Williams’s connection to Petitioner by asking repeatedly how she got Petitioner’s name and also by seeking to view Ms. Williams’s Facebook page.

37. Petitioner claims that he thought Ms. Williams was really a friend who was just playing a practical joke on him.

38. Petitioner's testimony is not credible or believable that Petitioner ordered these counterfeit items for 6 years without any idea that they were fake.

39. Petitioner's testimony is not credible or believable in that at least as of July 2013, Petitioner knew that the jerseys were counterfeit. It is clear from Petitioner's testimony at the hearing and from the email exchange that Petitioner was attempting to verify Ms. Williams's identity in an attempt to traffic in counterfeit jerseys in June 2014.

40. Based on the evidence presented at the administrative hearing, it is clear that Petitioner intentionally purchased counterfeit sports jerseys from a company in China for the purpose of selling them for profit.

CONCLUSIONS OF LAW

1. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. Similarly, to the extent that some of these Conclusions of Law are Findings of Fact, they should be so considered without regard to the given label.

2. 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 mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on January 5, 2015.

3. The North Carolina Sheriffs' Education and Training Standards 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.

4. 12 NCAC 10B .0204(a) provides that the Sheriffs' Commission shall revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a felony, or a crime for which the authorized punishment could have been imprisonment for more than two (2) years.

5. In order to establish a violation of 18 U.S.C. § 2320, trafficking in counterfeit goods, there must be a showing that the individual 1) trafficked or attempted to traffic in goods; 2) the trafficking was intentional; 3) there was a counterfeit mark in connection with the goods; and 4) the individual knew the mark so used was counterfeit. Trafficking is defined in 18 U.S.C. § 2320 (d)(2) to mean "transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer or dispose of." A violation of 18 U.S.C. § 2320 carries with it a maximum penalty of 10 years. 18 USC 2320 (b)(1).

6. The evidence presented at the administrative hearing established that Petitioner was engaged in the trafficking of counterfeit goods within the meaning of 18 U.S.C. § 2320.

7. A preponderance of the evidence establishes Petitioner violated this criminal statute and Petitioner's certification is therefore subject to revocation pursuant to 12 NCAC 10B .0204 (a).

8. The unlawful conduct Petitioner engaged in which gave rise to the proposed revocation of his certification occurred while Petitioner was off-duty. Nevertheless, 12 NCAC 10B .0204(a) of the Respondent's rules prohibits a sworn justice officer from engaging in felonious activity at any time or from committing a crime for which the authorized punishment could have been imprisonment for more than two (2) years, whether on or off-duty.

9. Petitioner's actions also exhibited a lack of honesty and integrity and a lack of respect for the law.

10. Pursuant to 12 NCAC 10B .0301(a)(8), every justice officer employed or certified in North Carolina shall be of good moral character. 12 NCAC 10B .0204(b)(2) further provides the Sheriff's Commission shall revoke, deny, or suspend a justice officer's certification when the Commission finds that the justice officer no longer possesses the good moral character that is required of all sworn justice officers.

11. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of the state and nation." In Re Willis, 288 N.C. 1, 10 (1975).

12. Given the totality of the evidence presented at the administrative hearing, the Undersigned concludes Petitioner no longer possesses the good moral character that is required of a sworn justice officer in this state.

13. Petitioner engaged in acts of trafficking in counterfeit sports jerseys at a time when Petitioner held a justice officer certification through the State of North Carolina. Based on the evidence presented at the administrative hearing, Respondent's proposed revocation of Petitioner's justice officer certification due to Petitioner's lack of good moral character and failure to maintain the minimum standards required of all sworn justice officers under 12 NCAC 10B .0301 is supported by a preponderance of the evidence.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned recommends the Petitioner's certification as a justice officer be revoked.

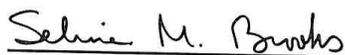
NOTICE AND ORDER

The N.C. Sheriffs' Education and Training Standards Commission is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED.

This the 2nd day of February, 2016.



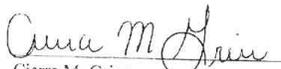
Selina M Brooks
Administrative Law Judge

On this date mailed to:

Joseph Larry Wyatt
9173 Meadow Vista Road
Charlotte NC 28213
PETITIONER

Matthew L Boyatt
Assistant Attorney General,
NC Department of Justice
9001 Mail Service Center
Raleigh NC 27699
ATTORNEY FOR RESPONDENT

This the 2nd day of February, 2016.



Cierra M. Grier
Administrator Law Judge Assistant
Office of Administrative Hearings
6714 Mail Service Center
Raleigh NC 27699-6700
Telephone: 919-431-3000

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/17/2016 10:38 AM

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DST 00387

Jesus Lopez JR. Petitioner, v. Dept of State Treasurer Retirement Respondent.	FINAL DECISION AND ORDER FOR SUMMARY JUDGMENT
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THIS MATTER comes before the Honorable Selina M. Brooks, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgement filed with the Office of Administrative Hearings ("OAH") on November 6, 2015, as well as Respondent's Brief In Response to Bench Question. This matter is properly before the OAH for consideration and disposition.

Respondent's Final Agency Decision Letter, the basis of this contested case, states the facts as follows:

I have thoroughly reviewed your file and find that you retired effective July 1, 1991. At the time of your retirement you elected to receive your monthly benefits under Option Six-Two which provides for a monthly benefit to the designated survivorship beneficiary should you predecease the designated beneficiary. Option Six-Two also provides that if the designated survivorship beneficiary predeceases the retiree, the retiree's monthly retirement benefit would increase to the Maximum Allowance for the remainder of the retiree's life. According to our records you designated Mr. Larry J. Lopez as the survivorship beneficiary under Option Six-Two.

On September 25, 1997, our office received a Certificate of Death showing Ms. Betty Sue Cannon Lopez died on April 19, 1997. In November 1997 our office erroneously changed your monthly retirement benefit from Option Six-Two to the Maximum Allowance retroactively to May 1, 1997, assuming your spouse was the designated survivorship beneficiary under Option Six-Two. This change caused your monthly retirement benefit to increase from \$913.58 per month to \$1,259.78 per month.

On July 23, 2014 you contacted our office to inquire about changing your beneficiary for your monthly retirement benefit. It was at that time our office discovered the error that was made in November 1997, which has created an overpayment of monthly benefits in the gross amount of \$92,031.86. Effective December 2014 your monthly retirement

benefit will be in the gross amount of \$1,271.65. In January 2015 we will begin deducting \$200.00 per month towards the repayment of the overpayment. Upon your death, if Mr. Larry J. Lopez is still living, we will apply the entire monthly benefit towards the repayment of the overpayment until the overpayment has been paid in full.

Respondent's Motion For Summary Judgment is supported by the Affidavit of Thomas Causey which affirms the facts stated in the Final Agency Decision Letter.

It is clear from Respondent's Final Agency Decision Letter and Respondent's Motion For Summary Judgment that it is solely Respondent's error and mistake that Petitioner was overpaid and that all fault for the overpayment is with the Respondent.

After reviewing Respondent's Motion For Summary Judgment, the Undersigned sent a Bench Question To Respondent concerning the application of the statute of limitations to the particular facts of this contested case. Respondent timely filed a Brief In Response To Bench Question.

In a nutshell, it is Respondent's position that the statute of limitations set forth in N.C. Gen. Stat. §135-b(n) only applies to proceedings in a court of justice and does not apply to contested cases before the Office of Administrative Hearings. This provision of the statute provides:

No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made.

N.C. Gen. Stat. § 135-5(n) (1995) (state government employees).

The Undersigned carefully reviewed Respondent's moving papers, legal authorities referenced therein, and then reviewed decisions in other contested cases. Respondent recently made this same argument in a similar contested case hearing before the Honorable Donald W. Overby in Healy v NC Department of State Treasure, Retirement Services Division, 14 DST 6764 (2015).

The Undersigned agrees with the legal analysis and reasoning of Judge Overby in the Healy case and incorporates and adopts herein the following paragraphs verbatim from that decision.

In the Empire Power Co. case, the North Carolina Supreme Court observed that the Administrative Procedure Act ("APA" or the "Act") both confers procedural rights as well as imposes procedural duties. Included among those rights conferred is "the right to commence an administrative hearing to resolve disputes between an agency and a person involving the person's rights, duties, or privileges." The APA defines those rights, duties, or privileges which provide the grounds for an administrative hearing in the event of an alleged breach. The Supreme Court affirms that the Act confers upon any "person

aggrieved” the right to commence an administrative hearing to resolve a dispute with an agency involving that person's rights, duties, or privileges. Empire Power Co. v. N. Carolina Dep't of Env't, Health & Natural Res., Div. of Env'tl. Mgmt., 337 N.C. 569, 583-84, 447 S.E.2d 768, 776-77 (1994)

Thus Empire Power Co. holds that the Administrative Procedures Act sets out procedures that govern the relationship between the agencies and citizens affected by agency action. “The basic purpose of a comprehensive administrative procedure act (APA) is to provide minimum uniform standards to govern administrative action.” (Citing Daye, Administrative Procedure, p. 835, 837). Id. at 586.

It is concluded as a matter of law that: Petitioner is a “person aggrieved” by the “agency action” of Respondent’s attempt to recover the monies paid to Petitioner. This contested case was properly brought before the OAH pursuant to the procedural process as limitations in N.C. Gen. Stat. § 135–5(n) is applicable to this contested case. To hold otherwise is to render the statute of limitations as mere surplusage. Therefore, Respondent is limited to recovery of “any overpayment of benefits or contributions more than three years after such overpayment was made.”

After reviewing all filings in this contested case, the Undersigned takes particular note of the following:

The facts are uncontroverted;

Respondent affirmatively states that Petitioner made no error or mistake; and

Respondent admits that all errors and mistakes were made by Respondent.

Even though Respondent admits that all errors and mistakes were made by Respondent and that Petitioner has made no error or mistake, Respondent contends that the applicable law, the statute of limitations, should not be applied to the State and that Petitioner, alone, should bear the harsh consequences of Respondent’s error and mistake.

Respondent’s interpretation of the law works an injustice to the Petitioner.

DECISION AND ORDER

Based upon the foregoing, the Undersigned hereby determines that the three-year statute of limitations set forth in N.C. Gen. Stat. § 135-5(n) applies to contested cases before the Office of Administrative Hearings.

Therefore, Respondent may only recoup an overpayment that is calculated for the period beginning three years prior to the date of July 23, 2014 when Respondent first became aware of Respondent’s error and mistake and it is hereby ORDERED that Respondent’s recovery is limited to that three-year period.

NOTICE

This is a **Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 17th day of February, 2016.



Selina M Brooks
Administrative Law Judge

NORTH CAROLINA

FILED

OFFICE OF ADMINISTRATIVE HEARINGS

ANSON COUNTY

2015 SEP -4 PM 2:48
15 OSP 1203

EDWARD LITTLE

OFFICE OF
ADMIN HEARINGS

Petitioner

v

FINAL DECISION

NC DEPARTMENT OF
PUBLIC SAFETY

Respondent

This matter coming on to be heard and being heard June 16, 2015 in High Point, North Carolina, the Petitioner being represented by attorney Mr. Kirk J. Angel, and the Respondent was represented by Assistant Attorney General Yvonne B. Ricci, and based upon the evidence presented and the arguments of counsel, the undersigned makes the following findings of fact:

1. Petitioner is a citizen and resident of Anson County, North Carolina, and was employed at Brown Creek Correctional Institution as an Assistant Correctional Superintendent for Custody and Operations III.
2. Respondent is the state agency which operates Brown Creek Correctional Institution.
3. Petitioner has been employed with Respondent in various capacities and positions since November, 1991, and qualifies as a career state employee.
4. On October 13, 2014, Petitioner was demoted from Assistant Correctional Superintendent to a Correctional Officer.
5. The demotion, based on Unacceptable Personal Conduct, reduced Petitioner from pay grade 74 to pay grade 62.
6. Monetarily, the demotion reduced Petitioner's pay from \$55,211.00 to \$45,099.00.
7. Petitioner appealed the demotion internally, but said appeal was denied.

8. Petitioner received notification his appeal was denied on January 20, 2015, and timely filed a Petition for a Contested Case Hearing in the above-captioned matter.

9. On May 1, 2014, a committee at Scotland Correctional Institution conducted interviews for a vacant Assistant Superintendent of Custody/Operations I position.

10. The three-member panel included Ms. Katy Poole, Region Operations Manager, Ms. Mary Locklear, Assistant Superintendent of Programs at Lumberton Correctional Institution, and the petitioner.

11. One of the applicants interviewed for the position was a captain with the initials, C.C.

12. C.C. was rated "Excellent" on his responses to the interview questions.

13. C.C.'s interview rating sheets were superior to the other four applicants', and some of his responses were similar to the Respondent's benchmark answers.

14. In fact, Central Region Director for the Division of Prisons, Mr. J.C. Huggins, testified that C.C.'s responses were "almost verbatim to what the benchmark responses were for the questions." (Tr. p119).

15. Ms. Poole stated that she had interviewed C.C. previously, and he had never scored better than "average" in an interview.

16. Ms. Poole also stated that in her twenty years interviewing applicants, she could not recall an applicant who scored "excellent."

17. Concerns were raised that the interview process had been compromised, and Mr. Huggins ordered the interview committee to conduct a second round of interviews.

18. On May 12, 2014, the same five applicants were interviewed, but different questions were used to evaluate the candidates.

19. The three-member panel for these interviews consisted of Ms. Poole, the petitioner, and Mr. Larry Thompson, Assistant Superintendent of Custody/Operations at Tabor Correctional Institution.

20. C.C.'s responses to the new questions were determined to be "Below Good" during the May 12, 2014 interview.

21. Respondent launched an investigation following this interview to determine if, in fact, the May 1, 2014 interview had been compromised.

22. The Petitioner was interviewed on June 26, 2014 in connection with the investigation.

23. Petitioner was informed that the investigation was related to the possible compromise of the Assistant Superintendent of Custody and Operations I interview.

24. Petitioner signed an acknowledgment that the questioning related to "performance of official duties and/or personal conduct" and that his answers could be "used against him in an administrative or disciplinary action." (Respondent Exhibit 1).

25. Petitioner also acknowledged that he had to provide "complete and accurate information," and that he was not to discuss the investigation with any other employee, or he could be disciplined, to include dismissal. (Resp. Ex. 1)

26. Petitioner told the investigators that he had not provided C.C. with the questions or answers for the interview. (T. pp. 14 - 15; Resp. Ex. 1.).

27. As set forth below, this information was not accurate.

28. Following his interview with investigators, Petitioner reviewed his emails and found an email containing the questions and answers which he had forwarded to C.C.

29. Petitioner did not notify anyone associated with the investigation that the information he had provided was not accurate.

30. Following this interview, Petitioner told Correctional Administrator Sorrell Saunders that he had forwarded the email to C.C which included the interview questions and benchmark answers.

31. Mr. Saunders instructed Petitioner to inform investigators that he had forwarded the interview questions and benchmark answers to C.C.

32. On July 9, 2014, Petitioner provided another written statement to investigators in which he stated that he and C.C. had spoken about a week following his receipt of the interview questions.

33. Prior to providing information to investigators in this statement, Petitioner again acknowledged that his answers could be "used against him in an administrative or disciplinary action." (Resp. Ex. 2).

34. Petitioner also acknowledged that he had to provide "complete and accurate information," and that he was not to discuss the investigation with any other employee, or he could be disciplined, to include dismissal. (Resp. Ex. 2).

35. In his written statement, the Petitioner indicated that he "told [C.C.] there was information on the application he could use as well as information I had gave him ... for interview purposes." (Resp. Ex. 2).

36. Petitioner also testified that he and C.C. talked “about questions and different things that would be on the interview -- on past interviews.” (Tr. p20).

37. By forwarding this email to C.C., Petitioner provided confidential information regarding the interview to an individual who was scheduled to appear as an applicant for the position which was being filled.

38. Petitioner acknowledges that he sent the interview questions to C.C., and his contention that he did not intend to forward this particular information to C.C. is not credible.

39. Petitioner was copied on an email forwarded from Correctional Administrator Sorrell Saunders to Mr. J. Huggins and Ms. Melanie Wood on April 9, 2015.

40. The original email to Mr. Saunders was from Ms. Geraldine Lewis, an Administrative Services Manager with the North Carolina Department of Public Safety.

41. Ms. Lewis indicated in her original email that the “5-Tier Interview Questions” were included as attachments. (Resp. Ex. 4).

42. In addition, the email forwarded from Mr. Saunders to Petitioner lists “5-Tier Interview Questions” as an attachment. (Resp. Ex. 4).

43. The “5-Tier Interview Questions” attachment included the interview questions and benchmark answers. (Tr. p86).

44. Mr. Huggins received and reviewed the written investigation prepared by investigators.

45. Mr. Huggins recommended disciplinary action for Petitioner up to and including dismissal. (Tr. p121).

46. Mr. Huggins along with other decision makers initially considered dismissal of the Petitioner from his employment with the Respondent because he had disclosed confidential information and hindered the internal investigation, but in part because of the Petitioner’s years of service and his prior overall job performance ratings, the decision was made to recommend the demotion of the Petitioner to a correctional officer for unacceptable personal conduct. (Tr. pp. 120 - 122, 131.)

47. Respondent ultimately determined that demotion was appropriate given Petitioner’s history with the department, but lesser punishment was determined not to be appropriate given the severity of Petitioner’s actions. (Tr. p122).

48. On September 24, 2014, Respondent mailed Petitioner a Notification of Pre-Disciplinary Conference which set forth the allegations against him, specifically that the Petitioner had provided interview questions and benchmark answers to C.C., given inaccurate

information to the investigator assigned to his case, and had discussed the ongoing investigation with Mr. Saunders.

49. The September 24, 2014 letter also stated that Pre-Disciplinary Conference would be held on October 9, 2014, at 9:00 am in the South Central Region Office, and gave the Petitioner the option to participate in person or by phone.

50. A Pre-Disciplinary Conference was held on October 9, 2014, and the Petitioner attended said conference.

51. On October 13, 2014, Petitioner was notified by letter that he was demoted to the position of Correctional Officer for Unacceptable Personal Conduct. (Resp. Ex. 18).

52. The demotion letter indicated that the recommendation for demotion was approved in part because the Petitioner's "willful violation of the Merit-Based Hiring policy compromised the integrity of the employee selection process." Further, Petitioner compromised an ongoing internal investigation by contacting Sorrell Saunders, knowing that he was not to discuss the investigation with anyone, and the Petitioner's failure "to provide accurate information, thereby failing to cooperate and hindering the investigation." (Resp. Ex. 18).

53. In addition to providing notice to the Petitioner of his appeal rights, the October 13, 2014 letter notified Petitioner that the demotion would reduce his pay grade from 74 to pay grade 62, and that his pay would be reduced from \$55,211.00 to \$45,099.00.

54. The Final Agency Decision upholding the demotion was issued on January 13, 2015. Specifically, the Employee Advisory Committee found that the Petitioner had willfully violated the Merit-Based Hiring policy in compromising the employee selection process, compromised an internal investigation, failed to cooperate with an investigation, and hindered an investigation. (Resp. Ex. 19).

55. The Merit-Based Recruitment and Selection Policy is set forth in the Respondent's Human Resources Manual, HR 0.1. This policy clearly states that employment decisions are to be made impartially and without preferential treatment. (Resp. Ex. 20, p1).

56. The policy further provides that records for the selection process are to be confidential. (Resp. Ex. 20, p12).

57. Petitioner violated the Merit-Based Recruitment and Selection Policy of the North Carolina Department of Public Safety.

58. Unacceptable Personal Conduct includes "conduct for which no reasonable person should expect to receive prior warning; . . . the willful violation of known or written work rules; conduct unbecoming a state employee that is detrimental to state service[.]" (Resp. Ex. 22, p3); 25 N.C.A.C. 01J .0614(8)(a) (d) and (e).

59. Unacceptable Personal Conduct is similarly defined in the Department of Corrections personnel manual. (Resp. Ex. 22).

60. DOC's personnel manual provides examples of unacceptable personal conduct, including the "[b]etrayal of confidential information" and failing to cooperate with an investigation. (Resp. Ex. 22).

61. Petitioner engaged in unacceptable personal conduct by forwarding the email containing interview questions and benchmark answers to C.C.

62. Petitioner engaged in unacceptable personal conduct by discussing an ongoing investigation when he knew he was not permitted to do so, and signed a statement acknowledging the same.

63. Petitioner engaged in unacceptable personal conduct by failing to provide accurate information during the June 26, 2014 interview with investigators.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.
2. Both parties were properly noticed for hearing.
3. Any findings of fact that contain conclusions of law, or any conclusions of law that are findings of fact should be so considered without regard to the given labels.
4. At the time of his demotion, Petitioner was a career state employee as defined by Chapter 126 of the North Carolina General Statutes, and was entitled to the protections of the North Carolina Personnel Act and the administrative regulations promulgated thereunder.
5. N.C. Gen. Stat. § 126-35(a) provides that "[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause."
6. In an employee's appeal of disciplinary action, the department or agency employer bears the burden of proving that "just cause" existed for the disciplinary action. N.C. Gen. Stat. § 126-35(d).
7. N.C. Gen. Stat. §126-35(a) does not define the term "just cause."
8. Just cause has been defined by our appellate courts as, among other things, good or adequate reason. *Amanini v. Dep't of Human Resources*, 114 N.C. App. 668 (1994).
9. Just cause "is a flexible concept, embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual

case.” *N.C. Dep’t of Env. and Natural Resources v. Carroll*, 358 N.C. 649, 669 (2004) (internal citations omitted).

10. The proper inquiry in determining whether the discipline imposed was just, based on the facts and circumstances, is to consider, if the employee engage in the alleged conduct, whether that conduct meets the definition of unacceptable personal conduct, and if so, whether the misconduct provides the requisite just cause for the action taken by the employer? *Warren v. North Carolina Dep’t of Crime Control & Public Safety, N. Carolina Highway Patrol*, 221 N.C. App. 376, (2012).

11. A preponderance of the evidence shows Petitioner did engage in the conduct alleged by his employer when he forwarded the e-mail containing the interview questions and benchmark answers to C.C.

12. In addition, Petitioner failed to acknowledge in June 26, 2014 interview with investigators that he had forwarded the interview questions and benchmark answers to C.C.

13. In addition, Petitioner admitted to talking with Mr. Sorrell Saunders about the internal investigation.

14. 25 N.C.A.C. 01J .0604(b)(2) establishes that unacceptable personal conduct is a basis for just cause.

15. 25 N.C.A.C. 1J .0614(8) defines “Unacceptable personal conduct” as:

- a. Conduct for which no reasonable person should expect to receive prior warning;
- b. Job related conduct which constitutes a violation of state or federal law;
- c. Conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts an employee’s service to the state;
- d. The willful violation of known or written work rules;
- e. Conduct unbecoming a state employee that is detrimental to state service;
- f. The abuse of a clients, patients, students or a person over whom the employee has a charge or to whom the employee has a responsibility or an animal owned by the state;
- g. Absence from work after all authorized leave credits and benefits have been exhausted; or
- h. Falsification of a state application or employment documentation.

16. An employee need not intend for his conduct to violate a work rule for a willful violation to occur. See *N.C. Dep’t of Corr. v. McNeely*, 135 N.C.App. 587, 592–93 (1999); *Hilliard v. N. Carolina Dep’t of Correction*, 173 N.C. App. 594, 597 (2005).

17. Petitioner’s conduct falls within a category of unacceptable personal conduct as he violated the provisions of the Respondent’s Merit-Based Recruitment and Selection process by failing to maintain the confidentiality of the interview materials.

18. Petitioner's actions are such that no reasonable person would expect to receive prior warning, a willful violation of known or written work rules, and conduct unbecoming a state employee that is detrimental to state service.

19. Petitioner was or should have been aware of the Respondent's policies related to maintaining confidentiality in the employee selection process.

20. Petitioner's conduct in forwarding the email to C.C. which contained interview questions and benchmark answers amounts to just cause for the disciplinary action taken, i.e. demotion.

21. Petitioner knew, or should have known, the contents of the email before he forwarded the same to C.C. The attachment was clearly identified as "5-Tier Interview Questions." A reasonable person with the same or similar experience as the Petitioner would have at the very least exercised a greater degree of caution in receiving and transmitting such information.

22. Further, the mere title of the attachment, "5-Tier Interview Questions" should have placed the Petitioner on notice that the attachment contained interview questions.

23. Especially given the fact that the title "5-Tier Interview Questions" appeared twice in the email, Petitioner had a duty to know and understand the contents of the email before he forwarded the same to anyone, let alone an applicant for the position the interview questions applied.

24. Petitioner willfully violated a known work rule in forwarding the email to C.C.

25. An employer may discipline an employee for just cause based upon one instance of unacceptable personal conduct.

26. Petitioner's action in forwarding confidential information to C.C. is sufficient, standing alone, to constitute unacceptable personal conduct for which Respondent could discipline the Petitioner.

27. Petitioner, however, also engaged in unacceptable personal conduct when he discussed the ongoing internal investigation with Mr. Saunders.

28. Said action is conduct for which no reasonable person should expect to receive prior warning, a willful violation of known or written work rules, and conduct unbecoming a state employee that is detrimental to state service.

29. Petitioner's conduct in discussing the ongoing investigation with Mr. Saunders amounts to just cause for the disciplinary action taken, i.e. demotion.

30. In addition, Petitioner's conduct rose to the level of unacceptable personal conduct when he failed to provide accurate information in his original statement to investigators.

31. Said action is conduct for which no reasonable person should expect to receive prior warning, a willful violation of known or written work rules, and conduct unbecoming a state employee that is detrimental to state service.

32. Petitioner's conduct in failing to provide accurate information amounts to just cause for the disciplinary action taken, i.e. demotion.

33. Respondent met its burden of proof and established by substantial evidence that just cause existed to demote Petitioner for unacceptable personal conduct.

34. Petitioner's action in compromising the interview adversely affected the hiring process of the North Carolina Department of Public Safety. Not only did Respondent have to utilize additional time and resources to ensure the integrity of the hiring process by conducting additional interviews for applicants, but Respondent was forced to engage in a prolonged investigation because the Petitioner refused to provide accurate information when requested.

35. In addition, Petitioner was aware that he was not permitted to discuss an ongoing investigation, and the facts clearly demonstrate that Petitioner discussed the investigation with Mr. Saunders. Petitioner's action had the potential to further delay and compromise the internal investigation.

36. Balancing the equities, the nature and severity of the employee's offense, among other things, determines what form of discipline is appropriate. See *Warren* at 923. Central Region Director Huggins concluded that a lesser form of discipline, including either a coaching or written warning would not be sufficient due to the seriousness of the nature of the conduct engaged in by Petitioner by providing confidential interview questions and benchmark answers to C.C.

37. But for Petitioner's history of service with the Respondent, Petitioner would have been dismissed.

38. Substantial evidence exists that Respondent had just cause to demote the Petitioner for unacceptable personal conduct.

39. Procedurally, the Respondent complied with the requirements for demotion for unacceptable personal conduct set forth in 25 N.C.A.C. 01J .0613.

40. Respondent is required to conduct a Pre-Disciplinary Conference pursuant to 25 N.C.A.C 01J .0613(3)(c), which the Respondent did on October 9, 2014. Petitioner was given advanced notice in writing of the Pre-Disciplinary Conference, which included the time, date, and location of said conference, along with the issues that provided the basis for dismissal.

41. Respondent also provided Petitioner with written notice of the specific acts and omissions which led to his demotion in the October 13, 2014 letter as required by 25 N.C.A.C 01J .0613(3)(d).

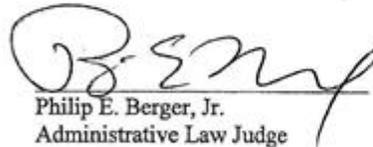
42. The October 13, 2014 letter also advised the Petitioner how the demotion would impact his salary and pay grade, and provided information regarding his appeal rights as required by 25 N.C.A.C. 01J .0613(3)(e) and (f).

Based upon the foregoing findings of fact and conclusions of law, the Respondent had just cause for the disciplinary action taken in this matter pursuant to N.C. Gen. Stat. §126-35, and the Petitioner's claims are denied.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statutes § 126-34.02(a): "An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing." In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this final decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this final decision.

This the ^{4th} day of September, 2015.


Philip E. Berger, Jr.
Administrative Law Judge

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 126-1.1, N.C. Gen. Stat. § 126-5
N.C. Gen. Stat. § 126-34.02, N.C. Gen. Stat. § 126-35
N.C. Gen. Stat. § 150B-23
25 N.C.A.C. 011.2301, 25 N.C.A.C. 011.2304
25 N.C.A.C. 011.2308

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

1. Work Planning and Performance Review – April 15, 2002
2. Work Planning and Performance Review – June 2003
3. Work Planning and Performance Review – May 27, 2004
4. Work Planning and Performance Review – June 30, 2005
5. Work Planning and Performance Review – May 12, 2006
6. Work Planning and Performance Review – June 15, 2007
7. Work Planning and Performance Review – April 22, 2008
8. Work Planning and Performance Review – May 21, 2009
9. Work Planning and Performance Review – July 20, 2011
10. Work Planning and Performance Review – July 23, 2012
11. Work Planning and Performance Review – August 23, 2013
12. Work Planning and Performance Review – September 30, 2014
13. Petitioner's Response to September 30, 2014 Work Planning and Performance Review
14. Allen Coleman's Time Card – January 2015
15. Allen Coleman's January 2, 2015 E Mail
16. Petitioner's Notice of Termination
17. Petitioner's July 2015 Salary Increase
18. Orange County Code of Ordinances 28-20 Attendance Records
19. Description of February 28, 2013 Incident
20. Brenda Bartholomew's Investigation Follow-up

22. Allen Coleman's Statement Concerning June 25, 2015 Incident
23. Serena McPherson June 26, 2015 Email

For Respondent:

1. Work Planning and Performance Review dated May 21, 2001
2. Work Planning and Performance Review dated April 15, 2002
3. Work Planning and Performance Review dated June 2003
4. Work Planning and Performance Review dated May 27, 2004
5. Work Planning and Performance Review dated June 30, 2005
6. Work Planning and Performance Review dated May 12, 2006

7. Work Planning and Performance Review dated June 15, 2007
8. Work Planning and Performance Review dated April 22, 2008
9. Work Planning and Performance Review dated May 21, 2009
10. Work Planning and Performance Review dated July 20, 2011
11. Work Planning and Performance Review dated July 23, 2012
12. Work Planning and Performance Review dated August 23, 2013
13. Counseling Statement dated July 23, 2012
14. Work Planning and Performance Review dated September 30, 2014
15. Ms. Lee's Statement of Accomplishments for Ms. Coston
16. Allen Coleman's Timecard dated January 10, 2015 – January 23, 2015
17. January 30, 2015 Written Warning to Ms. Lee
18. July 3, 2015 Email from Brenda Bartholomew to Nancy Coston dated and attached DSS Investigation Follow-up Memorandum
19. Notice of Investigatory Suspension
20. July 23, 2015 Notice of Pre-disciplinary Conference
21. July 27, 2015 Notice of Termination
22. August 6, 2014 Email Communications between Denise Shaffer and Petitioner
23. August 28, 2014 Email Communications between Denise Shaffer and Petitioner
24. Denise Shaffer's Notes
25. June 26, 2015 Email from Katherine Thompson and attached Statement
26. Vehicle #886 Mileage Logs and Reservations for Respondent
27. Emails from Maria Retana to Petitioner and Amy Mitchell
28. Amber Lemon's Statement
29. January 30, 2015 Memorandum from Petitioner to Brenda Bartholomew re: 2013-2014 Work Planning and Performance Review (WPPR)
30. Memorandum from Petitioner to Brenda Bartholomew re: Retaliation Grievance with attached to Written Warning
31. May 25, 2015 Email from Brenda Bartholomew to Nancy Coston
32. April 4, 2015 Emails from Brenda Bartholomew to Accounting Technicians
33. Tyrone Williams's Timecard

WITNESSES

For Petitioner: Robert Gilmore, Joyce Lee, Elizabeth Phillips, Cynthia Pulliam, Amy Mitchell

For Respondent: Nancy Coston, Denise Shaffer, Katherine Thompson, Allen Coleman, Donna Hall, Serena McPherson, Brenda Bartholomew, Maricruz Rios, Maria Retana, Amber Lemons, Louise Moize, Sharron Hinton, Tyran Fennell

FINDING OF FACT

Jurisdiction and Parties

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.

2. Petitioner Joyce Lee was a permanent State employee subject to Chapter 126 of the North Carolina General Statutes.

3. Respondent Orange County Department of Social Services ("DSS") was Petitioner's employer, and subject to Chapter 126.

4. In March of 1996, Petitioner began working for Orange County as an administrative assistant in the Orange County's Public Works Department. In November 1996, she was promoted to a Business Officer position at the Orange County Health Department. On April 24, 2000, then DSS Director Marti Pryor Cook hired Petitioner to work as a Business Officer II at Respondent DSS. (Resp. Ex. 1; T. p 457) Petitioner was a member of Respondent's management team, and reported directly to Respondent's Director.

5. In 2001, Nancy Coston was hired as Director of DSS. At all times relevant to this case, Director Coston directly supervised Petitioner and other members of the management team. (Resp. Ex 2-12, 14; T. p. 9, 458-459)

6. As a Business Officer II, Petitioner managed the Administrative Division including the Accounting Unit, and was responsible for all agency financial, budgetary, and administrative activities, including facility managements and managing and reserving agency vehicles. Petitioner supervised approximately twenty-two employees, either through direct supervision or through a supervisor (T. p. 30, 70-71, 458-459, 463)

Petitioner's Termination from Employment

7. On July 20, 2015, Respondent issued a Notice of Pre-disciplinary Conference to Petitioner advising her that Respondent's Director Nancy Coston would conduct a pre-disciplinary conference with Petitioner on July 23, 2015 to discuss possible disciplinary action about Petitioner's "continuing pattern and practice of harassing and intimidating behavior toward agency staff which, if substantiated, would constitute personal conduct." (Resp. Ex. 20) In such Notice, Coston outlined several examples of Petitioner's interpersonal interactions and attitude toward staff, which would be discussed at the pre-disciplinary conference. These actions allegedly occurred from July 2012 through August 2014, and were the subject of counseling sessions Ms. Coston had with Petitioner.

8. On July 23, 2015, Ms. Coston and Respondent's Human Resource Manager, Tyran Ferrell, conducted a pre-disciplinary conference with Petitioner to allow

Petitioner an opportunity to respond to the allegations listed in the Notice of Pre-disciplinary conference.

9. On July 27, 2015, Respondent terminated Petitioner's employment for engaging in unacceptable personal conduct, and issued a Notice of Termination to Petitioner. In that Notice, Respondent informed Petitioner that she had "exhibited a pattern of engaging staff at the agency [Respondent DSS] in a confrontational, intimidating, or angry manner." Respondent based its termination on Petitioner's personal conduct shown, (1) on June 25, 2015 towards a management analyst and accounting technician, and (2) a written warning on January 30, 2015 issued for similar behaviors. In the Notice of Termination, Director Coston also referenced Petitioner receiving a "number of counseling sessions in 2013 and 2014. . . for similar behaviors." Coston noted that she had:

. . . Discussed these behaviors with Petitioner on numerous occasions over a period of several years:

3. You have been provided counseling on anger management through the Employee Assistance Program;
4. When you have been counseled about these behaviors, you have not taken any responsibility for your actions and blame responses on the actions of others or have not awareness of how your behavior affects others;
5. On several occasions, your interactions with me has [sic] also been negative including several times when you told me you would not do what I asked you to do;
6. On January 30, 2015, you received a written warning for unacceptable personal conduct for inappropriate interactions with staff and for your retaliation against an employee. At that time, you were instructed to refrain from any intimidating or harassing behavior and to communicate and interact with all county staff in a professional, constructive, and positive tone and manner; and
7. You failed to follow instructions in your interactions with staff on June 25, 2015.

(Pet. Ex. 16, Resp. Ex. 21)

10. N.C.G.S. § 126-34.02 requires an employer state agency, before taking any personnel disciplinary actions, to furnish the subject State employee with "a statement in writing setting forth the specific acts or omissions that are the reasons for the disciplinary action." Based on that statute, Respondent is bound by the reasons stated in its July 27, 2015 dismissal letter to Petitioner in proving it had just cause to dismiss Petitioner from employment. After issuing its Notice of Termination, Respondent cannot rely upon evidence that was not listed in its dismissal letter to Petitioner, to bolster its reasons for terminating Petitioner from employment.

11. In the Notice of Termination, while Respondent cited that Petitioner “received a number of counseling sessions in 2013 and 2104,” Respondent did not identify counseling sessions from 2012 – 2014 by specific date, and/or by subject name, other than the January 30, 2015 and June 25, 2015 incidents, as a basis for terminating Petitioner’s employment.

a. In the Notice of Termination, Respondent failed to identify any counseling sessions it had cited in the Notice of Pre-disciplinary Conference, other than the January 30, 2015 written warning and June 25, 2015 counseling, as a basis for terminating Petitioner’s employment. Neither did Respondent state that it relied upon any incidents addressed in Petitioner’s annual performance evaluations (“WPPR”), as a basis to terminate Petitioner from employment.

b. Because Respondent did not list these above-cited events as a basis for terminating Petitioner’s employment in the Notice of Termination, any such evidence is only allowed as background information, and/or for the purpose of showing that Ms. Coston had made Petitioner aware that she was exhibiting inappropriate behavior in the workplace with agency staff on prior occasions.

Performance Evaluations

12. From May 7, 2002 through 2008, Director Coston rated Petitioner’s performance as “Proficient” or better in her annual WPPRs. Ms. Coston defined “proficient” as meaning an employee was meeting minimum expectations, and doing an acceptable job. (Resp. Ex 4, 7, 9, 10, 11, 12, 14, T. pp. 12-27, 39-40, 72-73, 76-89, 113-114, 119-122) In Petitioner’s 2004 WPPR, Ms. Coston listed one of Petitioner’s goals for the next year was “improving communication with staff by assuring staff understand the reasons for administrative decisions.” (Resp. Ex. 4,T. pp. 12)

13. In Petitioner’s 2009 WPPR, Petitioner received an “Exceptional” rating. Under Supervisor’s Comments, Ms. Coston described Petitioner as “a very hardworking, dependable member of management who volunteers to help others.” (Pet. Ex. 8) Coston noted that Petitioner appeared “calmer at work and has improved her relationship with staff.” Coston noted that Petitioner did not have as many communication issues with staff, and her communication had improved during that review period. (Resp. Ex. 9, T. pp. 14)

14. Ms. Coston did not complete a performance evaluation for Petitioner in 2010. In October of 2011, Coston issued an annual WPPR to Petitioner, rating Petitioner’s performance as “proficient.” Under the Supervisor’s Comments, Ms. Coston wrote:

[Given] the situation, Joyce is also seeking training on handling interpersonal and personnel issues at the workplace and will attend some additional training this year.

(Resp. Ex. 10) Petitioner was given additional training to improve her handling of staff and conflict so that things would not escalate. (T. pp. 15-16)

15. In Petitioner's 2012 WPPR, Ms. Coston wrote that:

Joyce will need to be conscience of her personal interaction style and its impact on staff. She and I have committed to working on improving communication and feedback loops.

(Resp. Ex. 11)

16. On July 23, 2012, Ms. Coston conducted a counseling session with Petitioner about overreacting in an angry tone at a July 13, 2012 supervisor's meeting, and reacting inappropriately to an agency supervisor in the hall in front of a client. Petitioner had also reacted very negatively toward Coston when she asked Petitioner to work on new codes for line staff to use on the day sheets. Petitioner told Coston she was not going to do it, that it was not part of her job, and that it was the job of the program staff. Coston advised Petitioner that:

This trend of anger, aggressive or rude behavior with other staff is totally inappropriate for an employee at this agency, and is particularly inappropriate for a member of management. . . . At our conference, I told you to refrain from using angry or curt tones with staff and not to give orders or instructions to staff in other divisions unless a division manager had asked you to intervene.

(Resp. Ex. 13) During the counseling session, Coston advised Petitioner to refrain from using angry and confrontational tones with agency staff, and recommended Petitioner get additional training on communication and conflict management. (Resp. Ex. 13)

17. In 2013, Respondent DSS underwent many changes, such as the implementation of NCFAST and new automated measures. Some of Petitioner's responsibilities were shifted to other sections of the agency. Petitioner was frustrated by these shifts in her areas and responsibilities, and attributed these changes to Ms. Coston. Both Coston and Petitioner acknowledge that issues began to escalate in 2013. Petitioner felt Ms. Coston excluded her from meetings, and that Ms. Coston was "on her" for the way Petitioner interacted with staff. (T. pp. 406-416, 532)

18. Petitioner did not sign her 2014 WPPR, because she did not believe the evaluation accurately reflected her accomplishments. (T. pp. 459-461) Petitioner believed she deserved a rating of "exceptional," instead of the "proficient" rating Coston had given Petitioner. Ms. Coston allowed Petitioner to write a list of her accomplishments during the review period in question. (Resp. Ex. 15) Ms. Coston and Petitioner discussed issues with Petitioner's 2014 WPPR at the September 30, 2014 meeting, and again in October 2014. (Resp. Exs. 14, 15, T. pp. 36-37, 41-45, 88-89, 513-519) On January 12,

2015, Ms. Coston received and reviewed Petitioner's list of her own accomplishments, before completing and signing Petitioner's 2014 WPPR.

January 30, 2015 Written Warning

19. On December 30, 2015, Respondent's Assistant Director, Denise Shaffer, asked Petitioner to verify whether Petitioner had created a "rule" limiting use of agency vehicle #886 to the administrative unit. Petitioner told Ms. Shaffer that she had limited use of agency vehicle #886 to administrative staff, or staff not transporting clients and children, because cars used by other staff transporting clients and children were often dirty. Petitioner thought administrative staff should not have to use dirty cars, and she wanted a clean car for administrative staff to use for running errands. Petitioner kept the reservation book for vehicle #886 in her office. Because Petitioner locked her office when she was absent from the office, vehicle #886 was inaccessible to the Accounting Technicians to make vehicle reservations for that car when Petitioner was absent from work. The reservation book also showed that vehicle #886 was always reserved to "Joyce."

20. After talking with Shaffer, Petitioner accused Mr. Coleman of telling Shaffer about Petitioner's "rule." Petitioner walked into Coleman's office, and asked him what gave him the authority to tell a supervisor that there was a car reserved to Petitioner. Coleman advised Ms. Coston that he was concerned Petitioner would retaliate against him for getting Petitioner into trouble.

21. On January 9, 2015, Petitioner met with her staff, including Allen Coleman. She informed her staff that they should not work past their scheduled departure time unless they informed her in advance they needed to work late. That same day, Mr. Coleman returned from lunch late. Mr. Coleman's work hours were from 8 AM until 5 PM. At the end of the day, Petitioner noticed Coleman had not clocked out at his scheduled 5:00PM time, and directed Coleman to clock out. (T. pp. 466-468)

22. On January 13, 2015, Coleman was twelve minutes late returning from lunch. Petitioner observed Coleman did not leave work at his scheduled 5:00PM time that date. She did not think Coleman appeared to be working after 5:00PM. (T. pp. 471-72) Coleman claimed he worked late that day, or "flexed" his time, in order to work his allotted eight hours that day. He did not ask Petitioner if he could make up his time by staying late. Coleman clocked out at 5:06PM. (T. p. 472)

23. The next day, Petitioner changed Mr. Coleman's time "out" on his timecard, because Coleman had not followed Petitioner's instructions regarding working late, and as Coleman did not appear to be working after 5:00PM on January 13, 2015. Petitioner believed that she was authorized as Coleman's manager to adjust to employee time records. (T. pp. 466-473)

24. When Mr. Coleman returned to work on January 14, 2015, he saw his time "out" on his timecard had been changed to 5:00PM for January 13, 2015, reducing his

hours worked for that day to 7.8 hours. A note on his timecard read, "Time after schedule work hour was not approved by supervisor. [jlee; 1/14/2015 8:50AM]." (Resp Ex 16, 17; T. pp. 50-51, 94-99, 203-207, 472, 606-618, 673-674) Mr. Coleman printed the relevant portion of his altered timecard, and showed it to Ms. Coston. Ms. Coston was very concerned that Petitioner was in fact retaliating against Mr. Coleman, especially after reviewing other staffs' timecards, and finding none of them had been changed without the staff member's involvement. (Resp Ex 16, 17; T. pp. 50-51, 94-99, 203-207, 472, 606-618, 673-674)

25. Ms. Coston and Ms. Shaffer interviewed Petitioner's staff about vehicle reservations and time cards. The Accounting Technicians supervised by Petitioner indicated there were major issues with timekeeping in their unit. Petitioner required them to clock in at exactly 8:00AM, and clock out at exactly 5:00PM, a requirement made difficult by the technical aspects of the County's timekeeping system, Kronos. Petitioner did not permit employees work over eight hours in a workday, even by .1 or .3 of an hour. If employees did not adhere to this strict schedule, they had to give a leave slip to Petitioner for that time. It was also clear from these interviews that employees had to go through Petitioner to use vehicle #886. Although some of the Accounting Technicians had never complained about Petitioner before these interviews, every Accounting Technician, when asked, expressed concerns about Petitioner's behavior towards them. (Resp Ex 24; T. pp. 147-149, 154-158, 199-201, 205-206, 247-254, 592-606, 683-684, 651-652, 683-685)

26. On January 22, 2015, Ms. Coston and Ms. Shaffer met with Petitioner regarding their concerns about vehicle #886, and Mr. Coleman's altered timecard. Petitioner told Ms. Coston and Ms. Shaffer that vehicle #886 had been set aside for administrative staff for two years, because she did not want to get in a nasty car. Petitioner admitted to asking Mr. Coleman about the car, because she was upset that he referred to vehicle #886 as "Joyce's car" when the administrative staff car used that car. Petitioner also told Ms. Coston and Ms. Shaffer that if her staff went over their time on their lunch break, they had to submit a leave slip to Petitioner. Petitioner admitted she changed Mr. Coleman's timecard, because Coleman had not signed out at his scheduled time, and Petitioner did not believe he was working. Petitioner did not speak to Mr. Coleman before changing his timecard. (Resp Ex 17, 24; T. pp. 50-51, 91-93, 95, 141, 205-206, 683)

27. At approximately 11:00 a.m. on January 30, 2015, Petitioner hand-delivered a grievance concerning her 2014 WPPR with Brenda Bartholomew, Orange County's Human Resources Director. (Pet. Ex. 13, T. pp. 354, 461-462) In such grievance, Petitioner asserted that Ms. Coston had turned in her 2014 WPPR without allowing Petitioner the opportunity to comment, and that her 2014 WPPR was not a true representation of Petitioner's work accomplishments, as it rated her "Proficient," and not "Exceptional." Ms. Bartholomew did not share the document with Ms. Coston, because she did not believe Coston had the authority to investigate the complaint. (Resp Ex 15, 29; T. pp. 42-43, 56, 354-356, 461-462)

28. Approximately four and one half hours after Petitioner delivered her grievance to Ms. Bartholomew on January 30, 2015, Ms. Coston issued Petitioner a written warning for unsatisfactory job performance and personal conduct. (Resp. Ex. 17) This was the first written warning that Petitioner had received during her fifteen years of employment with Respondent. Coston issued this warning for the following reasons: (1) Petitioner had retaliated against employee Allen Coleman, and violated County policy by changing Coleman's timecard without talking with Coleman, and (2) Petitioner had created an inappropriate work environment in which employees felt harassed and intimidated. (Resp. Exs. 17, 24; T. pp. 51-52, 91, 95-100, 103-105, 673-674, 677) The closeness in time between Mr. Coleman first telling Coston he feared retaliation from Petitioner (early January 2015), and Petitioner changing his time card on January 13, 2015, made Ms. Coston believe that Petitioner had retaliated against Mr. Coleman for telling others in the agency about Petitioner's restricting the usage of vehicle #886.

29. In the January 30, 2015 written warning, Coston also informed Petitioner that staff perceived Petitioner's behavior towards them as intimidating. Coston reminded Petitioner that Coston had counseled Petitioner about her communication style with staff on past occasions. Coston also instructed Petitioner that:

Your behavior has created an atmosphere of fear and intimidation that is unbecoming of an employee of your position and is a detriment to the agency work environment. In addition, your actions in altering an employee's official time record is a falsification of employment documents and a violation of work rules, and as such constitutes unacceptable personal conduct as a manager at this agency.

(Resp. Ex. 17) In the warning, Coston did not specifically identify which staff felt intimidated by Petitioner.

30. Finally, in the written warning, Ms. Coston directed Petitioner to: (1) refrain from any intimidating or harassing actions with any agency employees, (2) consult with the Director or Assistant Director before implementing any rules impacting agency staff, (3) participate in the Employee Assistance Program ("EAP") to address constructive ways to handle her frustration and anger, and (4) immediately and continuously communicate and interact with supervisors and other County employees in a professional, constructive, and positive tone and manner.

a. Ms. Coston believed Petitioner would benefit from the EAP, because Petitioner often spoke to Ms. Coston in a very angry tone, even though Petitioner always insisted that she was not angry. Ms. Coston felt EAP could help Petitioner to understand why she was coming across to others as angry and hostile.

b. Ms. Coston also wanted Petitioner to be more flexible with staff, especially regarding their time. In the written warning, Coston also advised Petitioner that failure to follow these instructions could result in further disciplinary actions, up to and including termination from employment. (Resp Ex 17; T. pp. 52-55, 622-623)

31. After receiving the January 30, 2015 written warning, Petitioner no longer placed any restrictions on the use of vehicles that were assigned to Respondent. (T. p. 466), and did not change any employee time records after January 30, 2015. (T. pp. 474-475)

32. On February 20, 2015, Petitioner filed a second grievance with Brenda Bartholomew of Human Resources alleging that Ms. Coston had issued the January 30, 2015 written warning to Petitioner in retaliation for Petitioner's refusal to sign her 2014 WPPR. Ms. Bartholomew did not share the document with Ms. Coston. (Resp Ex 30; T. pp. 56, 354-355, 358, 477)

33. By letter dated March 2, 2015, Ms. Bartholomew informed Petitioner that she had received Petitioner's two grievances. Bartholomew advised Petitioner that since Respondent fell under the authority of the State's personnel policies, as opposed to the County's policies, Petitioner must follow State procedures for filing a grievance. (T. pp. 354, 358, 368, 478)

34. Ms. Bartholomew told Coston that Petitioner had filed a grievance alleging retaliation by Ms. Coston, though Ms. Bartholomew did not share the contents of the grievance with Ms. Coston. Ms. Coston told Bartholomew that Petitioner often expressed that she felt treated unfairly by Ms. Coston. Petitioner had also told Coston that others in the agency also thought Ms. Coston treated Petitioner unfairly. Ms. Coston asked Ms. Bartholomew to assess these claims, and other perceived morale issues within DSS, and permitted her to interview agency staff. (T. pp. 56-58, 358-360, 375-376, 384-385, 388-391, 674-676) Bartholomew investigated Petitioner's allegations by interviewing several agency employees, including Petitioner. (Resp. Ex. 31, 32; T. pp. 56-58, 360-362, 371-374, 383-385, 388-391, 676)

35. On or about June 24, 2015, Lindsey Shewmaker, Respondent's Economic Services Manager, instructed one of her employees, Katherine Thompson, to obtain information about rent and mortgage payments that Respondent had made to its clients. (T. pp. 174-175) Shewmaker told Thompson to talk with Allen Coleman regarding the information she needed. (T. pp. 175-176) Ms. Thompson arranged to meet with Mr. Coleman on the following day. (T. p. 176)

36. On June 25, 2015, Ms. Thompson met with Mr. Coleman in his office. (T. pp. 176) Petitioner observed Ms. Thompson, walked and stood at Mr. Coleman's office door, and asked Thompson, in an angry tone, if she was "interviewing my people." (T. pp. 176-177, 210, 479) Ms. Thompson replied that she was working on a project "for Lindsey and Nancy." (T. pp. 177, 479) Petitioner told Ms. Thompson that she was not aware that Ms. Thompson needed information, and that Petitioner wished someone had informed her that Ms. Thompson would be visiting her division and staff. (T. pp. 479-480) Petitioner advised Thompson that next time, she needed to ask Petitioner first, and could not speak to Petitioner's people without coming to Petitioner first. Thompson apologized. Petitioner stood there, and stared at Thompson for a few seconds before walking away.

Thompson thought Petitioner appeared very agitated as Petitioner's tone of voice was condescending, her eyebrows were raised, and her eyes were wide. Thompson felt like Petitioner was trying to appear threatening. (Pet. Ex. 22)

37. Accounting Technician Donna Hall overheard Petitioner speaking to Thompson. Hall thought Petitioner's tone of voice was inappropriate, and her conduct was an overreaction. (Resp. Ex. 25; Pet. Ex. 23; T. pp. 58-60, 175-177, 181-182, 209-211, 243-244, 478-481, 619-621)

38. Petitioner did not say anything to Mr. Coleman during this incident. (T. p. 190) After Petitioner returned to her office, Mr. Coleman and Ms. Thompson decided to discontinue their meeting.

39. After Ms. Thompson left Mr. Coleman's office, she encountered Petitioner in the hallway. Petitioner told Ms. Thompson again that Ms. Thompson was not to speak to Petitioner's people without consulting her first. Petitioner's tone was cold and condescending. Petitioner further told Ms. Thompson that she might not have wanted her staff to give Ms. Thompson the information she sought. Ms. Thompson apologized repeatedly to Petitioner. After returning to her office, Ms. Thompson emailed her supervisor. Thompson asked to speak with her, as she was upset and shocked by the incident, as well as frustrated that an important project for Ms. Coston had been hindered. (Resp Ex 25; T. pp. 178-179, 182-183, 187-188, 481-482)

40. Ms. McPherson encountered Petitioner following this incident. Ms. McPherson could tell Petitioner was angry based on Petitioner's demeanor and tone. Petitioner told Ms. McPherson it was unfair that people talked to her staff without her permission. (Pet Ex 24; T. pp. 285-286)

41. Mr. Coleman contacted Ms. Shaffer, and told her what transpired with Petitioner and Ms. Thompson. Mr. Coleman told Ms. Shaffer that Petitioner was upset, shaking, and her voiced was raised. Ms. Shaffer spoke with Ms. Thompson after speaking to Mr. Coleman, and found Ms. Thompson's description of what transpired to be consistent with Mr. Coleman's recounting of the incident. Ms. Shaffer asked Mr. Coleman, Ms. Thompson, and Ms. McPherson to write statements regarding the incident. (Resp. Ex. 25; Pet. Ex. 22-24; T. pp. 109, 149-152, 179-181, 213-215, 287-288, 291-293)

42. At hearing, Ms. Thompson's testimony differed significantly from Mr. Coleman's testimony regarding this matter. Mr. Thompson testified that Mr. Coleman told her he was nervous when he received Ms. Thompson's email, and that he was afraid of being retaliated against again. (T. p. 182) In contrast, Mr. Coleman testified that he had no reservations about meeting with Ms. Thompson, and that he does not recall telling Ms. Thompson that Petitioner had retaliated against him in the past. (T. pp. 222-223)

43. On June 26, 2015, Ms. Coston and Ms. Bartholomew met with Petitioner and issued a Notice of Investigatory Suspension. Through the Notice, Coston placed Petitioner on investigatory placement/suspension to allow Coston time to investigate

allegations about Petitioner's conduct on June 25, 2015. (Resp. Ex. 19) That Notice provided:

. . . you have failed to follow the directions outlined in your January 30, 2015 Written Warning by failing to refrain from any intimidating or harassing actions with any employees of the department, including actions that could be deemed to be retaliatory. You also failed to communicate and interact with all County employees in a professional manner with a constructive and positive tone.

(Resp. Ex. 19) Bartholomew observed that Petitioner was visibly upset about the suspension. Petitioner accused Ms. Coston of being at fault for the suspension. (Resp. Ex. 19; T. pp. 60-61, 364-365, 377, 483)

44. Ms. Coston investigated the June 25, 2015 incident by interviewing Allen Coleman, Katherine Thompson, Ms. Everhart, Donna Hall, Cynthia Pulliam, and Serena McPherson. Neither Ms. Coston nor any other employee of Respondent contacted Petitioner during the course of Ms. Coston's investigation. (T. pp. 124, 484) Ms. Coston found the witness accounts of such incident consistently showed that Petitioner was intimidating when she spoke to Ms. Thompson on June 25, 2015. Based on these interviews, Coston concluded that Petitioner engaged in misconduct during the June 25, 2015 event. She considered possible disciplinary actions for Petitioner's conduct, including demotion. (T. pp. 61-62, 111, 124-125)

45. On July 20, 2015, Tyran Fennell, Orange County's Human Resources Manager, presented Petitioner with a Notice of Pre-disciplinary Conference from Ms. Coston notifying Petitioner of such conference scheduled for July 23, 2015. (T. pp. 485-486, 686, R. Ex. 20) Ms. Fennell discussed several potential outcomes with Petitioner, including resignation, retirement, termination, and the possibility that nothing would happen. At hearing, Ms. Fennell explained her conversation with Petitioner was similar to those she had with other employees who received a notice of pre-disciplinary conference. At the hearing, Petitioner stated Ms. Fennell only gave her two options: to retire or be terminated. (T. pp. 485, 686-687, 689-691)

46. The purpose of the pre-disciplinary conference was to discuss allegations that Petitioner had engaged in a continuing pattern, and practice of harassment and intimidation toward agency staff, which, if substantiated, would constitute unacceptable personal conduct. (Resp. Ex. 20; T. pp. 61-62, 124-125) Other than the June 25, 2015 incident, the Notice of Pre-disciplinary Conference did not mention any harassment and/or intimidation by Petitioner that had occurred since the January 30, 2015 written warning. Instead, such Notice cited multiple incidents, occurring between July 2012 and August 2014, as examples of Petitioner's alleged inappropriate behavior, which necessitated the pre-disciplinary conference. (Resp. Ex. 20) This Notice referenced several alleged incidents in which Petitioner intimidated staff. Three of those incidents allegedly occurred in 2014. However, Coston failed to list a date or month in which such incidents allegedly occurred. (Resp. Ex. 20)

47. On July 23, 2015, Ms. Coston conducted a pre-disciplinary conference with Petitioner, and allowed Petitioner an opportunity to present information to her. Ms. Fennell also attended Petitioner's pre-disciplinary conference. At the pre-disciplinary conference, Coston gave Petitioner a copy of the Notice of Pre-disciplinary Conference. Coston allowed Petitioner an opportunity to read the Notice, and respond to the allegations within the Notice. Petitioner addressed many of the allegations outlined in the Notice during the pre-disciplinary conference. She defended her past behavior at the agency. Petitioner insisted she never used an angry tone, and denied she had engaged in harassing and intimidating behavior on June 25, 2015. Ms. Coston thought Petitioner accepted no responsibility for her actions. (Resp. Ex 20, 21; T. pp. 62-66, 487, 547-548, 621-622, 676-677, 687-688)

48. Following the pre-disciplinary conference, Ms. Coston reviewed Petitioner's statements, and considered alternate disciplinary actions. Ms. Coston felt it was her responsibility to protect staff after staff advised Coston that Petitioner was making staff feel harassed and intimidated. Given Petitioner's history of angry and intimidating behavior at DSS, Coston felt she could not guarantee Petitioner's intimidating conduct would not continue if she were to remain at the agency. Ms. Coston believed Petitioner's conduct warranted dismissal. (Resp. Ex 21; T. pp. 66-68, 106, 121-125, 508, 622)

49. On July 27, 2015, Ms. Coston issued Petitioner a Notice of Termination, incorrectly dated June 27, 2015, dismissing Petitioner from employment for the unacceptable personal conduct of a pattern of harassing, intimidating, confrontational, and angry behavior towards agency staff. Coston concluded that Petitioner's behavior had a negative impact on employees of the agency that continued even after counseling, after Petitioner participated in the County's Employment Assistance Program, and after Petitioner received a written warning for such behavior. (Resp. Ex 21; T. pp. 66-68, 106, 121-125, 508, 622)

50. The preponderance of the evidence presented at hearing showed that since July 23, 2012, Petitioner was aware that her behavior towards her staff had created an atmosphere of fear and intimidation that Petitioner's supervisor thought was "inappropriate for an employee at this agency, and is particularly inappropriate for a member of management." (Resp. Ex. 13) Again, through the January 30, 2015 written warning, Petitioner was made aware that her behavior towards staff was intimidating, and harassing. Petitioner's supervisor warned Petitioner again that she needed to refrain from such behavior, and she was expected to communicate and interact with staff in a "professional, constructive, and positive tone and manner." (Resp. Ex. 17)

51. The testimony of DSS employees regarding Petitioner's conduct was credible, and corroborated the testimony of other employees. The preponderance of the evidence established that Petitioner engaged in a pattern of harassing and intimidating conduct that detrimentally affected the working environment at Respondent's agency.

52. Since Petitioner's termination, the agency has a more positive, and less stressful atmosphere. (T. pp.255-256, 336-337)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes, and the parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. Despite the parties' due diligence, and the complexity of the case, this case presented a situation of a kind that exceeded the usual, regular, and customary practice for completion of a contested case hearing. Consequently, pursuant to N.C. Gen. Stat. § 126-34.01, extraordinary cause existed so that the issuance of the Final Decision was rendered more than 180 days from the commencement of the case.

3. N.C. Gen. Stat. § 126-35(a) provides that, "No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause."

4. At the time of her dismissal, Petitioner was a "career state employee," as defined under Chapter 126 of the North Carolina General Statutes, and thus, was entitled to the protections of the North Carolina Personnel Act, and the administrative regulations promulgated hereunder.

5. In a career State employee's appeal of a disciplinary action, the department or agency employer bears the burden of proving that "just cause" existed for the disciplinary action. N.C. Gen. Stat. § 126-35(d) (2007).

6. 25 NCAC 011 .2301(c) enumerates the two grounds for disciplinary action including dismissal, based on just cause, as set out in N.C. Gen. Stat. § 126-35. These two bases are: (1) Discipline or dismissal imposed based on unsatisfactory job performance, including grossly inefficient job performance, and (2) Discipline or dismissal imposed based on unacceptable personal conduct.

7. 25 NCAC 011 .2304 "DISMISSAL FOR PERSONAL CONDUCT" states:

- (a) Employees may be dismissed for a current incident of unacceptable personal conduct.
- (b) Unacceptable personal conduct is:
 - (1) conduct for which no reasonable person should expect to receive prior warning; or
 - (2) job related conduct which constitutes violation of state or federal law; or . . .

- (4) the willful violation of known or written work rules; or
- (5) conduct unbecoming an employee that is detrimental to the agency's service; or . . .
- (7) falsification of an employment application or other employment documentation; or
- (8) insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning; . . .

One instance of unacceptable conduct constitutes just cause for dismissal. *Hilliard v. North Carolina Dep't of Corr.*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

8. *N.C.D.E.N.R. v. Clifton Carroll*, 358 N.C. 649, 599 S.E.2d 888 (2004), states that the fundamental question in determining just cause is whether the disciplinary action taken was just. Citing further, the Court provided, "Inevitably, this inquiry requires an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations." There is no bright line test to determine "just cause"—it depends upon the specific facts and circumstances in each case. Furthermore, "not every violation of law gives rise to 'just cause' for employee discipline."

9. Though just cause is case-dependent and not exclusive, *Carroll* provides examples of some other actions where just cause were found:

Although there is no bright line test to determine whether an employee's conduct establishes "unacceptable personal conduct" and thus "just cause" for discipline, we draw guidance from those prior cases where just cause has been found. . . See, e.g., *Kea*, 153 N.C. App. 595, 570 S.E.2d 919 (employee violated known and written work rules, disobeyed direct order from superior, and made crude and offensive sexual advances to a co-worker); *Davis v. N.C. Dep't of Crime Control & Pub. Safety*, 151 N.C. App. 513, 565 S.E.2d 716 (2002) (highway patrol officer was stopped for speeding and driving while intoxicated); *N.C. Dep't of Corr. v. McNeely*, 135 N.C. App. 587, 521 S.E.2d 730 (1999) (correctional officer abandoned post without authorization and failed to remain alert while on duty); *Gray v. Orange Cty. Health Dep't*, 119 N.C. App. 62, 457 S.E.2d 892 (1995) (health department inspector engaged in inappropriate sexually oriented behavior during inspections of catering businesses [***53] owned by women), disc. rev. denied, 341 N.C. 649, 462 S.E.2d 511 (1995); *Leiphart v. N.C. Sch. of the Arts*, 80 N.C. App. 339, 342 S.E.2d 914 (1986) (division director at North Carolina School of the Arts surreptitiously organized meetings with other division directors to discuss complaints against their superior), cert. denied, 318 N.C. 507, 349 S.E.2d 862 (1986).

10. In the recent case of *Warren v. NC Dept. of Crime Control & Public Safety*, the Court of Appeals crystallized the *Carroll* just cause analysis as follows:

The proper analytical approach is to first determine whether the employee engaged in the conduct, the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish just cause for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to just cause for the disciplinary action taken. Just cause must be determined based "upon an examination of the facts and circumstances of each individual case.

Warren v. N.C. Dep't of Crime Control & Pub. Safety, 726 S.E.2d 920, 925 (N.C. Ct. App. 2012).

STEP ONE: DID PETITIONER COMMIT THE CONDUCT ALLEGED

11. In this case, Respondent proved by a preponderance of the evidence that Petitioner engaged in the alleged "unacceptable personal conduct" alleged by Respondent. Beginning in 2012, and again in 2015, Petitioner used an angry tone of voice, and confrontational and intimidating manner when addressing many of her staff at her employment. Through a written warning on January 30, 2015, Respondent warned Petitioner that her failure to make the required improvements to her conduct could result in her dismissal. On June 25, 2015, Petitioner again failed to refrain from intimidating or harassing employees of the agency, and failed to communicate with other County employees in a professional and positive manner when she confronted two agency employees. During Coston's investigation of that incident, other staff employees voiced similar concerns to Ms. Coston regarding Petitioner's hostile conduct. The June 25, 2015 incident of unacceptable personal conduct provided justification for Petitioner's dismissal.

STEP TWO: DID PETITIONER'S CONDUCT CONSTITUTE UNACCEPTABLE PERSONAL CONDUCT

12. Petitioner's actions constituted "unacceptable personal conduct" in violation of 25 NCAC 011 .2304. Petitioner engaged in "conduct unbecoming a state employee that is detrimental to state service," and "conduct for which no reasonable person should expect to receive prior warning" when she continuously addressed other agency employees in a harassing or intimidating manner, and used an angry tone to create a work environment in which agency employees feared retaliation from Petitioner. 25 NCAC 011 .2304(b)(1) & (5). Petitioner continued this pattern of conduct even after being counseled about such behavior on July 23, 2012, being warned by the January 30, 2015 written warning, and again on June 25, 2015.

13. Based on the foregoing, Respondent has met its burden of proof by showing that Petitioner engaged in the conduct her employer alleged, and, secondly, that conduct constituted 'unacceptable personal conduct' under 25 NCAC 011 .2304.

14. Having found the two prongs of the *Carroll* case have been met, the next inquiry is whether the punishment is appropriate as established in *Warren*.

STEP THREE: DID THE MISCONDUCT AMOUNT TO JUST CAUSE FOR THE DISCIPLINARY ACTION TAKEN

15. The final inquiry of the *Warren* analysis is determining whether the discipline imposed for the conduct was "just." Just cause must be determined based "upon an examination of the facts and circumstances of each individual case," which the *Warren* court refers to as "balancing the equities." In balancing the equities, one must look at the totality of the facts and circumstances as opposed to merely asking whether Petitioner violated rules or policy.

16. The totality of the facts and circumstances of Petitioner's conduct include a fifteen-year employment with Respondent. The preponderance of the evidence established that during the last three years of employment, Petitioner engaged in abrasive, intimidating, and negative interactions with other agency staff, which continued to escalate despite a July 23, 2012 counseling from Ms. Coston and a January 30, 2015 written warning. Through these disciplinary actions, Petitioner was made aware that the tone of voice she used was not only hostile, but intimidating to her staff, and was more than just Petitioner's "way" of speaking to others. Despite attending counseling through the Employee Assistance Program, Petitioner continued to engage in unacceptable personal conduct in the workplace. Under the particular facts of this case, Respondent met its burden of proving that it had "just cause" to dismiss Petitioner for this unacceptable personal conduct, and that the punishment of termination from employment was appropriate.

17. The preponderance of the evidence at hearing established that Respondent followed the procedures required before dismissing Petitioner for unacceptable personal conduct, and Respondent had just cause to dismiss Petitioner for her unacceptable personal conduct.

18. Respondent did not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily and/or capriciously, or fail to act as required by law or rule when it dismissed Petitioner from employment.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that Respondent's decision to dismiss Petitioner from employment is **AFFIRMED**.

NOTICE

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such an appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29(a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 9th day of February, 2016.



Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
02/09/2016 5:00 PM

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 OSP 05867

RANDALL COLE.)
Petitioner,)
)
v.)
)
N.C. DEPARTMENT OF)
PUBLIC SAFETY,)
Respondent.)
_____)

FINAL DECISION

This matter was heard before the Honorable Donald W. Overby, Administrative Law Judge, on January 12, 2016 at the Haywood County Courthouse in Waynesville, North Carolina.

APPEARANCES

PETITIONER: John C. Hunter
One North Pack Square
Suite 421
Asheville, NC 28801

RESPONDENT: Tamika L. Henderson
Assistant Attorneys General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27609

EXHIBITS

Admitted for Petitioner:

Exhibit	Description
7	Written Warning
14	TAPS for Randall Cole 12/1/2011-11/31/2012
15	State Human Resources Manual, Section 7

Official notice was taken of Petitioner's Exhibit 16, State Human Resources Manual, Section 7.

Admitted for Respondent:

Exhibit	Description
1.	Position Description
2.	Essential Job Functions
3.	2011 Audit Report
4.	2011 Audit Follow-Up
5.	Training Records
6.	Email from Wayne Sasser to Ronald Young
7.	Email from Randall Cole to Ronald Young
8.	Email to Ronald Young
9.	Email from Betty Eller to Ronald Young
10.	Memo to Karen Brown regarding Unsatisfactory Job Performance
11.	Pre-D Notification Letter
12.	Pre-D Letter
13.	Pre-D Acknowledgment
14.	Dismissal Letter
15.	Final Agency Decision
16.	2011 Audit Second Follow-up
17.	First Written Warning
18.	Second Written Warning
19.	Third Written Warning
20.	Craggy Laundry Organization Chart
21.	Broughton Laundry Organization Chart
22.	FMLA Designation
23.	2013 Semi-Annual Inspection Checklist
24.	Petitioner's Response to Respondent's Request for Admissions
25.	Petitioner's Response to Respondent's First Set of Interrogatories and RPD
26.	Work Plan Discussion Form
27.	TAP Performance Logs
28.	Karen Brown Pre-D Notes
30.	Employee Management System Sheet with handwritten notes
31.	Timeline
32.	Petitioner's Responses to Discovery 2015 action
33.	Petitioner's Responses to Discovery 2014 action

Respondent's Exhibits 3, 4, 9, 10 and 16 were admitted over Petitioner's objection, but are given the weight the trier of fact deems appropriate. Respondent's Exhibit 31 was admitted for illustrative purposes only.

WITNESSES

The following witnesses testified for the Petitioner:
Randall Cole

The follow witnesses testified for the Respondent:

Randall Cole
Wayne Sasser
Ronald Young
Karen Brown

ISSUES

Whether Respondent had just cause to dismiss Petitioner for unsatisfactory job performance.

PRE-HEARING MOTIONS

Prior to the contested case hearing in this matter, on December 14, 2015, Respondent filed a dispositive Motion to Dismiss with the Office of Administrative Hearings ("OAH"). Petitioner filed his response on December 28, 2015. The basis of the motion was that OAH lacked jurisdiction to hear this matter. By separate Order dated December 30, 2015, Respondent's Motion was **DENIED**.

BURDEN OF PROOF

The burden of proof is on the Respondent to show by the greater weight of the evidence that it had just cause to dismiss Petitioner for disciplinary reasons related to unsatisfactory job performance.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law.

In making these Findings of Fact, the undersigned has weighed all of the evidence and assessed the credibility of the witnesses. The undersigned has taken into account

the appropriate factors for judging the credibility of witnesses, including but not limited to the demeanor of the witness, and any interests, bias, or prejudice the witness may have. Further, the undersigned has carefully considered the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witnesses testified, whether the testimony of the witness is reasonable and rationale, and whether the testimony is consistent with all other believable evidence in the case. After careful consideration of the sworn testimony present in this hearing, the documents and exhibits admitted in evidence, and the entire record in this proceeding, the undersigned makes the following FINDINGS OF FACT:

1. Prior to his discharge on December 3, 2013 Petitioner, Randall Cole, was an employee of North Carolina Department of Public Safety, Division of Correction Enterprises ("Correction Enterprises"). Petitioner was dismissed by DPS for Unsatisfactory Job Performance;
2. The final agency decision affirming Petitioner's dismissal was issued on March 7, 2014;
3. Petitioner filed a Petition for Contested Case Hearing, (14 OSP 02494), challenging his dismissal with the OAH on April 3, 2014;
4. Petitioner filed a notice of voluntary dismissal of the action captioned 14 OSP 02494 on August 21, 2014;
5. Petitioner filed a second Petition for Contested Case Hearing, (15 OSP 05867), on August 10, 2015.

6. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.

7. Prior to his dismissal, Petitioner was a permanent State employee subject to Chapter 126 of the North Carolina General Statutes.

8. Petitioner was hired as the Assistant Director of the Craggy Laundry in November 2003. During his 7 years as the Assistant Director for Craggy Laundry, Petitioner received Very Good Overall Job Performance Ratings.

9. Petitioner was promoted from the Assistant Plant Manager at Craggy Laundry to the Plant Manager (Correction Enterprises Manager III) in December 2010 following the retirement of its longtime Director.

10. The primary purpose of the Petitioner's position was to provide management to the laundry plant operation. (R. Ex. 1)

11. Petitioner's direct supervisor was Ronald Young ("Young"), Correctional Enterprise's Laundry Director. (R. Ex. 20).

12. When a facility transitions to new management, Respondent performs a change of command audit. That audit is a functioning report of the condition of that particular facility under the prior management. It is, in essence, a statement of what new management is inheriting, not a litany of problems created by the new manager.

13. After Petitioner was promoted, an audit was conducted at Craggy Laundry from January 18 through January 19, 2011. That audit found no exceptions in the areas Manufacturing Inventories, Incentive Wage Fund and Travel Reimbursements. The audit

found “some improvement needed to strengthen controls or minimize risks” in the areas of Accounts Payable and Procurement and Fixed Assets. The audit found “below expected performance level, significant improvement needed “in the area of Telephones.” (Respondent Exhibit 3)

14. There is no evidence of how long those problems had existed under the prior manager or what if anything had been done to address the problems in the past. What is known is that those conditions existed when Petitioner began his duties as manager of Craggy.

15. A conference was held on February 3, 2011 where the results of the audit were discussed with Petitioner. Due to the significance of the audit findings, Petitioner was told that a follow-up audit would be conducted to verify corrective action was implemented. (R. Ex. 3)

16. On February 10, 2011, Young created a “cheat sheet” for Petitioner which outlined what issues needed to be corrected and what steps Petitioner needed to take to correct the noted issues. Petitioner acknowledged that Young created the “cheat sheet” and even gave him advance notice as to when the follow-up audit was to occur in order to ensure that Craggy successfully passed the follow-up audit inspection.

17. On March 1, 2011 Young sent Petitioner a follow-up email regarding abatement of the audit issues. On March 1, 2011 Petitioner sent an email back to Young indicating that he had resolved all of the identified issues. However, Petitioner conceded that he in fact had not corrected the issues.

18. On June 7, 2011 a follow-up audit was conducted with advance notice to Petitioner. The follow-up audit report was delivered to the Petitioner and his Supervisor, Ronald

Young, on June 16, 2011. (Respondent Exhibit 3) Two of the four previously identified issues had not been corrected. (R.Ex.4).

19. An unsatisfactory rating was entered into Petitioner's employee appraisal, The Appraisal Process ("TAP"), for July 2011 indicating Petitioner's failures to fully correct the audit issues which were found in January 2011. (R.Ex. 27, 000235). It must be remembered that at this point Petitioner had been the manager for approximately six months and the problems were those he inherited from the prior manager, not of his own creation; however, Petitioner was the assistant director for seven years but was *de facto* manager of Craggy for some extended period of time at the end of his predecessor's tenure.

20. On August 24, 2011 the Petitioner was issued an Employee Action Plan which included correcting "all violations set forth in the command audit." (Respondent Exhibit 27, p. 239)

21. In September 2011, Petitioner still had not properly updated his subordinate employees' TAPs and Young sent him a note to remind him to do so. The note stated, "no excuses." (R.Ex. 30) Young's note was an example of Petitioner's supervisor trying to help him and giving him an opportunity to improve his performance.

22. On December 15, 2011 Petitioner was issued a Written Warning for Unsatisfactory Job Performance "for not satisfactorily implementing or correcting actions prescribed on your action plan dated and signed by [Petitioner] on August 24, 2011." Thus the written warning was not solely about correcting the issues raised in the change of command audit. The written warning also notified Petitioner that if the Unsatisfactory Job

Performance continued he may be subject to further discipline up to and including dismissal. (Respondent Exhibit 17)

23. The action plan cited in the written warning required all violations set forth in the Change of Command Audit from January 2011 to be corrected, insure employee TAPS were updated, insure all bills and invoices were submitted in a timely manner and improve communications with administration. Petitioner was directed to take immediate corrective measures. (R.Ex.17).

24. By the time the Written Warning was issued on December 15, 2011, Petitioner's Supervisor, Ronald Young, had documented in Petitioner's TAP for the appraisal period 12/1/2010 to 11/31/2011, that Petitioner had abated all of the audit violations. That TAP expressly states in the Performance Log for the month of November 2011, "All violations noted in original change of command audit have been abated." (Respondent Exhibit 27, p. 234) However, those were not all of the violations listed in the written warning.

25. The credible evidence tends to show that all of the violations in the original change of command audit had not been corrected; however, Petitioner's supervisor Young entered in Petitioner's personnel file that indeed they had, satisfying 25 NCAC 1J. 0614(6)(a)

26. For the next yearly appraisal period, 12/1/2011 to 11/31/2012, Petitioner received a Final Evaluation Overall rating of "Good" and received no "Unsatisfactory" ratings on any of his "Key Responsibilities (KRRS)" or "Dimensions (DIM)" sections which make up the Overall Rating. (Petitioner's Exhibit 14)

27. KRRS #2 and #4 were changed to BG ("Below Good") and are admittedly initialed by Young. Petitioner contends those ratings were changed after he had signed and received a copy of the TAP. Petitioner did not initial the changes.

28. It was undisputed that upon Petitioner's acceptance of the promotion it was understood and documented in his work plans under section B (training) in 2010, 2011, & 2012 that he would become certified as a Laundry Manager under the Association of Linen Management Program.

29. Respondent required all of their laundry managers to obtain the certification. A reminder email was sent to him on September 26, 2012 and also documented in his work plan under Section A (goals) on 12/3/2012. Petitioner was issued an action plan on 12/21/2012 and given until January 31, 2013 to obtain the certification. That deadline was extended at least two more times. (R. Ex. 26; R.Ex.27)

30. On March 20, 2013 Petitioner was issued a second written warning for Grossly Inefficient Job Performance for not achieving the Certification for Laundry Linen Manager (CLLM) within the timeframe designated by management. (R.Ex.18). The written warning notified Petitioner that if he failed to achieve his certification by April 20, 2013 he would receive further disciplinary action up to and including dismissal.

31. The second written warning was issued within 18 months of Petitioner's first written warning which had not yet expired and remained active. 25 N.C.A.C. 1J.0614

32. The second written warning incorrectly labeled the Petitioner's conduct as "Grossly Inefficient Job Performance." Petitioner's conduct failed to meet the definition as recited on the written warning itself, as well as the definition in the State Human Resources Manual.

33. The Laundry Linen Manager Certification is not a legally required certification for the position of Director of the Craggy Laundry nor is it listed in the State of North Carolina

Position Description Form for a Correction Enterprise Manager III position as a required certification or license for the position. (Respondent Exhibit 1)

34. There is no evidence that Petitioner's failure to get the certification created the "potential for death or serious bodily injury" to anyone, or "the loss of or damage to state property or funds that result in a serious impact on the State or work unit," as required by the State Human Resources Manual. Section 7, Page 2, Revised: February 1, 2011. Disciplinary/Appeals/Grievances.

35. The written warning for failing to maintain the credentials was incorrectly treated as Grossly Inefficient Job Performance. However, to the extent that the warning arguably should have been issued for unsatisfactory job performance or unacceptable personal conduct, "no disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly." 25 NCAC 1J. 0604(c)

36. Respondent contends that a written warning can be continued in effect because the agency does not remove the warning from the Petitioner's personnel file. That is not the full recitation of the State Human Resource Manual, and, if such were the case, then the agency could hold a written warning open into perpetuity simply by not removing the warning from the individual's file. First of all, the Manual is not a rule or statute and is not controlling. Secondly, the manual correctly points out that, alternatively, a written warning becomes inactive after eighteen months if there are no further disciplinary actions. (P.Ex. 16, Pg. 4). Respondent's contention is without merit.

37. Petitioner does not dispute that management had the right to mandate the training and corresponding certification (P.Ex. 16, pg. 4).

38. The action plan prior to the second written warning indicated that follow-up would occur in April 2013 and directed Petitioner to obtain certification by April 2013, which Petitioner failed to do. Although not before the deadline set by Respondent, Petitioner obtained the CLLM.

39. Petitioner's receipt of the CLLM was documented by Young in the Petitioner's TAP Performance Log for the month of July 2013. (Respondent Exhibit 27, p. 242) By so doing, the second written warning became "inactive."

40. Petitioner was also having an ongoing problem reconciling P-Card receipts and sending the information and invoices to Raleigh for payment. In July 2013, Young reached out to Petitioner Cole when informed and inquired why the information requested wasn't being forwarded. Cole's reply was he would get it to Raleigh on Monday. However, he failed to do so. (R.Ex. 8)

41. On September 24, 2013 Petitioner received a third written warning for Unsatisfactory Job Performance. At the time Petitioner received the third written warning, both the first and second written warnings were inactive as discussed above.

42. The third written warning was based in large part on an audit conducted on August 15, 2013, related to specific subject areas: Purchase Order Documentation, Procurement Card, Direct Processing Forms and Incomplete Control Register for Blank DC-702s. (Respondent Exhibit 19) Two of the four were noted to have been cited in a prior audit.

43. The third written warning also relied upon Petitioner's failure to correct actions addressed in an employee action plan given to him in August 2011, which continued to be problematic. These included failing to ensure that he completed and updated TAPS

for his subordinate employees, failing to ensure all bills and invoices were submitted in a timely manner and failing to improve communications between he and administration.

44. Petitioner was advised that he was expected to take immediate corrective measures to ensure that this behavior did not continue. Petitioner was put on notice a third time that if his Unsatisfactory Job Performance continued, it may result in further disciplinary action up to and including dismissal. (R.Ex. 19)

45. With the Third Written Warning, Respondent issued to the Petitioner an Employee Action Plan Form dated September 23, 2013 which instructed him to correct the matters included in the Written Warning.

46. Two different versions of this Employee Improvement Plan Form exist. Both were produced from the Personnel File Respondent maintained on Petitioner. One contained no date for a Follow-Up Discussion as to the matters in the Improvement Plan, and one set 12/20/2013 as the date for the Follow-Up Discussion concerning this improvement. (Petitioner Exhibits 7, p. 249) It cannot be determined by whom and when the follow-up date of 12/20/2013 was added to the one copy. In written warnings, if there is no specified time, then the employee has 60 days within which to correct the deficiencies.

47. It is noted that Petitioner was terminated on 12/03/2013, prior to the 12/20/2013 follow-up date set out on one the Employee Improvement Plan Form.

48. Approximately a week and a half after the third written warning, on October 3, 2013 Wayne Sasser conducted a semi-annual safety inspection at Craggy and noted several violations. Sasser discussed the violations with Petitioner's assistant manager as Petitioner was not present. (R.Ex. 23)

49. Sasser documented 7 action-needed items out of a checklist of over 100 separate items inspected. (Respondent Exhibit 23) Sasser testified that it was not uncommon for there to be action-needed items of this extent for Facilities within the Division following a Semi-annual Safety Inspection.

50. Several safety reports were not available; therefore, Sasser emailed Young notifying him that Craggy was missing several months of safety reports. (R.Ex. 6)

51. Young again reached out to Petitioner and asked for an explanation as to why the monthly safety reports weren't being submitted and requested that Petitioner send them Monday. (R. Ex. 7). Petitioner conceded that, in fact, he did not mail the reports on Monday as promised.

52. According to Young, he asked Petitioner numerous times if he could provide assistance to help Petitioner get matters under control. At each instance, Petitioner told Young that he did not need the help.

53. It is also very troubling that the safety inspection showed staff had not been trained on safety programs for over a year. (R. Ex. 27, 000242)

54. Young ostensibly was concerned about the ongoing administrative problems at Craggy. On October 8, 2013, five days after Sasser's safety inspection, Young sent Betty Eller ("Eller"), a processing assistant at Broughton Hospital Laundry, to Craggy to "assist with administrative support and audit follow-up."

55. Logic would dictate that if Young was really concerned about the backlog of work and reports, he would have sent more assistance than for one day. It seems that Ms. Eller's task was more to follow up on Sasser's audit, observe and report back to Mr. Young than to help actually address the backlog.

56. Eller sent Young an email detailing several issues she observed while at Craggy. Many of the issues identified by Eller were issues that had been found during the initial Change of Command Audit in 2011 which still had not been corrected years later.

57. Ms. Eller did not appear and testify in this contested case hearing, and, therefore, her report is given little to no weight.

58. Karen Brown ("Brown") is the Director of Correction Enterprises of which the laundry operation is a part, and is Young's immediate supervisor. Young informed Brown of both Sasser's report and Eller's email, and she ordered an internal investigation.

59. Jamie G. Parker ("Parker"), Correction Enterprises Human Resources Manager, conducted the investigation and submitted a report to Brown. The investigation determined that Petitioner failed to ensure that safety procedures were followed, conduct safety inspections and perform staff safety training. Moreover, the report noted that Craggy's requisition logs had no entries since May 2013 and failed to keep P-Card receipts as required. Parker recommended to Brown that Petitioner be dismissed for his continued unsatisfactory job performance. (R.Ex. 10)

60. According to Brown, Petitioner's failures relative to the P-Card management nearly resulted in Craggy's delivery trucks not having access to gas because the gas invoices were not being paid.

61. Brown felt disciplinary action was warranted because of Petitioner's continued unsatisfactory job performance. Brown was especially alarmed that the staff and inmate safety training had not been conducted. Petitioner did not dispute that he had not conducted the required safety training in over a year.

62. Accordingly, on November 5, 2013, Brown held a pre-disciplinary conference with Petitioner, and attended by Young, wherein the specific reasons supporting the recommendation for discipline were discussed and Petitioner was given an opportunity to explain his side of the story. (R. Ex. 11-13).

63. During the pre-disciplinary conference, and at this contested case hearing as well, Petitioner attributed his performance issues to the fact that in early 2011 Respondent changed the custody level from medium to minimum for inmates allowed to work at all Correction Enterprises facilities, including Craggy, which resulted in higher inmate staff turnover; that he did not have a processing assistant; that he had a high number of staff vacancies and that he had to take intermittent Family Medical Leave to care for his wife from September 3-November 20, 2013. (R.Ex. 22)

64. Brown investigated all of the mitigating factors presented by Petitioner and determined that dismissal was appropriate. Brown noted that Petitioner's performance issues spanned a two year period and occurred well before the three month period that Petitioner took intermittent leave to care for his wife. Brown personally calculated how much time Petitioner worked during his intermittent leave which was 66% of that three month period. The problems Petitioner was having far exceeded the time he was out on FMLA. The fact that Petitioner was out on intermittent FMLA leave was considered as a mitigating factor, but was not a factor for dismissing Petitioner.

65. Craggy has never employed a processing assistant and yet operated successfully. Furthermore, the preponderance of the evidence demonstrated that the laundries operated by Correction Enterprises either had a processing assistant or an assistant manager but not both. Craggy has an assistant manager. While that position was vacant

at times, and perhaps problematic even while filled, Petitioner did not reach out to Young for help.

66. Beginning in April 2011, the Division of Adult Correction changed the custody level for the inmates allowed to work at the Craggy Laundry from medium to minimum; thus, only inmates who were within 6 months of finishing the custodial portion of their sentences were eligible to work in the Laundry. This perhaps resulted in a more rapid turnover rate among the inmates working in the Laundry Facility, which in turn may have required more training and supervision. According to Young, this should not have been a significant problem.

67. Even at the contested case hearing the Petitioner testified that he could not sufficiently perform his administrative tasks, which were part of his essential job functions, because of the change in inmate control status. Petitioner conceded at hearing that he was “not too good with paperwork.” (R. Ex. 15)

68. Brown also noted that Young had worked with Petitioner to improve his performance, including asking Petitioner if he needed help, to no avail. Petitioner received several coachings, numerous action plans, numerous email reminders from his direct supervisor Young over a three year period all in an effort to improve his performance.

69. Young and Brown were credible witnesses. Crucial parts of their testimony were supported by documentation including handwritten notes made during the pre-disciplinary conference where Brown contemporaneously noted that Petitioner stated that he never reached out, never asked for help and never discussed with “Ron” (i.e., Young) that he was overwhelmed. (R. Ex. 28).

70. During his pre-disciplinary conference, when given the opportunity to produce safety training reports in Findings of Fact #51 and #53 above, Petitioner failed to do so. Moreover, Petitioner initially testified that he did not produce the reports. However, after Sasser testified that he received the safety reports in the mail on a later date, Petitioner changed his earlier testimony and said he had in fact submitted the reports to the Respondent but he could not recall when. The Petitioner's inconsistent testimony in this instance is merely illustrative of much of his testimony. At times he would testify to a particular fact only to refute or contradict that fact later. At times he seemed confused.

71. The undersigned finds that the testimony of Petitioner was less credible and crucial parts of his testimony were not supported by documentation. Admittedly, he did not have access to some of the information and documentation, as did the Respondents.

CONCLUSIONS OF LAW

1. All parties are properly before this Administrative Law Judge and jurisdiction and venue are proper. The Office of Administrative Hearings has jurisdiction to hear this appeal and issue the final decision in this matter.

2. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. At the time of his dismissal, Petitioner was a Career State Employee entitled to the protections of the North Carolina State Personnel Act (N.C. Gen. Stat. § 126-1 *et seq.*), and specifically the just cause provision of N.C. Gen. Stat. §126-35.

4. N.C. Gen. Stat. § 126-35(a) provides that "No career State employee subject to the State Human Resources Act shall be discharged, suspended, or demoted for

disciplinary reasons, except for just cause.”

5. Pursuant to N.C. Gen. Stat. § 126-35(d), in an appeal of a disciplinary action, the employer bears the burden of proving that “just cause” existed for the disciplinary action.

N.C. Gen. Stat. § 126-35(a),

6. N.C. Gen. Stat. §126-35 does not define “just cause,” however the words are to be accorded their ordinary meaning. *Amanini v. North Carolina Dep’t of Human Resources, Special Care Ctr* 114 N.C. App. 668, 678 – 679, 443 S.E.2d 114, 120 (1994) (defining “just cause” as, among other things, good and adequate reason).

7. Just cause is a “flexible concept embodying notions of equity and fairness that can only be determined upon an examination of the facts and circumstances of each individual case.” *NC Dep’t. of Env’t & Natural Res. v. Carroll*, 358 N.C. 649, 669, 599 S.E.2d 888, 900 (2004). In other words, a determination of whether disciplinary action taken was “just” requires “an irreducible act of judgment that cannot always be satisfied by the mechanical application of rules and regulations.

8. Pursuant to 25 N.C.A.C. 01J .0604(b), there are two bases for dismissal of an employee for just cause: (1) unsatisfactory job performance; and (2) unacceptable personal conduct. However, “the categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.” 25 N.C.A.C. 01J.0604(c). Furthermore, no disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly. *Id.*

9. The dismissal letter specified that the Petitioner was being dismissed for Unsatisfactory Job Performance. Unlike an Unacceptable Personal Conduct violation, dismissal for unsatisfactory job performance requires a progressive disciplinary system.

10. An employee must receive at least two prior disciplinary actions before being dismissed for a current incident of unsatisfactory job performance. 25 N.C.A.C. 01J.0605(b). In addition, the employee must be given a pre-disciplinary conference and written notice of the reasons for dismissal. 25 N.C.A.C. 01J.0605.

11. Section 7, Page 2 of the State Human Resources Manual contains the following Definition for "Inactive Disciplinary Action":

A disciplinary action taken after October 1, 1995 becomes inactive, i.e. cannot be counted towards the number of prior disciplinary actions that must be received before further action can be taken for unsatisfactory job performance when:

- The manager or supervisor notes in the employee's personnel file that the reasons for the disciplinary action has been resolved or corrected; or
- for performance related disciplinary actions, the performance evaluation process documents a summary rating that reflects an acceptable level of performance overall and satisfactory performance in the area cited in the warning or other disciplinary action, or
- eighteen (18) months have passed since issuance of the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months.

(Emphasis added)

12. In an "Advisory Note," the Personnel Manual restates the premise that the disciplinary actions must be active in order to be counted for any further discipline. Section 7, Page 4 of the State Human Resources Manual.

13. The language that there must be two active disciplinary actions in order to terminate an employee is not found in the promulgated rules nor the General Statutes.

14. This raises the question of what effect if any the State Human Resources Manual has. The issue specific to the State Human Resources Manual has not been addressed directly by our appellate courts. The appellate courts have issued some

opinions which cite the Manual as a basis for disciplinary action taken, but generally those cases are dealing with “unacceptable personal conduct” as opposed to job performance. *See, for example, N.C. Dep’t of Correction v. McNeely*, 135 N.C. App. 587, 593, 521 S.E.2d 730, 734 (1999)

15. In other cases, however, the Court of Appeals has addressed a similar manual:

Although the provisions of the Medicaid Manual are clearly entitled to some consideration in attempts to understand the rules and regulations governing eligibility for Medicaid benefits, we have previously stated that the Medicaid Manual “merely explains the definitions that currently exist in federal and state statutes, rules and regulations” and that “[v]iolations of or failures to comply with the MAF [Medicaid] Manual [are] of no effect” unless the act or omission in question amounts to a “failure to meet the requirements set out in the federal and state statutes and regulations [.]” (*Internal citations omitted*) *Joyner v. N. Carolina Dep’t of Health & Human Servs.*, 214 N.C. App. 278, 288-89, 715 S.E.2d 498, 506 (2011)

16. There is no question that the State Human Resources Manual has not been promulgated as a formal “rule.” The Manual is an attempt to explain and define the current state statutes and promulgated rules applicable to being a state employee, similar to the Medicaid Manual, and is not controlling.

17. We, therefore, must look at the properly promulgated rules and statutes for guidance. Rule 25 NCAC 01J .0605, titled “Dismissal for Unsatisfactory Performance of Duties” sets out the parameters for terminating an employee for job performance issues.

It states:

(b) In order to be dismissed for a current incident of unsatisfactory job performance an employee must first receive at least two prior disciplinary actions: First, one or more written warnings followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal. (Emphasis added)

18. The requirement that the “employee must first receive at least two prior disciplinary actions” is not defined by time nor whether the prior disciplines are “active.” Additionally, the rule requires “First (there is no Second), one or more written warnings” is merely an acknowledgement that, when read *in pari materia* there must be at least one written warning as well as some other permissible form of discipline. Likewise, there is no requirement in this language of being “active” nor any timeframe.

19. The inquiry does not stop there, however. We must also look at the definitions section of Rule 25 NCAC 01J .0614, especially subsection (6). This section defines “inactive disciplinary action,” and reads verbatim the same as the Section 7, Page 2 of the State Human Resources Manual cited above, with the exception of the noted questioned section.

20. Subsection (6) states that a disciplinary action becomes inactive “for the purpose of this Section” if one of the three enumerated conditions exist. If this section is to have any meaning at all, then it must apply to the sanctions and disciplines as provided in 25 NCAC 01J. Otherwise, it is mere surplusage. Again, reading *in pari materia* with 25 NCAC 01J .0605, it is only logical that the two prior disciplinary actions must be “active.” To hold to the contrary, that it is not required to have two active disciplinary actions, means the entire process of finding a prior discipline inactive has no applicability or effect; i.e., a meaningless exercise in futility.

21. As set out in the Findings of Fact above, at the time Petitioner received the First Written Warning dated December 15, 2011, the Respondent had already documented in Petitioner’s TAP Performance Log dated November 2011 that, “All violations noted in original change of command audit have been abated,” even though they apparently had

not. Also, as set forth in the Findings above, there were more job performance violations by Petitioner than just those in the command audit which remained unresolved.

22. As set out in Findings of Fact above, the Petitioner received the Second Written Warning on March 20, 2013, less than 18 months from the issuance of the first warning. The Second Written Warning was for Petitioner not having received his Certification for Laundry Linen Manager. The Respondent documented in the Petitioner's TAP Performance Log dated July 2013 that Petitioner had completed and received this Certificate.

23. These entries in the Petitioner's TAP file constitute notes by the Petitioner's Supervisors in Petitioner's personnel file "that the reasons for the disciplinary action has been resolved or corrected" (25 NCAC 01J .0614(6)(a)). Once the second written warning abated, then there were no grounds for the first warning to continue as "active" because more than 18 months had elapsed. 25 NCAC 01J .0614(6)(c). Both of these Warnings were, therefore, inactive and ineligible to support Petitioner's termination for unsatisfactory job performance in December 2013. In the absence of these two Written Warnings, Petitioner did not have the required two active warnings at the time of his termination.

24. On September 24, 2013 Petitioner received a third written warning for Unsatisfactory Job Performance. The third written warning was based in large part on an audit conducted on August 15, 2013.

25. The third written warning also relied upon Petitioner's failure to correct actions addressed in an employee action plan given to him in August 2011, which continued to be problematic.

26. With the Third Written Warning, Respondent issued to the Petitioner an Employee Action Plan Form dated September 23, 2013 which instructed him to correct the matters included in the Written Warning. Petitioner failed to make the corrections timely.

27. Wayne Sasser's semi-annual safety inspection at Craggy on October 3, 2013, noted several violations. Among the troubling reports, the safety inspection showed staff had not been trained on safety programs for over a year. (R. Ex. 27, 000242)

28. Karen Brown ordered an internal investigation based upon Sasser's report and Eller's email. Jamie G. Parker conducted the investigation and found numerous serious violations. Parker recommended to Brown that Petitioner be dismissed for his continued unsatisfactory job performance. (R.Ex. 10)

29. Brown felt disciplinary action was warranted because of Petitioner's continued unsatisfactory job performance.

30. Unsatisfactory job performance is "work-related performance that fails to satisfactorily meet job requirement as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency." 25 N.C.A.C. 01J.0614(9). See also, *Amanini v. North Carolina Dep't of Human Resources, Special Care Ctr.*, 114 N.C. App 668, 679, 443 S.E.2d 114, 121 (1994).

31. Petitioner's repeated and admitted failure to perform the duties set out in his job description and work plans in a satisfactory and timely manner and failure to follow management directives constituted "work-related performance that failed to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency" in violation of 25 N.C.A.C. 01J .0614(9).

32. Respondent did not impose unreasonable standards or work conditions on Petitioner. Petitioner was expected to supervise and train his staff, complete administrative tasks and reports, take ownership of his work and complete tasks as expected in a satisfactory and timely manner. He was also expected to follow directives of management. Respondent had a legitimate expectation that Petitioner would fulfill the essential job functions of his position.

33. Petitioner's job requirements and his unsatisfactory job performance were addressed with Petitioner on multiple occasions through various methods such as his work plan, written warnings, performance reviews, counseling and direction of supervisors. Petitioner was given ample opportunity to correct his unsatisfactory job performance.

34. Petitioner was given three written warnings, and he was warned each time that his failure to make the required improvements in his performance could result in dismissal. Yet Petitioner's work performance did not improve after the issuance of the warnings, and he failed to take full corrective action as outlined in numerous action plans.

35. Petitioner was terminated on 12/03/2013. The fourth incident of unsatisfactory job performance following the third written warning would have been sufficient justification for Petitioner's dismissal.

36. The case law supports the Respondent's right to dismiss Petitioner for conduct during an FMLA leave period, so long as the Petitioner's assertion of FMLA leave is not the reason for the dismissal. See *Gipson v. Vought Aircraft Industries*, 387 Fed. Appx. 548 (6th Cir. Term. 2010), *Right v. SCM Corp of America*, 632 F. 2d 404 (7th Cir. Ill. 2011), *Thompson v. Century Tel Central Arkansas*, 403 Fed. Appx. 114 (8th Cir. Ark. 2010),

Branch v. City of Richmond, 10 Fed. Appx. 50 (4th Cir. Va. 2001) and *Wright v Southwest Airlines*, 319 Fed. Appx. 232 (4th Cir. Md. 2009). There is no evidence that the termination of this Petitioner was because he was intermittently out on FMLA leave.

37. The Respondent has met its burden by showing that the employee engaged in the conduct the employer alleges, and secondly, that conduct constitutes “just cause” for the disciplinary action taken.

38. Mitigating factors in the employee’s conduct should be considered in assessing discipline.

39. Having given due regard to factors in mitigation, including Petitioner’s work history while employed with Respondent, Respondent submitted substantial and credible evidence to meet its burden of proof that it had “just cause” to dismiss Petitioner for unsatisfactory job performance.

40. Because of the particular facts of this case, in particular the over three year period that Petitioner was given to improve his performance, termination would be appropriate.

41. It should be remembered that Petitioner was the assistant director for seven years, but also the *de facto* manager of Craggy for some extended period of time at the end of his predecessor’s tenure.

42. Although just cause existed for terminating Petitioner, Respondent failed to meet its burden of proof that it did not act erroneously or fail to use proper procedure, fail to act as required by law when Respondent dismissed Petitioner for “just cause” because Petitioner did not have two active warnings at the time he was disciplined and terminated.

43. It is clear to the undersigned that Petitioner failed to perform his duties as manager at Craggy. But for the fact of Respondent's procedural error, committed in good faith, it is clear that Petitioner should have been terminated.

44. While Respondent thus lacked "just cause" to dismiss Petitioner for unsatisfactory job performance; there is still sufficient evidence to support a demotion for unsatisfactory job performance as Petitioner had one active written warning at the time he was disciplined.

DECISION AND ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that the Respondent acted erroneously, failed to use proper procedure and failed to act as required by law when Respondent dismissed Petitioner for "just cause;" however, Respondent has sufficiently proven that it had just cause to demote Petitioner based on his unsatisfactory job performance. The Respondent's Final Decision terminating Petitioner's employment is therefore **REVERSED**; however, it is ORDERED that Petitioner shall be demoted to a position comparable to his position of assistant manager at Craggy and at the same pay grade he had while in that position. Petitioner shall be retroactively reinstated to this position of employment with the Respondent, with all back pay and benefits. Respondent shall pay to Petitioner and his attorney all reasonable attorney fees and costs incurred in this Contested Case.

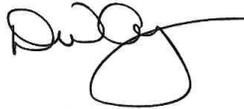
NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Pursuant to N.C. Gen. Stat. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C. Gen. Stat. § 7A-29(a). **The appeal shall be taken within 30 days of receipt of the written notice of final decision.**

A copy of the notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

IT IS SO ORDERED.

This the 9th day of February, 2016.

A handwritten signature in black ink, appearing to read "D. Overby", with a large loop at the end of the signature.

Donald W Overby
Administrative Law Judge