

# ***NORTH CAROLINA REGISTER***

**VOLUME 31 • ISSUE 15 • Pages 1484 - 1655**

**February 1, 2017**

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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.

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2017 – December 2017

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 <sup>th</sup> day from publication in the Register
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
32:11	12/01/17	11/07/17	12/16/17	01/30/18	02/20/18	04/01/18	05/2018	08/28/18
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## **EXPLANATION OF THE PUBLICATION SCHEDULE**

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

### **GENERAL**

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

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

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

### **FILING DEADLINES**

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

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

### **NOTICE OF TEXT**

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

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

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

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date



# State of North Carolina

**PAT McCrory**

GOVERNOR

December 5, 2016

EXECUTIVE ORDER NO. 118

## TO DECLARE BY PROCLAMATION THE TRUE BOUNDARY LINE BETWEEN THE STATE OF NORTH CAROLINA AND THE STATE OF SOUTH CAROLINA FROM POLK TO BRUNSWICK COUNTY

**WHEREAS**, the Joint North Carolina/South Carolina Boundary Commission determined at its meeting on September 23, 2010, to establish the true boundary line between the states along the North Carolina counties of Polk, Rutherford, Cleveland, Gaston, Mecklenburg, and Union counties; and

**WHEREAS**, the Joint North Carolina/South Carolina Boundary Commission determined at its meeting on May 3, 2013, to establish the true boundary line between the states along the North Carolina counties of, Union, Anson, Richmond, Scotland, Robeson, Columbus, and Brunswick counties; and

**WHEREAS**, pursuant to N.C.G.S. § 141-5, the completion of the survey of the above-described boundary has been reported to the undersigned Governor Pat McCrory and placed before and approved by the Council of State on October 4, 2016; and

**WHEREAS**, N.C.G.S. § 141-5 further requires that the Governor issue a Proclamation declaring the reported and approved survey line to be the true boundary of the State of North Carolina.

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

**Section 1.** That, pursuant to the provisions of N.C.G.S. § 141-5, the true boundary line between the State of North Carolina and the State of South Carolina along the North Carolina counties of Brunswick, Columbus, Robeson, Scotland, Richmond, Anson, Union, Mecklenburg, Gaston, Cleveland, Rutherford, and portion of Polk counties is hereby declared, by Proclamation, to be the surveyed line represented by the plats of the completed survey captioned as the North Carolina/South Carolina Boundary, and described as follows:

Beginning at Boundary Monument (Mon) Bird Island North Carolina (NC) South Carolina (SC) and running thence North 44°40'49" West 4046.09 feet to Boundary Mon 1 Granite NC SC, thence North 44°41'01" West 2018.42 feet to Boundary Mon 2 Granite NC SC, thence North 44°40'37" West 5235.30 feet to Boundary Mon Mile 2 NC SC, thence North 44°40'31" West 3625.78 feet to Boundary House NC SC, thence North 44°40'44" West 6936.61 feet to Boundary Mon Mile 4 NC SC, thence North 44°41'01" West 10243.49 feet to Boundary Mon McLamb RD NC SC, thence North 44°28'47" West 320.77 feet to Boundary Mon Mile 6 NC SC, thence North 44°40'53" West 5502.42 feet to Boundary Mon Hwy 57 NC SC, thence North 44°40'21" West 5062.13 feet to Boundary Mon Mile 8 NC SC, thence North 44°40'41" West 3831.50 feet to Boundary Mon Waccamaw River NC SC, thence North 44°40'41" West 6731.89 feet to Boundary Mon Mile 10 NC SC, thence North 44°40'38" West 5183.51 feet to Boundary Mon Hwy 905 NC SC, thence North 44°40'41" West 5379.95 feet to Boundary Mon Mile 12

NC SC, thence North 44°40'38" West 10564.29 feet to Boundary Mon Mile 14 NC SC, thence North 44°40'50" West 13978.85 feet to Boundary Mon Dothan NC SC, thence North 44°40'29" West 3372.24 feet to Boundary Mon Hwy 144 NC SC, thence North 44°40'39" West 3757.65 feet to Boundary Mon Mile 18 NC SC, thence North 44°41'53" West 983.45 feet to Boundary Mon Volunteer DR NC SC, thence North 44°40'24" West 9598.88 feet to Boundary Mon Mile 20 NC SC, thence North 44°40'28" West 21125.44 feet to Boundary Mon Mile 24 NC SC, thence North 44°40'46" West 10564.70 feet to Boundary Mon Mile 26 NC SC, thence North 44°40'31" West 5764.70 feet to Boundary Mon Wac DR NC SC, thence North 44°40'46" West 806.45 feet to Boundary Mon Sandy Bluff NC SC, thence North 44°38'25" West 2557.49 feet to Boundary Mon Green Sea RD NC SC, thence North 44°44'28" West 1435.00 feet to Boundary Mon Mile 28 NC SC, thence North 44°40'18" West 2720.96 feet to Boundary Mon Bertie RD NC SC, thence North 44°42'19" West 5370.53 feet to Boundary Mon Carolina RD NC SC, thence North 44°40'20" West 13035.54 feet to Boundary Mon Mile 32 NC SC, thence North 44°40'48" West 10563.94 feet to Boundary Mon Mile 34 NC SC, thence North 44°40'58" West 400.98 feet to Boundary Mon Replacement NC SC, thence North 44°40'27" West 5870.97 feet to Boundary Mon Old Placard RD NC SC, thence North 44°40'47" West 4290.78 feet to Boundary Mon Mile 36 NC SC, thence North 44°41'29" West 6142.25 feet to Boundary Mon 6 LLB NC SC, thence North 44°40'03" West 4421.05 feet to Boundary Mon Mile 38 NC SC, thence North 44°39'53" West 7205.63 feet to Boundary Mon Enzor NC SC, thence North 44°42'19" West 3356.52 feet to Boundary Mon Mile 40 NC SC, thence North 44°40'36" West 12789.83 feet to Boundary Mon Strickland NC SC, thence North 44°40'59" West 3459.45 feet to Boundary Mon Lumber River NC SC, thence North 44°32'50" West 19510.25 feet to a Bent 1 3/4" Pipe, thence North 44°29'56" West 5743.40 feet to a #5 Rebar Inside 1 3/4" Pipe, thence North 44°28'25" West 11944.82 feet to a Buggy Axle, thence North 45°07'04" West 2826.20 feet to a Buggy Axle, thence North 43°22'05" West 2007.51 feet to a Concrete Monument, thence North 44°31'03" West 1240.81 feet to an Angle Iron, thence North 44°13'16" West 4941.68 feet to an Axle, Thence North 44°55'03" West 7898.45 feet to a 1" Pipe, thence North 44°47'49" West 6109.86 feet to a Buggy Axle, thence North 43°47'04" West 14289.62 feet to an Axle, thence North 43°12'37" West 12824.72 feet to a 1" Pipe, thence North 42°43'48" West 11314.59 feet to a 1 3/4" Pipe, thence North 42°59'31" West 9694.71 feet to a 1/2" Rod, thence North 43°20'01" West 18563.82 feet to a Concrete Monument, thence North 43°52'27" West 3271.00 feet to a Concrete Monument, thence North 45°54'10" West 764.86 feet to a 1 3/4" Pipe, thence North 43°39'09" West 2173.70 feet to a 1 3/4" Pipe, thence North 44°01'18" West 3599.77 feet to a 1 1/2" Pipe in Concrete beside #4 Rebar, thence North 45°29'52" West 12012.65 feet to a #4 Rebar, thence North 45°21'42" West 3955.78 feet to a #4 Rebar, thence North 45°26'53" West 8822.40 feet to a Computed Location of 1905 NC SC Granite Monument, thence North 45°07'35" West 3506.12 feet to Boundary Mon HWY 83 NC SC, thence North 45°29'39" West 8902.36 feet to a Granite Monument with top Broken Off, Thence North 44°51'14" West 10664.49 feet to 1905 NC SC Granite Monument, Thence North 45°08'40" West 16158.03 feet to a Granite Monument with top Broken Off, Thence North 45°08'03" West 13023.07 feet to the Base of Leaning 1905 NC SC Granite Monument, Thence North 45°07'46" West 6484.50 feet to a Granite Monument with top Broken Off, a Granite Monument with top Broken Off, Thence North 45°07'39" West 12177.37 feet to a Boundary Mon near Gibson NC SC, Thence North 45°09'36" West 15739.42 feet to the Base of Leaning 1905 NC SC Granite Monument, Thence North 45°01'43" West 4834.93 feet to the NC-SC Bend Corner, Marlboro Co., SC & Scotland Co., NC, thence North 89°13'14" West 10773.44 feet to the Base of Leaning 1905 NC SC Granite Monument, Thence North 89°07'59" West 9615.58 feet to 1905 NC SC Granite Monument, Thence North 89°01'27" West 18942.81 feet to Boundary Mon Pleasant NC SC, Thence North 89°02'01" West feet 9909.40 to Boundary Mon Jordan NC SC, Thence North 89°03'32" West 5963.31 feet to Boundary Mon Timber NC SC, Thence North 89°02'34" West 13757.92 feet to a Computed Location of 1905 NC SC Granite Monument, Thence North 88°52'57" West 5341.69 feet to a 2" Pipe, Thence North 89°53'03" West 2172.83 feet to a Nail at Base of 1 1/2" pipe Projecting from River Bank, Thence North 87°58'59" West 10155.91 feet to a #4 rebar, Thence North 88°07'57" West 6803.16 feet to a 1" Rod beside Bent Bolt, thence North 87°53'57" West 4012.68 feet to the Bottom of Pushed Over Leaf Spring, thence North 87°56'48" West 7940.19 feet to a bent 1" Rod, Thence North 87°56'46" West 5807.09 feet to a #5 Rebar, Thence North 87°57'34" West 3165.48 feet to an Axle beside 1/2" Rod, Thence North 88°08'27" West 6091.15 feet to a 1" Pipe, Thence North 87°58'20" West 3472.55 feet to a 1/2" Square Rod, Thence North 88°00'28" West 11896.94 feet to a 1" Square Buggy Axle, thence North 87°53'48" West 5068.00 feet to an Axle, Thence North 88°04'10" West 13765.18 feet to a 3/4" Rod, Thence North 87°19'38" West 6545.99 feet to a T-Bar Fence post, Thence North 88°22'19" West 7028.80 feet to a 1 1/2" Pipe, Thence North 88°07'49" West 4791.23 feet to a Spike Nail, Thence North 88°19'38" West 14873.63 feet to a #8 Rebar, Thence North 88°32'23"

West 3775.15 to a #8 Rebar, Thence North 88°30'15" West 2970.01 feet to a T-Post and Stone, Thence North 88°11'46" West 1766.66 feet to a stone, Thence North 86°36'04" West 2121.55 feet to a 3/4" Pipe, Thence North 88°37'03" West 2394.76 feet to a Stump Hole, Thence North 88°15'53" West 7097.73 feet to a Bolt, Thence North 88°20'45" West 7083.58 feet to an Axle, Thence North 87°46'02" West 16351.83 feet to a 1 1/2" Rod, Thence North 87°35'25" West 4694.09 feet to a 1" Square Iron, Thence North 88°23'39" West 5692.57 feet #5 Rebar in Rock Pile, Thence North 88°34'58" West 14054.97 feet to a 1" Pipe, Thence North 88°19'04" West 9365.45 feet to a Mag Hub at Bend in 1" Pipe in Depression, Thence North 88°00'02" West 3750.18 feet to a 24" Black Gum, Thence North 87°43'15" West 459.00 to a #5 Rebar, Thence North 88°03'56" West 9351.82 feet to a 1" Pipe, Thence North 89°34'05" West 1129.45' to an Axle, Thence North 88°19'45" West 4969.57 feet to a 1" Angle Iron, Thence North 88°35'58" West 7819.92' to a Stone beside a 1 1/4" Pipe, Thence North 88°09'14" West 7373.54 feet to a 1" Pipe, Thence North 87°56'40" W 5969.11 feet to a #4 Rebar in Stone Pile, Thence North 88°23'50" West 3547.43 feet to a #4 Rebar, Thence North 88°44'49" 10625.59 feet to a Stone Beside 3/4" Pipe, Thence North 88°46'44" West 3699.20 feet to a Stone Pile, Thence North 88°03'56" West 11672.10 feet to a 1" Pipe, thence North 89°11'36" West 885.75 feet to the Boundary Mon Old North Corner NC SC, Thence North 07°17'46" East 3114.66 feet to 1" Pipe by 20" Pine, Thence North 07°17'58" East 2297.84 feet to a T-Bar Fence Post, thence North 06°34'41" East 3064.48 feet to a #4 Rebar with Cap, Thence North 06°11'17" East 2134.49 feet to a 3/4" Pipe, Thence North 06°20'27" East 2335.44 feet to a 3/4" Pipe in Stone Pile, Thence North 08°28'10" East 5215.25 feet to a 1" Pipe, Thence North 07°04'28" East 17041.19 feet to a 1" Pipe in Stone Pile, Thence North 09°31'41" East 2205.29 feet to a #4 Rebar, Thence North 07°29'17" East 1648.03 feet to a #4 Rebar, Thence North 08°27'51" East 463.89 feet to a Nail at Base of T-Bar Fence Post in Stone Pile, Thence N 07°20'16" East 2972.07 feet to a Computed Point of a "Gum" -09/20/1813 plat, Thence North 36°13'51" West 4111.87 feet to a #4 Rebar, Thence North 35°01'56" West 2559.91 feet to a 3/4" Pipe, Thence North 36°01'57" West 263.99 feet to a 3/4" Pipe, Thence North 35°46'08" West 7226.21 feet to a Stone, Thence North 35°25'19" West 6349.78 feet to a Stone Pile, Thence North 33°43'51" West 11279.53 feet to a 1" Rod, Thence North 33°40'52" West 5514.99 feet to a #4 Rebar with Cap, Thence North 35°22'34" West 3963.66 feet to a #6 Rebar, Thence North 33°59'37" West 3762.59 feet to a 1" Pipe at Stone beside 12" Cedar with 3 Hacks, Thence North 34°37'18" West 3650.16 feet to a 1 1/4" Pipe in Stone Pile, Thence North 34°29'43" West 2890.05 feet to a #4 Rebar, Thence North 33°07'36" West 1405.54 feet to a #5 Rebar, Thence North 36°36'29" 1563.16 feet to a 3/4" Pipe, thence North 36°40'56" West 863.55 feet to a 1 1/2" pipe beside #5 Rebar, Thence North 33°44'46" West 1554.52 to a #5 Rebar, Thence North 39°07'19" West 1576.52 feet to a Stone, Thence North 37°34'53" West 2256.67 feet to a 1 3/4" Pipe, Thence North 36°30'10" West 3188.25 feet to a Concrete Monument, Thence North 34°27'16" West 4421.99 feet to a Rebar with Cap, Thence North 33°51'21" West 5007.99 feet to a 1 1/4" Pipe, Thence North 35°23'26" West 574.95 feet to NCGS Monument "Superior", Thence North 40°16'06" West 3424.64 feet to NCGS Monument "Carowinds", Thence South 55°23'03" West 1367.55 feet to NCGS Monument "Harlee"(now gone), Thence South 53°00'30" West 2357.94 feet to NCGS Monument "McClelland"(now gone), Thence South 53°12'04" West 1529.68 feet to NCGS Monument "Creech"(now gone), Thence South 54°15'57" West 4132.28 feet to a 1 1/4"x3/4" Iron Bar, Thence South 55°36'12" West 806.10 feet to a 1 1/4"x3/4" Iron Bar, Thence South 56°24'57" West 9951.52 feet to a Stone, thence South 55°48'01" West 1213.19 feet to an Axle, Thence South 55°47'56" West 3406.71 feet to a #8 rebar beside Bent 3/4" Pipe and Bent 1" Pipe, Thence South 56°03'02" West 6272.48 feet to a Copper Nail in 4" Iron Pipe Filled with Concrete, Thence South 55°34'03" West 443.87 to an Angle Iron, Thence South 55°29'01" West 437.72 feet to an Angle Iron, Thence South 55°49'09" West 1265.80 feet to a #4 Rebar, Thence South 52°29'54" West 752.46 feet to a #4 Rebar with Punch in 4" Iron Pipe Filled with Concrete, Thence South 52°27'17" West 264.32 feet to a Nail in Center of 3" Pipe Filled with Concrete, Thence South 52°21'16" West 676.08 feet to a Quartz Stone beside #5 Rebar, Thence South 58°40'53" West 3000.13 feet to a computed location of "Stake" on Southern Power Co. Catawba River Survey(Jan 1, 1925), Thence South 56°38'21" West 1408.99 feet to a Computed Location of Intersection of State Line Shown on Southern power Co. Catawba River Survey (Jan 1,1925) and Catawba River, Thence in a Northerly direction following the center of the Catawba River Bed as shown on a Survey titled "Survey of NC-SC State Line in Lake Wylie Depicting Center of Catawba River Bed" performed in May and June 2009 by SC Geodetic Survey and Approved by Joint NC-SC Boundary Commission on September 23, 2010 to a Computed Location of State Stone Monument in Lake Wylie, Thence North 84°46'46" West 6338.49 feet to a Concrete Monument, Thence North 84°42'22" West 851.67 feet to Stone Pillar "L 30" on West Side "CV 33" on East Side, Thence North 84°46'34" West 3132.53 feet to a Bent 3" Pipe Filled with Concrete with Copper Nail in Center, Thence North 84°58'49" West 7316.87 feet to a Set #5 Rebar, Thence North 84°24'41" West 15311.35 feet to a Stone Pillar,

Thence North 84°10'49" West 1002.55 feet to a Stone Pile, Thence North 85°44'42" West 4342.47 feet to a Stone Pillar in Stone Pile, Thence North 85°40'03" West 16042.55 feet to a 1 1/4" Pipe, Thence North 85°43'57" West 28109.19 feet to a 1 1/4" Rebar, Thence North 87°05'15" West 4715.49 feet to a #8 Rebar, Thence North 84°13'32" West 829.50 feet to a PK Nail, Thence North 86°54'46" West 6246.61 feet to a Rail Road (RR) Spike, Thence North 85°06'36" West 9777.38 feet to a 3" Pipe, Thence North 84°29'31" West 4036.25 feet to a 1 1/2" Square Iron, Thence North 84°31'11" West 1483.95 feet to a 4" "x" Iron, Thence North 84°33'11" West 2496.41 feet to a 1" Rod at 2 Pine Stumps, Thence North 87°53'25" West 3395.98 feet to a 1" Pipe, Thence North 87°33'41" West 4192.16 feet to a RR Rail, Thence North 85°44'09" West 11452.11 to a 20" Post Oak, Thence North 85°51'06" West 11134.26 feet to a #4 Rebar, Thence North 86°08'01" West 19224.83 feet to a #4 Rebar, Thence North 85°23'15" West 16786.99 feet to a 7/8" Rod in Stone, Thence North 85°27'56" West 1896.58 feet to a 3" Pipe, Thence North 86°02'30" West 4390.61 feet to an axle, Thence North 85°35'29" West 11638.37 feet to a 1" Rod, Thence North 85°22'09" West 3914.44 feet to a 1" Rod, Thence North 85°57'38" West 6471.27 feet to a 1" Square Bar, Thence North 85°45'35" West 11726.99 feet to a #5 Rebar with Cap, Thence North 86°37'46" West 8889.78 feet to an Axle, Thence North 85°56'18" West 5785.55 feet to a Nail in Stone, Thence North 85°21'24" West 4894.47 feet to a Stone with Inscribed "X", Thence North 87°37'11" West 1771.03 feet to a Bent 5/8" Rod, Thence North 85°51'40" West 2759.75 feet to a Nail, Thence North 85°54'32" West 7747.74 feet to a T Post, Thence North 86°49'05" West 5413.39 feet to a 1/2" Pipe in Stone Pile, Thence North 86°00'31" West 11222.34 feet to a RR Spike, Thence North 86°10'31" West 5326.97 feet to a 3/4" Pipe, Thence North 85°31'19" West 4438.04 feet to a RR Spike, Thence North 85°04'33" West 10190.26 feet to a Stone, Thence North 86°49'22" West 1893.84 feet to a Bent 7/8" Pipe, Thence North 86°07'30" West 5549.49 feet to a 1/2" Pipe, Thence North 86°36'51" West 1233.89 feet to a Bent Buggy Axle, Thence North 87°21'14" West 3227.86 to a SCGS Monument "LWBH 28" PK Nail in Stone, Thence North 86°15'29" West 22806.41 feet to a #4 Rebar, Thence 84°41'41" West 1620.18 feet to a Stone with "X" beside a #5 Rebar, Thence North 83°40'31" West 6247.90 feet to a 1" Rod, Thence North 86°53'39" West 6725.11 feet to a #4 Rebar in Concrete, Thence North 87°54'50" West 1260.36 feet to a #4 Rebar in Concrete beside a Stone, Thence North 84°53'50" West 10854.95 feet to a 1" Pipe, Thence North 83°56'34" West 5465.26 feet to a SCGS Monument "Boundary Mon State County NC SC".

All bearings are referenced to the North American Datum of 1983 (NAD83) 2007 and all distances are grid distances as denoted on the survey plats on file at the office of the North Carolina Geodetic Survey in the North Carolina Department of Public Safety and recorded in the Register of Deeds of the North Carolina counties adjacent to the North - South Carolina boundary.

**Section 2.** The North Carolina Geodetic Survey in the Department of Public Safety and the North Carolina State Property Office of the Department of Administration continue to retain and manage sufficient and necessary records of the state boundary marking and re-markings, including but not limited to this Executive Order.

This Executive Order shall take effect immediately and remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this fifth day of December in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State







# State of North Carolina

**PAT McCrory**

GOVERNOR

December 9, 2016

## EXECUTIVE ORDER 119

### NOTICE OF TERMINATION OF EXECUTIVE ORDERS 107, 108, 109, 112, 115, 116

**WHEREAS**, Executive Order No. 107, was issued on October 3, 2016 declaring a state of emergency in sixty-six (66) counties in the State of North Carolina in anticipation of Hurricane Matthew; and

**WHEREAS**, Executive Order No. 108 was issued on October 3, 2016, waiving the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials, and with the concurrence of the Council of State temporarily suspended size and weight restrictions on vehicles used for utility restoration, carrying essentials and agricultural commodities on the interstate and intrastate highways due to the anticipated damage and impacts from Hurricane Matthew; and

**WHEREAS**, Executive Order No. 109, was issued on October 6, 2016, which expanded the emergency area in Executive Order No. 107 to all 100 counties; and

**WHEREAS**, Executive Order No. 112 was issued on November 1, 2016 which extended the waivers in Executive Order No. 108 until midnight December 3, 2016; and

**WHEREAS**, Executive Order No. 115, was issued on November 10, 2016 declaring a state of emergency in twenty-five (25) counties in the State of North Carolina due to wildfires that endangered communities in the western part of the state; and

**WHEREAS**, Executive Order No. 116, was issued on November 22, 2016, which expanded the emergency area in Executive Order No. 115 to an additional twenty-two (22) counties.

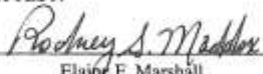
**NOW, THEREFORE**, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED**:

Pursuant to N.C.G.S § 166A-19.20(c) the states of emergency and expansion of the emergency areas that were declared by Executive Orders Nos. 107, 109, 115, 116 and the waivers issued in Executive Order No. 108 and extended by Executive Order No. 112 are hereby terminated, effective immediately.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this ninth day of December in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Chief of Staff  
Secretary of State





# State of North Carolina

**PAT McCrory**

GOVERNOR

December 9, 2016

## EXECUTIVE ORDER NO. 120

### DISASTER DECLARATION BY THE GOVERNOR

**WHEREAS**, on October 8-9, 2016, Hurricane Matthew hit central and eastern North Carolina with record breaking rainfall that created 1,000-year flood events that devastated the people, infrastructure, businesses, and schools of entire communities. At the height of the storm, 800,000 people were without power, nearly 3,750 were displaced from their homes, 635 roads were closed, 34 school systems were closed and 28 people lost their lives; and

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, on October 3, 2016, I declared a state of emergency under N.C.G.S. § 166A-19.20, in anticipation of Hurricane Matthew impacting the State of North Carolina; and

**WHEREAS**, on October 4, 2016, I requested an emergency declaration from the President of the United States, which was granted on October 7, 2016 as FEMA-3380-EM-NC; and

**WHEREAS**, on October 9, 2016, I requested an expedited major disaster declaration from the President of the United States, which was granted on October 10, 2016 as FEMA-4285-DR-NC, allowing North Carolina to receive federal aid in the form of individual and public assistance for citizens and local governments; and

**WHEREAS**, on November 14, 2016, I requested \$1,028,932,144.00 in additional assistance from the federal government; and

**WHEREAS**, on December 9, 2016, I requested that the North Carolina General Assembly convene an extra session on December 13, 2016, for the purposes of addressing unmet needs resulting from the damage done by Hurricane Matthew; and

**WHEREAS**, I have determined that a Type III disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina in the following counties: Anson, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Wake, Warren, Washington, Wayne, Wilson; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b)(3), the criteria for a Type III disaster are met if the President of the United States has issued a major disaster declaration

under the Stafford Act and either of the following is true: (1) The preliminary damage assessment indicates that the extent of damage is reasonably expected to meet the threshold established for an increased share of disaster assistance under applicable federal law and regulations, and (2) The preliminary damage assessment prompts the Governor to call a special session of the General Assembly to establish programs to meet the unmet needs of individuals, businesses, or political subdivisions affected by the emergency; and

**WHEREAS**, there remain many unmet needs for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.**

Pursuant to N.C.G.S. § 166A-19.21(b)(3), a Type III disaster is hereby declared for the following North Carolina counties: Anson, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Wake, Warren, Washington, Wayne, Wilson.

**Section 2.** I authorize state disaster assistance in the form of State funds that are made available for emergency assistance in the emergency area in the form of the following types of grants as allowed under N.C.G.S. § 166A-19.41(d):

1. State Acquisition and Relocation Funds.
2. Supplemental repair and replacement housing grants available to individuals or families in amounts necessary to locate individuals or families in safe, decent, and sanitary housing, not to exceed twenty-five thousand dollars (\$25,000) per family.
3. Any programs authorized by the General Assembly.

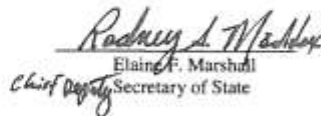
**Section 3.** I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 4.** This Type III disaster declaration shall expire 24 months after issuance unless renewed by the General Assembly.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this ninth day of December in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Chief Deputy Secretary of State





# State of North Carolina

**PAT McCrORY**

GOVERNOR

December 29, 2016

## EXECUTIVE ORDER NO. 121

### EXTENDING THE NORTH CAROLINA COMMISSION ON VOLUNTEERISM AND COMMUNITY SERVICE

**WHEREAS**, North Carolina Commission on Volunteerism and Community Service is a public body established by Executive Order No. 32 issued on November 22, 2013; and

**WHEREAS**, the order establishing the North Carolina Commission on Volunteerism and Community Service expires on December 31, 2016; and

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

Executive Order Number 32, *Reestablishing the North Carolina Commission on Volunteerism and Community Service*, signed on November 22, 2013, is hereby extended until December 31, 2020 pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded.

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

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**PAT McCrORY**  
GOVERNOR

December 29, 2016

## EXECUTIVE ORDER NO. 122

### EXTENDING THE STATE HEALTH COORDINATING COUNCIL

**WHEREAS**, the State Health Coordinating Council is a public body established by Executive Order No. 46 on March 4, 2014; and

**WHEREAS**, the State Health Coordinating Council plays an important role in working with the Department of Health and Human Services to prepare the State Medical Facilities Plan approved annually by the Governor; and

**WHEREAS**, the order establishing the State Health Coordinating Council expires on December 31, 2016; and

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

Executive Order Number 46, *Reauthorizing the State Health Coordinating Council*, signed on March 4, 2014, is hereby extended until December 31, 2020 pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded.

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

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# State of North Carolina

**PAT McCrORY**  
GOVERNOR

December 29, 2016

## EXECUTIVE ORDER NO. 123

### EXTENDING THE SUBSTANCE ABUSE TASK FORCE

**WHEREAS**, the Substance Abuse and Underage Drinking Prevention and Treatment Task Force is a public advisory body established by Executive Order No. 52 issued on May 13, 2014 and amended by Executive Order No. 74 issued on May 11, 2015; and

**WHEREAS**, the orders establishing and amending the Substance Abuse and Underage Drinking Prevention and Treatment Task Force expires on December 31, 2016; and


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

Executive Order Number 52, *Establishment of North Carolina Governor's Substance Abuse and Underage Drinking Prevention and Treatment Task Force*, signed on May 13, 2014, as amended by Executive Order No. 74 issued on May 11, 2015 is hereby extended until December 31, 2020 pursuant to N.C. Gen. Stat. § 147-16.2(b), or until earlier rescinded.

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

  
Pat McCrory  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State





# *State of North Carolina*

**Roy Cooper**  
Governor

January 6, 2017

## EXECUTIVE ORDER NO. 1

### DECLARATION OF A STATE OF EMERGENCY

#### BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

##### Section 1.

I hereby declare, pursuant to N.C.G.S. § 166A-19.20, that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the approach and potential impacts of an upcoming winter storm.

The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina.

##### Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan.

##### Section 3.

I delegate to Erik Hooks, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

##### Section 4.

Further, Secretary Hooks, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. § 143B-602.

**Section 5.**

I further direct Secretary Hooks or his designee, to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

I hereby order this declaration: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).


**Section 8.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

**Section 9.**

This declaration is effective immediately and shall remain in effect until rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 6<sup>th</sup> day of January in the year of our Lord two thousand and seventeen.



Roy Cooper  
Governor

ATTEST:



Elaine F. Marshall  
Secretary of State







# *State of North Carolina*

**Roy Cooper**  
Governor

January 6, 2017

## EXECUTIVE ORDER NO. 2

### TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES AND TRANSPORTING ESSENTIALS

**WHEREAS**, due to the approach and potential impacts of an upcoming winter storm, vehicles bearing equipment and supplies for utility restoration and debris removal, carrying essentials such as food and medicine, transporting livestock and poultry and feed for livestock and poultry need to be moved on the highways of North Carolina; and

**WHEREAS**, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists due to the approaching winter storm and its likely impact in this State. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina; and

**WHEREAS**, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, livestock and poultry feed, and medical supplies to residential and commercial establishments is essential before, during and after the winter storm and any interruption in the delivery of those commodities threatens the public welfare; and

**WHEREAS**, the prompt restoration of utility services to citizens is essential to their safety and well-being; and

**WHEREAS**, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

**WHEREAS**, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. §§ 105-449.45, 105-449.47, and 105-449.49, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118 and 20-119. I have further found that citizens in this State may suffer losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic loss of livestock or poultry, the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock and poultry; and

**WHEREAS**, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Parts 390-399 for up to 30 days if the Governor determines that an emergency condition exists; and

**WHEREAS**, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, transporting livestock and poultry and for vehicles used in the restoration of utility services.

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

**Section 1.**

The Department of Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Public Safety pursuant to N.C.G.S. § 20-381.

**Section 2.**

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118 and 20-119, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C.G.S. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials and for equipment for any debris removal. The Department of Public Safety shall temporarily suspend weighing pursuant to N.C.G.S. § 20-118.1 vehicles used to transport livestock and poultry in the emergency area.

**Section 3.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

**Section 4.**

Vehicles referenced under Sections 2 and 3 shall be exempt from the following registration requirements:

- a. The requirement to obtain a temporary trip permit and pay the associated \$50.00 fee listed in N.C.G.S. § 105-449.49 is waived for the vehicles described above. No filing of a quarterly fuel tax return is required because the exemption in N.C.G.S. § 105-449.45(b)(1) is recognized.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and N.C.G.S. § 20-382 concerning interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 5.**

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

**Section 6.**

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

**Section 7.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

**Section 8.**

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, carrying feed for livestock and poultry, or transporting livestock and poultry in the State of North Carolina.

**Section 9.**

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

**Section 10.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38 in the declared emergency area.

**Section 11.**

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 6th day of January in the year of our Lord two thousand and seventeen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State





# *State of North Carolina*

**Roy Cooper**  
Governor

January 10, 2017

## EXECUTIVE ORDER NO. 3

### NOTICE OF TERMINATION OF EXECUTIVE ORDERS 1 AND 2

**WHEREAS**, Executive Order No. 1, issued on January 6, 2017, declared a state of emergency in North Carolina due to the potential and actual impacts of a winter storm; and

**WHEREAS**, Executive Order No. 2, issued on January 6, 2017, waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials in commerce, and with the concurrence of the Council of State temporarily suspended size and weight restrictions on vehicles used for utility restoration and carrying essentials on the interstate and intrastate highways due to the potential and actual impacts of a winter storm. In addition, the order also directed the Department of Public Safety to suspend weighing equipment used for movement of crops, transporting livestock and poultry and feed for livestock and poultry.

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

#### Section 1.

Pursuant to N.C.G.S. § 166A-19.20(c) the state of emergency that was declared by Executive Order No. 1 is terminated as of Tuesday, January 10, 2017 at 12:00 p.m.

#### Section 2.

Executive Order No. 2 will remain in effect until 11:59 p.m., Sunday, January 15, 2017. The order is amended to repeal the following clause:

**WHEREAS**, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists due to the approaching winter storm and its likely impact in this State. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina; and

Replacing it with the following clause:

**WHEREAS**; although I have terminated Executive Order No. 1, issued on January 6, 2017, there continues to be a limited state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) only for the purposes of responding to ongoing impacts from the winter storm in this state. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina; and

Section 3.

Section 10 of Executive Order No. 2 is rewritten to read as follows:

As of 12:00pm on January 10, 2017, this order will no longer trigger the prohibitions against excessive pricing in the emergency area in North Carolina, notwithstanding the provisions of N.C.G.S. § 166A-19.23.

Section 4.

The remaining provisions in Executive Order No. 2 remain in effect until the order terminates at 11:59 p.m. on Sunday, January 15, 2017.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this tenth day of January in the year of our Lord two thousand and seventeen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State



**The 2017 Low-Income Housing Tax Credit Qualified Allocation Plan  
For the State of North Carolina**

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## **I. INTRODUCTION**

The 2017 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

A. Selection criteria to be used in determining the allocation of tax credits:

- Project location and site suitability.
- Market demand and local housing needs.
- Serving the lowest income tenants.
- Serving qualified tenants for the longest periods.
- Design and quality of construction.
- Financial structure and long-term viability.
- Use of federal project-based rental assistance.
- Use of mortgage subsidies.
- Experience of development team and management agent(s).
- Serving persons with disabilities and persons who are homeless.
- Willingness to solicit referrals from public housing waiting lists.
- Tenant populations of individuals with children.
- Projects intended for eventual tenant ownership.
- Projects that are part of a community redevelopment effort.
- Energy efficiency.
- Historic nature of the buildings.

B. Threshold, underwriting and process requirements.

C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster,
  - disruption in the financial markets, or
  - reduction in subsidy resources available, including tax credits, RPP and WHLP funding,
- the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

## II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

### A. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3).

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

### B. NEW CONSTRUCTION SET-ASIDES

#### 1. GEOGRAPHIC REGIONS

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

West 16%		Central 24%		Metro 37%	East 23%	
Alexander	Lincoln	Alamance	Moore	Buncombe	Beaufort	Jones
Alleghany	Macon	Anson	Orange	Cumberland	Bertie	Lenoir
Ashe	Madison	Cabarrus	Person	Durham	Bladen	Martin
Avery	McDowell	Caswell	Randolph	Forsyth	Brunswick	Nash
Burke	Mitchell	Chatham	Richmond	Guilford	Camden	New Hanover
Caldwell	Polk	Davidson	Rockingham	Mecklenburg	Carteret	Northampton
Catawba	Rutherford	Davie	Rowan	Wake	Chowan	Onslow
Cherokee	Surry	Franklin	Scotland		Columbus	Pamlico
Clay	Swain	Granville	Stanly		Craven	Pasquotank
Cleveland	Transylvania	Harnett	Stokes		Currituck	Pender
Gaston	Watauga	Hoke	Union		Dare	Perquimans
Graham	Wilkes	Iredell	Vance		Duplin	Pitt
Haywood	Yadkin	Lee	Warren		Edgecombe	Robeson
Henderson	Yancey	Montgomery			Gates	Sampson
Jackson					Greene	Tyrrell
					Halifax	Washington
					Hertford	Wayne
					Hyde	Wilson
					Johnston	

#### 2. REDEVELOPMENT PROJECTS

- (a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not meet the criteria below will be awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any set-aside.

(b) The following are required to qualify as a Redevelopment Project:

- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
- (ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.
- (iii) Any required demolition has been completed or is scheduled for completion in 2017 (not including the project buildings).
- (iv) A unit of local government initiated the project and has invested community development resources in the Half Mile area within the last ten years.
- (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:
  - donation of at least one parcel of land,
  - waiver of impact, tap, or related fees normally charged, or
  - commitment to lend/grant at least \$750,000 in the Metro region and \$250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding.

The Agency will require official documentation of each element of local government participation.

#### C. USDA RURAL DEVELOPMENT

Up to \$750,000 will be awarded to eligible rehabilitation and/or new construction project(s) identified by the U.S. Department of Agriculture, Rural Development (RD) state office as a priority. These projects will count towards the applicable set-asides and limits. The maximum award under this set-aside to any one Principal will be one project. Other RD applications will be considered under the applicable set-asides.

#### D. NONPROFIT AND CHDO SET-ASIDES AND LIMITS AND NATIONAL HOUSING TRUST FUND

##### I. SET-ASIDES AND NATIONAL HOUSING TRUST FUND

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

##### (a) Nonprofit Set-Aside

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

(b) CHDO Set-Aside

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

(c) National Housing Trust Fund

To qualify for the National Housing Trust Fund, the project must:

- be located in a High Income county as designated in Section II(F)(2) and
- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See **Appendix J** for additional information.

2. LIMITS

No more than twenty percent (20%) of the overall allocation will be awarded to projects where a nonprofit organization (or its qualified corporation) is the Applicant under Section III(C)(6). New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards.

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

- (a) The maximum awards to any one Principal will be a total of \$1,800,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.
- (c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,000,000.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

- (a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set aside.

(b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see **Appendix K**), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share.

2. INCOME DESIGNATIONS

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used in making this determination was HUD's FY 2016 Median Family Income.

High		Moderate		Low	
Brunswick	Johnston	Alamance	Hoke	Alleghany	Macon
Buncombe	Lee	Alexander	Jones	Anson	Martin
Cabarrus	Lincoln	Beaufort	Onslow	Ashe	McDowell
Camden	Madison	Burke	Pamlico	Avery	Mitchell
Chatham	Mecklenburg	Caldwell	Pasquotank	Bertie	Montgomery
Currituck	Moore	Carteret	Pender	Bladen	Nash
Dare	New Hanover	Catawba	Person	Caswell	Northampton
Davie	Orange	Cleveland	Perquimans	Cherokee	Richmond
Durham	Pitt	Craven	Polk	Chowan	Robeson
Forsyth	Randolph	Cumberland	Rockingham	Clay	Rutherford
Franklin	Stokes	Gates	Rowan	Columbus	Sampson
Gaston	Union	Granville	Stanly	Davidson	Scotland
Guilford	Wake	Greene	Swain	Duplin	Surry
Henderson	Watauga	Harnett	Transylvania	Edgecombe	Tyrrell
Iredell	Yadkin	Haywood	Wayne	Graham	Vance
				Halifax	Warren
				Hertford	Washington
				Hyde	Wilkes
				Jackson	Wilson
				Lenoir	Yancey

G. OTHER AWARDS AND RETURNED ALLOCATIONS

1. The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. An owner returning a valid allocation of 2014 tax credits between October 1, 2016 and December 31, 2016 will receive an allocation of the same amount of 2017 tax credits if:
  - the project has obtained a building permit and closed its construction loan,
  - the owner pays a fee equal to the original allocation fee amount upon the return, and
  - the project's design is the same as approved at full application (other than changes approved by the Agency).

None of the Principals for the returned project may be part of a 2017 application.
3. The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such

credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

#### **H. PROJECTS AWARDED IN 2016**

Owners of new constructions projects allocated 9% tax credits in 2016 may request an additional allocation of tax credits in 2017 to fill a funding gap created by the decline in equity pricing and/or rising interest rates. The following will apply to those owners requesting an additional tax credit allocation:

- (a) Owners will return their 2016 allocation for an allocation of 2017 tax credits.
- (b) Projects must comply with the requirements in the 2016 Qualified Allocation Plan and all representations made in the original awarded application (unless otherwise waived by the Agency).
- (c) The Agency will not consider increased uses.
- (d) Any tax credit allocation above the original 2016 tax credit allocation will count towards the Principal limits described in Section II(E)(1)(a).
- (e) Any deferred developer fees in the original awarded application must remain in the project. A minimum of 25% of deferred developer fees is required to qualify for an additional allocation.
- (f) Any request without a firm equity commitment will assume an equity price of \$0.90 when determining the gap to be filled.
- (g) The Agency may consult directly with equity providers in carrying out this Section II(H).
- (h) The maximum additional allocation to any project will be \$100,000.
- (i) The deadline for requesting an additional allocation is February 3, 2017. Requests will be made as a Project Update through the application system. The Agency expects to announce awards under this Section II(H) by April.
- (j) Owners will be required to pay a \$5,000 allocation fee.

### **III. DEADLINES, APPLICATION AND FEES**

#### **A. APPLICATION AND AWARD SCHEDULE**

The following schedule will apply to the 2017 application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits. The Agency will announce the application schedule for a second round of bond volume and 4% Tax Credits at a later time.

January 20	Deadline for submission of preliminary applications (12:00 noon)
March 13	Market analysts will submit studies to the Agency and Applicants
March 24	Notification of final site scores
April 3	Deadline for market-related project revisions
April 10	Deadline for the Agency and Applicant to receive the revised market study, if applicable
May 12	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

#### **B. APPLICATION, ALLOCATION, MONITORING AND PENALTY FEES**

1. All Applicants are required to pay a nonrefundable fee of \$5,720 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,320 preliminary application processing fee (which will be assessed for every electronic application)

submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).

2. All Applicants are required to pay a nonrefundable processing fee of \$1,320 upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.78% of the project's total qualified basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of \$860 per unit (includes all units, qualified, unrestricted and employee) prior to issuance of the project's IRS Form 8609.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. The Agency may assess Applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).
8. The Agency will assess \$1,500 for a Workforce Housing Loan Program closing and \$2,000 for an RPP closing.

#### C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. Only one (1) application can be submitted per site (new construction or rehabilitation).
4. The Agency may elect to treat applications involving more than one site, population type (family/elderly) or activity (new/rehabilitation) as separate for purposes of the Agency's application process. Each application would require a separate initial application fee. The Agency may allow such applications to be considered as one for the full application underwriting if all sites are secured by one permanent mortgage and are not intended for separation and sale after the tax credit allocation.
5. The Agency will notify the appropriate unit of government about the project after submission of the full application.
6. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:
  - (a) corporation, including nonprofits,
  - (b) limited partnership, or
  - (c) limited liability company.

Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements



but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

#### **IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS**

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2017 cycle.

##### **A. SITE AND MARKET EVALUATION**

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

##### **1. SITE EVALUATION (MAXIMUM 62 POINTS)**

###### **(a) General Site Requirements:**

- (i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
- (iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.
- (iv) To be eligible for RPP funds, the preliminary application must contain the Agency's "Notice of Real Property Acquisition" form. The form must be executed by all parties before or at the same time as the option or contract.

###### **(b) Criteria for Site Score Evaluation:**

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories.

##### **(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)**

Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))

Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

##### **(ii) AMENITIES (MAXIMUM 38 POINTS)**

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an



amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases the establishment must be open to the general public and operating with no announced closing as of the preliminary application deadline.

	<u>Driving Distance in Miles</u>			
<i>Primary Amenities</i> (maximum 26 points)	≤ 1	≤ 1.5	≤ 2	≤ 3
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> (maximum 12 points)	≤ 1	≤ 1.5	≤ 2	≤ 3
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Elderly)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

	<u>Driving Distance in Miles, Small Town*</u>			
<i>Primary Amenities</i> (maximum 26 points)	≤ 2	≤ 2.5	≤ 3	≤ 4
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> (maximum 12 points)	≤ 2	≤ 2.5	≤ 3	≤ 4
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Elderly)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

\* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management web site at [https://ncosbm.s3.amazonaws.com/s3fs-public/demog/rankedbysize-largest\\_2015.html](https://ncosbm.s3.amazonaws.com/s3fs-public/demog/rankedbysize-largest_2015.html). The Standard 2015 Estimates, Municipal Population Estimates by Size (Largest) will be used to determine a town's population. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park, middle school and community center all between one mile and two miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown in map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s).

The following establishments qualify as a Grocery:

Aldi	Food Matters Market	Just Save	Save-A-Lot
Bi-Lo	Fresh Air Galaxy Food Centers	Kroger	Super Target
Bo's Food Stores	The Fresh Market	Lowes Foods	Trader Joe's
Compare Foods	Harris Teeter	Piggly Wiggly	Walmart Neighborhood Market
Earth Fare	Hopey & Company	Publix	Walmart Supercenter
Family Foods	IGA	Red & White	Whole Foods
Food Lion	Ingle's Market	Sav-Mor	

The following establishments qualify as Shopping:

Big Lots	Kmart	Super Target
Dollar General	Maxway	Walmart
Dollar Tree	Ollie's Bargain Outlet	Walmart Supercenter
Family Dollar	Roses	
Fred's Super Dollar	Target	

To qualify as a Pharmacy the establishment must have general merchandise items for sale (not including pharmacies within hospitals).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store

Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies

Public Facility (any of the following):

- community center with scheduled activities operated by a local government
- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means
- library operated by a local government open at least five days a week

Public School: elementary, middle or high school (family properties only)

Senior Center: with scheduled activities operated by a local government (elderly properties only)

Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center with a minimum of 4 operating establishments; any grocery or general merchandise establishment

A commitment of at least \$250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 12 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b).

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- on a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 12 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks
- high traffic corridor
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands,

and other similar features (for adaptive re-use projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) **SITE BONUS POINTS (MAXIMUM 2 POINTS)**

Up to 2 points will be awarded to the site(s) in a county deemed to be the most desirable real estate investment and most appropriate for housing amongst all applications in that county. For counties with one application, the site will be judged against other sites in a given region receiving bonus points to determine if said site is comparable and worthy of also receiving bonus points. No county is guaranteed to receive bonus points.

**2. MARKET ANALYSIS**

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
  - (i) the project's capture rate,
  - (ii) the project's absorption rate,
  - (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
  - (iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.
- (d) Applicants may not increase the total number of units after submission of the preliminary application. After the deadline for completing market-related project revisions Applicants may not increase:
  - (i) rents, irrespective of a decrease in utility allowances,
  - (ii) the number of income targeted units in any bedroom type, or
  - (iii) the number of units in any bedroom type.
- (e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f) Projects may not give preferences to potential tenants based on:
  - (i) residing in the jurisdiction of a particular local government,
  - (ii) having a particular disability, or
  - (iii) being part of a specific occupational group (e.g. artists).

- (g) Age-restricted (elderly) projects may not contain three or more bedroom units.

**B. RENT AFFORDABILITY**

**1. FEDERAL RENTAL ASSISTANCE**

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated as a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

**2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)**

An application may earn points under one of the following scenarios:

(a) If the project is in a High Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.

(b) If the project is in a Moderate Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.

(c) If the project is in a Low Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. Targeting in subsection (a), (b) or (c) above counts towards this requirement.

**C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP**

**1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)**

- (a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- all units are detached single family houses or duplexes,
- serving persons with severe mobility impairments,
- development challenges resulting from being within or adjacent to a central business district,
- public housing redevelopment projects, or
- building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, building permits, Energy Star, certifications for green programs, and any other costs not unique to the specific proposal.

Chart A	Chart B
\$68,000   -10	\$79,000   -10

- (b) Lines 5 and 6 of the PDC description must total at least \$60,000 per unit.
- (c) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process.

See Section VI(B) for other cost restrictions.

## 2. RESTRICTIONS ON RPP AWARDS

- (a) Projects requesting RPP funds must submit the Agency's "Notice of Real Property Acquisition" form with the preliminary application and may not:
- (i) request RPP funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
  - (ii) include market-rate units,
  - (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2004,
  - (iv) request less than \$150,000 or more than \$800,000 per project,
  - (v) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,
  - (vi) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, or
  - (vii) have a Principal listed on SAM.gov as being ineligible to receive federal funds.

The maximum award of RPP funds to any one Principal will be a total of \$1,600,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

$$\text{Repayment of RPP and local government loans} = (\text{NOI} / 1.15) - \text{conventional debt service.}$$

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

$$\begin{aligned} \text{RPP Loan} &= \$400,000 \\ \text{local government loan} &= \$200,000 \end{aligned}$$

	Year 1	Year 2	Year 3	Year 4
Anticipated amount available for repayment	\$10,000	\$8,000	\$6,000	\$4,000

RPP principal and interest payments	\$6,667	\$5,333	\$4,000	\$2,667
local government P&I payments	\$3,333	\$2,667	\$2,000	\$1,333

- (c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.
- (d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency's requirements on a prior loan.

### 3. WORKFORCE HOUSING LOAN PROGRAM

- (a) Projects with 9% Tax Credits which meet the Agency's loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.
- (b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.
- (c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. The following percent of eligible basis will be the calculated loan amount. In no event will the loan amount exceed the statutory maximum.

County Income Designation	Percent of Eligible Basis	Statutory Maximum
High	4%	\$250,000
Moderate	12%	\$750,000
Low	20%	\$1,000,000

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

### D. CAPABILITY OF THE PROJECT TEAM

#### 1. DEVELOPMENT EXPERIENCE

- (a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, 2010 and January 1, 2016. Such Principal must:
  - (i) be identified in the preliminary application as the Applicant under Section III(C)(6),
  - (ii) become a general partner or managing member of the ownership entity, and
  - (iii) remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.
- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.

- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

## 2. MANAGEMENT EXPERIENCE

The management agent must:

- (a) have at least one similar tax credit project in their current portfolio,
- (b) be requesting Key Program assistance timely and accurately (if applicable),
- (c) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable)
- (d) have at least one staff person in a supervisory capacity with regard to the project who has attended at least one Agency sponsored training within the past 12 months as of the full application deadline, and
- (e) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

## 3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded 9% Tax Credits in 2016 for which either the equity investment has not closed as of the full application deadline or the "10% test" has not been met;



- (i) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (j) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;
- (k) requested a qualified contract for a North Carolina tax credit property; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2017 cycle and removing from consideration any application where they are identified.

**E. UNIT MIX AND PROJECT SIZE**

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either
  - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible, or
  - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
  - Metro Region - one hundred and twenty (120) units
  - Central, East, and West Regions - eighty (80) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application deadline.
4. All projects must have at least twenty-four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

**F. SPECIAL CRITERIA AND TIEBREAKERS**

**1. ENERGY STAR**

New construction residential buildings must comply with all Energy Star standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

**2. CREDITS PER UNIT AVERAGE (MAXIMUM 2 POINTS)**

The Agency will calculate the average federal tax credits per low-income unit requested on a Geographic Region basis among new construction full applications and award points based on the following:

Within 5% of the average	2 points
Within 10% of the average	1 point

**3. UNITS FOR THE MOBILITY IMPAIRED**

Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in **Appendix B** (incorporated herein by reference). THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES). If laws or codes do not require mobility impaired units for a project, a total of ten percent (10%) of the units must be fully accessible. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Program requirements of subsection (F)(4).

**4. TARGETING PROGRAM DOCUMENTS**

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Targeted units must be affordable to persons with extremely low incomes. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

- (a) Targeting Unit Agreement
- (b) Owner Agreement to Participate (if applicable)
- (c) Property Profile
- (d) Tenant Selection Plan
- (e) Rental Assistance Plan (if applicable)
- (f) Affirmative Fair Housing Marketing Plan

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines they are not feasible.

**5. OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)**

- (a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

7.5% of total units	1 point
10% of total units	2 points
15% of total units	3 points

- (b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

Buncombe	Craven	Gaston	Mecklenburg	Robeson
Burke	Cumberland	Guilford	New Hanover	Rowan
Cabarrus	Durham	Iredell	Onslow	Wake
Caldwell	Forsyth	Johnston	Pitt	Wayne

**6. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)**

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

#### 7. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) First Tiebreaker: The project in the census tract with the lowest percentage of families below the poverty rate (see **Appendix H** for listing of poverty rates by census tract).
- (b) Second Tiebreaker: The project with the lowest average income targeting.
- (c) Third Tiebreaker: The project requesting the least amount of federal tax credits per low-income unit based on the Agency's equity needs analysis.
- (d) Fourth Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (e) Fifth Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

#### G. DESIGN STANDARDS

All proposed measures must be shown in the application to receive points.

##### 1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

##### 2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

###### (a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

###### (b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.

- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) Use of brick veneer or masonry products on building exteriors.

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to 25 points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

## H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

### 1. GENERAL THRESHOLD REQUIREMENTS

To be eligible for an allocation under Section II(A), a project must:

- (a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 2001,
- (c) require rehabilitation expenses in excess of \$15,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax-exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
- (i) have total replacement costs of less than \$120,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

### 2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B** (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.

- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

### 3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (c) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (d) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (e) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (f) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (g) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

## V. ALLOCATION OF BOND CAP

### A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

- 1. Projects that serve as a component of an overall public housing revitalization effort.
- 2. Rehabilitation of existing rent restricted housing.
- 3. Rehabilitation of projects consisting of entirely market-rate units.
- 4. Adaptive re-use projects.

5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

**B. ELIGIBILITY FOR AWARD**

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet the requirements under Section IV(F)(4).
2. Rehabilitation applications must:
  - (a) have been placed in service on or before December 31, 2001,
  - (b) require rehabilitation expenses in excess of \$10,000 per unit,
  - (c) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
  - (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
  - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project. The project(s) must have been placed in service between January 1, 2010 and January 1, 2016. Such Principal must:
  - be identified in the preliminary application as the Applicant under Section III(C)(6),
  - become a general partner or managing member of the ownership entity, and
  - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

**VI. GENERAL REQUIREMENTS**

**A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS**

**1. PROJECTS WITH HISTORIC TAX CREDITS**

Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

**2. NONPROFIT SET-ASIDE**

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,

- (c) have as one of its exempt purposes the fostering of low-income housing.
- (d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

### 3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

- (a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- (b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.
- (c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

### 4. APPRAISALS

The Agency will not allow the project budget to include more for land costs than the lesser of its appraised market value or the purchase price. Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

### 5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

### 6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

### 7. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an



equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

**8. SMOKE-FREE HOUSING**

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

**B. UNDERWRITING THRESHOLD REQUIREMENTS**

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

**1. LOAN UNDERWRITING STANDARDS**

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds must use current Low HOME rents for 20% of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

**2. OPERATING EXPENSES**

- (a) New construction (excluding adaptive re-use): minimum of \$3,600 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): minimum of \$3,800 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.
- (c) The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

**3. EQUITY PRICING**

- (a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above \$0.99 will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.
- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project



directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

#### 4. RESERVES

- (a) Rent-up Reserve: Required for all except tax-exempt bond projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

#### 5. DEFERRED DEVELOPER FEES (NEGATIVE 2 POINTS)

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

Deferment of more than twenty-five (25%) of the total developer fee will result in a deduction of 2 points.

6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.
- (b) For all projects proposing public permanent financing, binding commitments are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Any Owner Investment listed as a source cannot exceed \$10,000.
- (e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

7. DEVELOPER FEES

- (a) Developer fees shall be up to \$13,000 per unit for new construction projects and twenty-eight percent point five (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.
- (b) Notwithstanding the amount calculated in subsection (7)(a), the developer fee for any project shall be a maximum of \$1,300,000 (the maximum for projects with tax-exempt bonds is \$1,900,000).
- (c) Contractor general requirements shall be limited to six percent (6%) of hard costs.
- (d) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (e) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

**11. PROJECT CONTINGENCY FUNDING**

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

**12. PROJECT OWNERSHIP**

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

**13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE**

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

**14. WATER, SEWER, AND TAP FEES**

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

**VII. POST-AWARD PROCESSES AND REQUIREMENTS****A. ALLOCATION TERMS AND REVOCATION**

- I. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:
  - (a) changing the anticipated or final sources (amount, terms, or provider), including equity;
  - (b) increasing the anticipated or final uses by more than two percent (2%);
  - (c) altering the designs approved by
    - the Agency at full application, or
    - local building code office,including amenities, site layout, floor plans and elevations (Approved Design);
  - (d) starting construction, including sitework;
  - (e) increasing rents for new construction low-income units (does not apply to tax-exempt bonds);
  - (f) increasing rents for rehabilitation low-income units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);
  - (g) any other change to the awarded application.

If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the

reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.
3. IRS Form 8609 will not be issued until:
  - (a) submission of a Final Cost Certification that complies with the Agency's requirements;
  - (b) the owner and management company document attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved seminars);
  - (c) monitoring fees have been paid;
  - (d) the project has been built according to the Approved Design;
  - (e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;
  - (f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and
  - (g) submission of a listing of the name and address for all contractors and subcontractors and a statement from each representing the entity will comply with all applicable employment rules and regulations.
4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.
5. Owners must record a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms.
6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
  - (a) accuracy of all representations made to the Agency, including application uploads,
  - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
  - (c) provision and maintenance of amenities for the benefit of the tenants, and
  - (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual

consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

**B. COMPLIANCE MONITORING**

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and on-line reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

**VIII. DEFINITIONS**

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(6).

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

**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 and G.S. 150B-21.3A(c)(2)g. that the Board of Agriculture intends to amend the rule cited as 02 NCAC 37 .0202 and readopt without substantive changes the rules cited as 02 NCAC 37 .0201 and .0203.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

**Proposed Effective Date:** June 1, 2017

**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 rules by submitting a request in writing no later than February 16, 2017 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Reason for Proposed Action:** Two rules are being readopted with no changes as part of the readoption process. 02 NCAC 37 .0202 changes are the following: Currently the lab offers a heavy metals analysis for waste samples for a fee of \$10. This analysis consists of Nickel, Cadmium and Lead. The change adds Arsenic, Selenium and Chromium to the list of heavy metals tested for an increase the fee to \$20. Striking the waste designation allows us to provide this service to university researchers who would like to have plant, solution and media samples also. The second change strikes the plant designation for molybdenum so that we can offer this service for other sample types. Several clients have expressed an interest in having molybdenum analysis offered for sample types. The last change is to add a test for bulk density for compost and media samples and charge a fee of \$10 for this service. Bulk density is regularly requested by compost producers. Also, nursery growers who sell plants across the quarantine line for fire ants need to know the bulk density of potting media. Potting media produced or used in the quarantine areas must be treated with pesticides that control fire ants before it is moved outside the quarantine area. The bulk density of the potting media is needed to determine the pesticide application rate.

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

**Comment period ends:** April, 3 2017

**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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

## CHAPTER 37 - AGRONOMIC SERVICES

### SECTION .0200 - PROGRAMS

#### 02 NCAC 37 .0201 SOIL TESTING SERVICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

**02 NCAC 37 .0202 PLANT ANALYSIS SERVICE**  
(a) Individuals desiring plant analysis may obtain plant tissue mailers and instructions from the Agronomic Services Division, county extension office, farm supply dealers, Agronomic Division Regional Agronomists, or other local agricultural advisors. All samples shall be analyzed for nitrogen, phosphorus, potassium, calcium, magnesium, manganese, copper, zinc, boron and other elements as needed. Results of the test and recommendations for corrective action shall be provided. For the purposes of this Rule, "plant analyses" shall include analysis of wastes, soilless media, and other solutions for agronomic purposes.



(b) Fees for these services, to be paid at the time of submission, are as follows:

- (1) Routine plant analysis - \$5.00.
- (2) Routine solution analysis - \$5.00.
- (3) Routine soilless media analysis - \$5.00.
- (4) Routine waste analysis - \$8.00.
- (5) Research plant, waste, soilless media, and solution analysis - \$12.00.
- (6) Nonresident plant, waste, soilless media, and solution analysis - \$25.00.
- (7) Special services:
  - (A) ~~Waste-heavy~~ Heavy metals - ~~\$10.00.~~ \$20.00
  - (B) Waste-N breakout - \$10.00.
  - (C) Waste-liming equivalent - \$10.00.
  - (D) Plant-chloride - \$2.00.
  - (E) ~~Plant molybdenum~~ Molybdenum - \$2.00.
  - (F) Plant-petiole nitrates - \$2.00.
  - (G) Bulk density - \$10.00.

Authority G.S. 106-22(17).

**02 NCAC 37 .0203 NEMATODE ADVISORY SERVICE (READoption WITHOUT SUBSTANTIVE CHANGES)**

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rule cited as 10A NCAC 70F .0214 and amend the rules cited as 10A NCAC 70F .0202, .0205, and .0208.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www2.ncdhhs.gov/dss/sscommission/contact.htm>

**Proposed Effective Date:** June 1, 2017

**Public Hearing:**

**Date:** March 8, 2017

**Time:** 10:00 a.m.

**Location:** NC DSS McBryde Building, 1<sup>st</sup> Floor Room 151, 820 South Boylan Avenue, Raleigh, NC 27603

**Reason for Proposed Action:**

**10A NCAC 70F .0202(l)** – Proposed rule amendment requires the governing body of child placing agency's for foster care and residential child-care facilities to develop and implement policies and procedures to comply with all applicable Federal and State laws pertaining to nondiscrimination.

**10A NCAC 70F .0202(m)** – Proposed rule amendment requires the governing body of child placing agency's for foster care and residential child-care facilities to comply with the Multiethnic Act (MEPA) of 1984, P.L. 103-382, as amended by the Interethnic Adoption Provisions(IEP).

**10A NCAC 70F .0202(n)** – Proposed rule amendment requires that the governing body of child placing agency's for foster care and residential child-care facilities comply with the terms and conditions of State and Federal requirements to participate in procurement contracts and covered non-procurement transactions. Existing laws found in 45 D.F.R. 82.510, P.L. 103-227 15 C.F.R. 29-630; Title 15-Commerce and Foreign Trade; Subtitle A-Office of the Secretary of Commerce; Part 29-Government wide requirements for Drug Free Workplace and N.C.G.S. Article 2, Chapter 64.)

**10A NCAC 70F .0205** – Proposed rule amendment requiring child placing agency's for foster care and residential child-care facilities to comply with Federal and State guidelines to avoid debarment as a recipient of federal and state funds. The System for Award Management (SAM) is the official U.S. Government system that consolidates the capabilities of Central Contraction Registry (CCR); Federal Agency Registration, Online Representations and Certifications Application (ORCA) and Excluded Parties List System (EPLS). The proposed rule requires that the agency notify the licensing authority if the agency receives notice on debarment.

**10A NCAC 70F .0208(b)(2)** – Proposed rule revision is to change the age of foster children up to 21 as current licensure rules and practice allows in order to protect the child's record.

**10A NCAC 70F .0214** – Proposed rule adoption requiring child placing agency's for foster care and residential child-care facilities to develop and implement policies and procedures in accordance with G.S. 131D-10.2 that creates the "reasonable and prudent parent standard" to be used for foster children. This statute brings State law in line with Federal Law established by P.L 113-183. The goals of the reasonable and prudent parent standard are to provide children and youth in foster care with access to normal childhood experiences and empower the placement provider to engage in activities which promote well-being. The rule amendment directs agencies on areas that must be addressed in their policies and procedures. This requirement applies to both existing licensed agencies and new agencies is proposed rule amendment in accordance G.S. 131D-10.2.

**Comments may be submitted to:** Carlotta Dixon, 820 South Boylan Ave, MSC 2402, Raleigh, NC 27603, phone (919) 527-6421, fax (919) 334-1198, email [Carlotta.dixon@dhhs.nc.gov](mailto:Carlotta.dixon@dhhs.nc.gov)

**Comment period ends:** April 3, 2017

**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 70 - CHILDREN'S SERVICES**

**SUBCHAPTER 70F – CHILD PLACING AGENCIES AND RESIDENTIAL MATERNITY HOMES**

**SECTION .0200 - ORGANIZATION AND ADMINISTRATION**

**10A NCAC 70F .0202 RESPONSIBILITIES OF THE GOVERNING BODY**

- (a) The governing body shall provide leadership for the agency and shall approve the agency's policies and programs.
- (b) The governing body shall employ an executive director who is located in the administrative office within the geographical boundaries of North Carolina and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.
- (c) The governing body shall require the executive director provide a signed statement that the executive director has no criminal, social or medical history that would adversely affect his or her capacity to work with children and adults. The governing body shall ensure that the criminal histories of an executive director are completed. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. The employing agency shall make all determinations concerning an individual's fitness for employment based on the requirements of this Paragraph prior to employment. The governing body shall require that the executive director provide a signed statement prior to employment that he or she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that he or she has not abused, neglected or exploited a disabled adult and that he or she has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.
- (d) The executive director is not eligible for employment if he or she has been convicted of a felony involving:

- (1) child abuse or neglect;
  - (2) spouse abuse;
  - (3) a crime against a child or children (including child pornography); or
  - (4) a crime of rape, sexual assault, or homicide.
- (e) The executive director is not eligible for employment if within the last five years he or she has been convicted of a felony involving:
- (1) assault;
  - (2) battery; or
  - (3) a drug-related offense.
- (f) The governing body shall annually evaluate the executive director's performance except a sole proprietor or partner is exempt from this Rule if he or she serves as executive director.
- (g) The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. Child-placing agencies and residential maternity homes receiving foster care payments or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office, Rate Setting Branch in compliance with 10A NCAC 70D .0105(a)(5).
- (h) The governing body shall annually evaluate the agency's services. This evaluation shall include the agency's interaction with other community agencies to serve its clients.
- (i) The governing body shall establish in writing confidentiality policies and procedures for control and access to and receipt, use, or release of information about its clients.
- (j) The governing body of child-placing agencies providing foster care services shall develop a written disaster plan that is provided to agency personnel and foster parents. The disaster plan shall be prepared and updated at least annually. The governing body of residential maternity homes shall comply with 10A NCAC 70K .0315(g).
- (k) The governing body, in the event of the closing of the agency, shall develop a plan for the retention and storage of client records. The specifics of this plan shall be submitted to the licensing authority before the actual closing of the agency.
- (l) The governing body shall develop and implement policies and procedures to comply with all applicable State and Federal laws pertaining to nondiscrimination.
- (m) The governing body shall insure that the agency complies with the Multiethnic Placement Act (MEPA) of 1994, P.L. 103-82, as amended by the Interethnic Adoption Provisions (IEP) of 1996, which is incorporated by reference, including subsequent amendments and editions.
- (n) The governing body shall comply with the terms and conditions of State and Federal requirements to participate in procurement contracts and covered non-procurement transactions as required by 45 C.F.R. 82.510 and 49 C.F.R. 29.630, which is incorporated by reference, including subsequent amendments and editions.

*Authority G.S. 131D-10.5; 131D-10.6; 131D-10.10; 143B-153.*

**10A NCAC 70F .0205 RESPONSIBILITY TO LICENSING AUTHORITY**

- (a) The agency shall submit, biennially to the licensing authority, the information and materials to document compliance with the licensure rules and to support issuance of a license.
- (b) The agency shall submit to the licensing authority a biennial statistical report of program activities.
- (c) The agency shall provide written notification to the licensing authority of a change in the executive director within 72 hours.
- (d) The agency shall provide written notification to the licensing authority of any changes in policies and procedures to assure that the changes are in compliance with the rules in Subchapters 70E, 70F, 70G, 70H, or 70K. The agency shall receive written approval from the licensing authority before instituting any changes in policies and procedures.
- (e) Child-placing agencies for foster care shall comply with requirements related to the handling and reporting of critical incidents in accordance with 10A NCAC 70G .0513. Residential maternity homes shall comply with requirements related to the handling and reporting of critical incidents in accordance with 10A NCAC 70K .0210.
- (f) When there is a death of a child or resident in placement in a home supervised by the agency, the executive director or his or her designee shall notify the licensing authority within 72 hours.
- (g) The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner and holds at least five percent interest of the agency.
- (h) The agency shall provide to the licensing authority written notification of a change in the legal name of any owner and individuals holding an interest of at least five percent within 30 days following the changes.
- (i) The agency shall notify the local management entity within 24 hours of placement that a child may require Mental Health, Developmental Disability or Substance Abuse ~~services.~~ Services.
- (j) If a child-placing agency for foster care is monitored by a local management entity, the agency shall provide data to the local management entity, as required by Department of Health and Human Services for monitoring and reporting to the General Assembly.
- (l) The agency shall notify the licensing authority immediately if the agency receives notice of debarment that prohibits the agency from participating in State and Federal procurement contracts and covered non-procurement transactions.

*Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153.*

**10A NCAC 70F .0208 CONFIDENTIALITY**

- (a) The agency shall develop and enforce a policy on confidentiality that will:
  - (1) identify the individuals with access to or control over confidential information;
  - (2) specify that persons who have access to records or specified information in a record be limited to persons authorized pursuant to law. These persons include the client; the parents or guardian or legal custodian when the client is a minor; agency staff; auditing, licensing, or accrediting personnel; and those persons for

- whom the agency has obtained a signed consent for release of confidential information;
- (3) require that when a client's information is disclosed, a signed consent for release of information is obtained on a consent for release form signed by the parent(s), guardian, legal custodian, or client, if age 18 or older;
- (4) provide a secure place for the storage of records with confidential information;
- (5) inform any individual with access to confidential information of the provisions of this Rule;
- (6) ensure that, upon employment and whenever revisions are made to the policy, staff sign a compliance statement which indicates an understanding of the requirements of confidentiality;
- (7) permit a client to review his or her case record in the presence of agency personnel on the agency premises, in a manner that protects the confidentiality of other family members or other individuals referenced in the record, unless agency personnel determines the information in the client's case record would be harmful to the client;
- (8) in cases of perceived harm to the client, document in writing any refusals to share information with the client, parents, guardian or legal custodian;
- (9) maintain a confidential case record for each client;
- (10) maintain confidential personnel records for all employees (full-time, part-time and contracted); and
- (11) maintain confidential records for all volunteers and interns;
- (b) A child-placing agency for foster care and a residential maternity home may destroy in office:
  - (1) the closed record of a child or resident who has been discharged from foster care or residential maternity care for a period of three years unless included in a federal or state fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits; and
  - (2) a record three years after a child or resident has reached age ~~18,~~ 21, unless included in a federal fiscal audit or program audit that is unresolved, then the agency may destroy the record in office when released from all audits.
- (c) All individual children, birth parents and adoptive family records shall be permanently retained by the agency. After a period of seven years, the files may be microfilmed or scanned in accordance with provisions of G.S. 8-45.1, following which the original files may be destroyed by a shredding process. The adoption agency may destroy in office the closed records of applicants who were not accepted or who did not have a child placed with them three years after the date of their application, unless included in a federal or state fiscal audit or program audit

that is unresolved, then the agency may destroy the record in office when released from all audits.

*Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153.*

**10A NCAC 70F .0214 NORMALCY FOR FOSTER CHILDREN**

(a) Child placing agencies and residential maternity homes shall develop and follow policies and procedures in accordance with 131D-10.2.

(b) The agency shall demonstrate compliance with policies and procedures that includes:

- (1) appointment of a designated official(s) to apply the reasonable and prudent parent standard when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities;
- (2) documentation of reasonable and prudent parenting standard decision making;
- (3) training for residential maternity home staff, child placing agency staff, and foster parents in the area of reasonable and prudent parent standard; and
- (4) supervision and support to staff and foster parents in the implementation of reasonable and prudent parent standard.

*Authority G.S. 131D-10.2; 131D-10.6; 131D-10.5; 143B-153.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0308, .0321, and .0355.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncwildlife.org](http://www.ncwildlife.org)

**Proposed Effective Date:** June 1, 2017

**Public Hearing:**

**Date:** Tuesday, February 28, 2017

**Time:** 10:00 a.m.

**Location:** WRC Headquarters 5<sup>th</sup> Floor, 1751 Varsity Drive, Raleigh, NC 27606

**Reason for Proposed Action:**

*15A NCAC 10F .0308 - Clay County submitted a formal application and resolution requesting extension of the no-wake zone in the waters of Shooting Creek in Lake Chatuge. An amendment to 15A NCAC 10F .0308(a)(2) will extend the no-wake zone shore to shore in the waters of Shooting Creek, from 50 yards west of the High Bridge on NC Highway 175 to the southeast end of Shooting Creek, where it meets Lake Chatuge. Numerous boating safety hazards exist, such as the narrow channel with limited visibility, underwater rock hazards, and danger to swimmers in the creek.*

*15A NCAC 10F .0321 - An amendment under 15A NCAC 10F .0321(a)(3) will extend the no-wake zone in the Town of Topsail Beach on the eastern side of Banks Channel within 100 yards of the shoreline, beginning 155 yards west of Bush's Marina and ending northwest 75 yards from the shoreline, perpendicular to Haywood Avenue. An amendment under 15A NCAC 10F .0321(a)(5) will establish a no-wake zone in the waters of the channel in Topsail Sound known as Deep Creek along the Town of Surf City waterfront. The amendments are necessary to mitigate hazards to boater safety as a result of the busy areas with commercial business and commercial and residential vessel traffic.*

*15A NCAC 10F .0355 - Perquimans County submitted a formal application and resolution requesting a no-wake zone in the waters of Yeopim Creek, shore to shore, adjacent to Heritage Shores North. The no-wake zone would mitigate hazards to boater safety, including two blind turns in the narrow creek and a recent fatality there.*

**Comments may be submitted to:** Betsy Haywood, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 707-0013, email [betsy.haywood@ncwildlife.org](mailto:betsy.haywood@ncwildlife.org)

**Comment period ends:** April 3, 2017

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

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

**SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY**

**SECTION .0300 - LOCAL WATER SAFETY REGULATIONS**

**15A NCAC 10F .0308 CLAY COUNTY**

(a) ~~Regulated Area. Areas. This Rule applies to the waters of Lake Chatuge that lie within 50 yards of the boat ramp at Ho Hum Campground. It is unlawful to operate any motorboat or vessel at greater than no-wake speed in the following areas on Chatuge Lake:~~

- (1) ~~within 50 yards of the boat ramp at Ho Hum Campground;~~
- (2) ~~the waters of Shooting Creek, from a line shore to shore 50 yards west of the High Bridge on NC Highway 175, to a line at the southeast end of Shooting Creek shore to shore, from a point at 35.01960 N, 83.72752 W; to a point at 35.01979 N, 83.72638 W;~~
- (3) ~~within 50 yards of the Gibson Cove access area;~~
- (4) ~~within 50 yards of the Chatuge Cove Marina;~~
- (5) ~~that portion of the cove shore to shore, west of Cottage Court off of NC Highway 175, northeast of a line from a point on the east shore at 35.02576 N, 83.73784 W; to a point on the northwest shore at 35.02609 N, 83.73945 W;~~
- (6) ~~within 50 yards of the Chatuge Dam Spillway access area; and~~
- (7) ~~the waters of McCracken Cove.~~

(b) ~~Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated area.~~

(c) ~~Speed Limit. It is unlawful to operate any motorboat or vessel at a speed greater than no wake speed within 50 yards of the following areas:~~

- (1) ~~The High Bridge~~
- (2) ~~Gibson Cove access area~~
- (3) ~~Chatuge Cove Complex II Marina~~
- (4) ~~Lakeside Cottages and Marina~~
- (5) ~~Chatuge Dam Spillway access area~~
- (6) ~~McCracken Cove on Lake Chatuge~~

(d)(c) ~~Placement and Maintenance of Markers. The Board of Commissioners of Clay County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard Tennessee Valley Authority and the United States Army Corps of Engineers. With regard to marking Lake Chatuge, supplementary standards as set forth in Rule .0301(g)(1) to (7) of this Section shall apply.~~

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

**15A NCAC 10F .0321 PENDER COUNTY**

(a) ~~Regulated Areas. This Rule applies to the following waters in Pender County:~~

- (1) ~~the canal adjoining Old Point Development;~~
- (2) ~~the First Finger Canal in New Topsail Beach;~~
- (3) ~~the eastern side of Banks Channel that extends 50 yards north of the northern boat ramp at the South Beach Villas and 50 yards south of the boat ramp at Bush's Marine at Topsail Beach;~~

in the Town of Topsail Beach, those waters on the eastern side of Banks Channel within 100 yards of the shoreline beginning 155 yards west of Bush's Marina, and extending northeast ending 75 yards from the shoreline perpendicular to Haywood Avenue;

- (4) those waters of the Northeast Cape Fear River between the U.S. Highway 117 bridge and the Seaboard Coastline Railroad bridge, the railroad trestle 60 yards east of the Castle Hayne Boating Access Area; and
- (5) in the Town of Surf City, the waters of the channel in Topsail Sound known as Deep Creek, from its mouth at a point at 34.43199 N, 77.54795 W to its end west of Goldsboro Avenue.

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

(c) ~~Placement and Maintenance of Markers. The Board of Commissioners of Pender County with respect to the regulated areas designated in Subparagraphs (1), (2) and (4) of Paragraph (a) of this Rule, and the Board of Commissioners of the Town of Topsail Beach, with respect to the regulated area designated in Subparagraph (3) of Paragraph (a) of this Rule, and the Board of Commissioners of the Town of Surf City, with respect to the regulated area designated in Subparagraph (a)(5) of this Rule are designated as suitable agencies for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.~~

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

**15A NCAC 10F .0355 PERQUIMANS COUNTY**

(a) ~~Regulated Areas. This Rule applies to the following waters:~~

- (1) ~~Perquimans River:~~
  - (A) ~~The canals of Holiday Island subdivision; and~~
  - (B) ~~Town of Hertford: that part of the Perquimans River beginning 75 yards northeast of the Perquimans River Bridge (Hertford S-shaped Bridge) parallel to the bridge, shore to shore, and ending approximately 550 yards southwest, at a line from a point on the north shore 36.19300 N, 76.46962 W to a point on the south shore 36.19150 N, 76.47099 W.~~
- (2) ~~Yeopim River:~~
  - (A) ~~The canal entrance between Navaho Trail and Cherokee Trail;~~
  - (B) ~~The canal entrance between Cherokee Trail and Ashe Street;~~
  - (C) ~~The boat ramp at Ashe and Pine Street;~~
  - (D) ~~The canal entrance between Pine Street and Linden Street;~~

- (E) The canal entrance and boat ramp between Willow Street and Evergreen Drive;
  - (F) The canal entrance between Sago Street and Alder Street;
  - (G) The swimming area at the Snug Harbor Park and Beach; and
  - (H) Bethel Creek north of a line from a point on the west shore at 36.09552N, 76.47958W to a point on the east shore at 36.095517N, 76.47735W to a line from a point on the west shore at 36.10532N, 76.48080W to a point on the east shore at 36.10516N, 76.48047W.
- (3) Yeopim Creek:
- (A) The canal entrance between Mohave Trail and Iowa Trail;
  - (B) The canal entrance between Iowa Trail and Shawnee Trail;
  - (C) The area within 75 yards of the Albemarle Plantation Marina Piers; ~~and~~
  - (D) The area of Beaver Cove as delineated by appropriate ~~markers~~; markers; and

- (E) The waters of Yeopim Creek adjacent to Heritage Shore North, shore to shore, east of a line from a point on the north shore at 36.11356 N, 76.43138 W to a point on the south shore at 36.11288 N, 76.43173 W, to a line northwest from a point on the east shore at 36.11219 N, 76.42445 W to a point on the west shore at 36.11178 N, 76.42596 W.

- (4) Little River: The entrance to the cove known as "Muddy Gut Canal," which extends from the waters known as "Deep Creek."

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

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

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

*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 December 15, 2016.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**STRUCTURAL PEST CONTROL COMMITTEE**

<u>Records: Pesticides and Application Equipment Used</u>	02	NCAC 34	.0328*	31:01	NCR
<u>Pesticides for Subterranean Termite Prevention and/or Con...</u>	02	NCAC 34	.0502*	31:01	NCR
<u>Subterranean Termite Control: Buildings After Constructed</u>	02	NCAC 34	.0503*	31:01	NCR
<u>Subterranean Termite Preventions/Res Bldgs Under Const</u>	02	NCAC 34	.0505*	31:01	NCR
<u>Min Require/Subterranean Termite Prev/Commercial Bldgs</u>	02	NCAC 34	.0506*	31:01	NCR

**MEDICAL CARE COMMISSION**

<u>Reporting Requirements</u>	10A	NCAC 13B	.2102*	30:24	NCR
<u>Reporting Requirements</u>	10A	NCAC 13C	.0206*	30:24	NCR
<u>Abbreviations</u>	10A	NCAC 13P	.0101	30:24	NCR
<u>Definitions</u>	10A	NCAC 13P	.0102*	30:24	NCR
<u>EMS System Requirements</u>	10A	NCAC 13P	.0201*	30:24	NCR
<u>Air Medical Ambulance: Vehicle and Equipment</u>	10A	NCAC 13P	.0209*	30:24	NCR
<u>EMS Non-transporting Vehicle Permit Conditions</u>	10A	NCAC 13P	.0214*	30:24	NCR
<u>Weapons and Explosives Forbidden</u>	10A	NCAC 13P	.0216*	30:24	NCR
<u>Staffing for Medical Ambulance/Evacuation Bus Vehicles</u>	10A	NCAC 13P	.0219*	30:24	NCR
<u>Patient Transportation Between Hospitals</u>	10A	NCAC 13P	.0221*	30:24	NCR
<u>Transport of Stretcher Bound Patients</u>	10A	NCAC 13P	.0222*	30:24	NCR
<u>Required Disclosure and Reporting Information</u>	10A	NCAC 13P	.0223*	30:24	NCR
<u>Specialty Care Transport Program Criteria</u>	10A	NCAC 13P	.0301*	30:24	NCR
<u>Air Medical Specialty Care Transport Program Criteria for...</u>	10A	NCAC 13P	.0302*	30:24	NCR
<u>Responsibilities of the Medical Director for EMS Systems</u>	10A	NCAC 13P	.0403*	30:24	NCR
<u>EMS Peer Review Committee for Specialty Care Transport</u>	10A	NCAC 13P	.0409*	30:24	NCR
<u>Educational Programs</u>	10A	NCAC 13P	.0501*	30:24	NCR
<u>Initial Credentialing Requirements for EMR, EMT, AEMT,</u>	10A	NCAC 13P	.0502*	30:24	NCR
<u>Term of Credentials for EMS Personnel</u>	10A	NCAC 13P	.0503*	30:24	NCR
<u>Renewal of Credentials for EMR, AEMT, Paramedic, and</u>	10A	NCAC 13P	.0504*	30:24	NCR
<u>Practice Settings for EMS Personnel</u>	10A	NCAC 13P	.0506*	30:24	NCR
<u>Credentialing Requirements for Level 1 EMS Instructors</u>	10A	NCAC 13P	.0507*	30:24	NCR
<u>Credentialing Requirements for Level II EMS Instructors</u>	10A	NCAC 13P	.0508*	30:24	NCR
<u>Renewal of Credentials for Level I and Level II EMS Instr...</u>	10A	NCAC 13P	.0510*	30:24	NCR
<u>Criminal Histories</u>	10A	NCAC 13P	.0511*	30:24	NCR
<u>Reinstatement of Lapsed EMS Credential</u>	10A	NCAC 13P	.0512*	30:24	NCR
<u>Refresher Courses</u>	10A	NCAC 13P	.0513*	30:24	NCR
<u>Continuing Education EMS Educational Institution</u>	10A	NCAC 13P	.0601*	30:24	NCR

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**APPROVED RULES**

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<u>Basic and Advanced EMS Educational Institutional</u>	10A NCAC 13P .0602*	30:24 NCR
<u>Advanced EMS Educational Institution Requirements</u>	10A NCAC 13P .0603	30:24 NCR
<u>Accredited EMS Educational Institution Requirements</u>	10A NCAC 13P .0605*	30:24 NCR
<u>Level I Trauma Center Criteria</u>	10A NCAC 13P .0901*	30:24 NCR
<u>Level II Trauma Center Criteria</u>	10A NCAC 13P .0902	30:24 NCR
<u>Level III Trauma Center Criteria</u>	10A NCAC 13P .0903	30:24 NCR
<u>Initial Designation Process</u>	10A NCAC 13P .0904*	30:24 NCR
<u>Renewal Designation Process</u>	10A NCAC 13P .0905*	30:24 NCR
<u>State Trauma System</u>	10A NCAC 13P .1101*	30:24 NCR
<u>Regional Trauma System Plan</u>	10A NCAC 13P .1102*	30:24 NCR
<u>Chemical Addiction or Abuse Treatment Program</u>	10A NCAC 13P .1401*	30:24 NCR
<u>Provisions for Participation in the Chemical Addiction of...</u>	10A NCAC 13P .1402*	30:24 NCR
<u>Conditions for Restricted Practice with Limited Privileges</u>	10A NCAC 13P .1403*	30:24 NCR
<u>Failure to Complete the Chemical Addiction or Abuse Treat...</u>	10A NCAC 13P .1405	30:24 NCR
<u>Licensed EMS Providers</u>	10A NCAC 13P .1502*	30:24 NCR
<u>EMS Educational Institutions</u>	10A NCAC 13P .1505*	30:24 NCR
<u>EMS Personnel Credentials</u>	10A NCAC 13P .1507*	30:24 NCR
<u>Procedures for Voluntary Surrendering or Modifying the Le...</u>	10A NCAC 13P .1510*	30:24 NCR
<u>Procedures for Qualifying for an EMS Credential Following...</u>	10A NCAC 13P .1511*	30:24 NCR

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Definitions</u>	12 NCAC 09A .0103*	31:05 NCR
<u>Admission of Trainees</u>	12 NCAC 09B .0203	30:23 NCR
<u>General Instructor Certification</u>	12 NCAC 09B .0302*	31:05 NCR
<u>Terms and Conditions of General Instructor Certification</u>	12 NCAC 09B .0303*	31:05 NCR
<u>Terms and Conditions of Specialized Instructor Certification</u>	12 NCAC 09B .0305*	31:05 NCR
<u>Instructor Certification Renewal</u>	12 NCAC 09B .0312*	31:05 NCR
<u>Evaluation for Training Waiver</u>	12 NCAC 09B .0403*	30:24 NCR
<u>Definitions</u>	12 NCAC 09G .0102*	31:05 NCR
<u>General Instructor Certification</u>	12 NCAC 09G .0308*	31:05 NCR
<u>Terms and Conditions of General Instructor Certification</u>	12 NCAC 09G .0309*	31:05 NCR
<u>Terms and Conditions of Specialized Instructor Certification</u>	12 NCAC 09G .0311*	31:05 NCR
<u>Instructor Certification Renewal</u>	12 NCAC 09G .0312*	31:05 NCR

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Minimum Training Requirements</u>	12 NCAC 10B .2005*	31:06 NCR
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**WILDLIFE RESOURCES COMMISSION**

<u>Chowan County</u>	15A NCAC 10F .0346*	30:23 NCR
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**BARBER EXAMINERS, BOARD OF**

<u>State Authorization as a Postsecondary Institution</u>	21 NCAC 06F .0127*	31:06 NCR
<u>Inspections of Shops</u>	21 NCAC 06L .0115	31:06 NCR
<u>Form Bar-4</u>	21 NCAC 06N .0105	31:06 NCR
<u>Form Bar-8</u>	21 NCAC 06N .0109	31:06 NCR

**PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS  
OF**

<u>Location of office</u>	21	NCAC 50	.0106*	n/a G.S. 150B-21.5(a)(4)
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**SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

<u>Relationships with Colleagues</u>	21	NCAC 63	.0505*	31:01 NCR
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**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
COSUMER SERVICES**

**02 NCAC 34 .0328      RECORDS: PESTICIDES AND  
APPLICATION EQUIPMENT USED**

(a) All required structural pest control records, pesticides, and application equipment used by the licensee or noncommercial certified applicator shall be maintained at the office location to which the license or certified applicator's card is issued. During inspections the licensee or his employee shall be present to provide access to all structural pest control records, pesticides, and application equipment, upon request by the Division.

(b) Notwithstanding the requirements of Paragraph (a) of this Rule, a licensee may request permission, annually, from the Division to maintain records, pesticides, and application equipment in a location other than the office location specified in Paragraph (a) of this Rule. The Division shall grant such permission if its ability to regulate the licensee will not be adversely affected by granting the request.

(c) All such records, pesticides, and equipment shall be made available for inspection during regular business hours upon request by the Division.

*History Note:      Authority G.S. 106-65.29;  
Eff. August 1, 1980;  
Amended Eff. January 1, 2017; July 1, 1998; January 1, 1989.*

**02 NCAC 34 .0502      PESTICIDES FOR  
SUBTERRANEAN TERMITE PREVENTION AND/OR  
CONTROL**

(a) Only those products which bear an EPA-approved label for such use and for which the Committee has received the following information may be used for subterranean termite control:

- (1) A statement from the pesticide registrant that the termiticide is primarily intended either for use:
  - (A) as a supplement to or in combination with other treatment(s); or
  - (B) by itself, as the sole source of termite control; and
- (2) For termiticides under Part (a)(1)(B) of this Rule:
  - (A) data to support all efficacy claims made on the label, labeling, and any promotional materials distributed by the registrant or manufacturer; and

(B) if the Committee approves a termiticide under Part (a)(1)(B) and the Directions for Use differ from the requirements of Rules .0503, .0505, or .0506 of this Section, the committee may determine that treatments with those termiticides are exempt from all or part of the requirements of Rules .0503(a)(4) and (6) through (11), .0505, or .0506 of this Section, provided that the product is labeled for protection of the entire structure and the licensee provides a warranty for the control of subterranean termites on the entire structure.

(b) Only those products approved by the Committee based on the data submitted pursuant to Subparagraph (a)(2) of this Rule may be used for the prevention or control of subterranean termites as the sole source of termite control or prevention. The Committee shall approve the product if the data submitted supports the efficacy claims.

(c) Termiticides intended for use as a supplement to or in combination with other termiticides shall not be used alone without first disclosing the registrants' recommendations to the property owner or agent.

(d) A list of approved termiticides may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control and Pesticides Division, 1090 Mail Service Center, Raleigh, NC 27699-1090, or by calling (919) 733-6100.

*History Note:      Authority G.S. 106-65.29;  
Eff. July 1, 1976;  
Readopted Eff. November 22, 1977;  
Amended Eff. January 1, 2017; July 18, 2002; July 1, 1998;  
August 1, 1980.*

**02 NCAC 34 .0503      SUBTERRANEAN TERMITE  
CONTROL: BUILDINGS AFTER CONSTRUCTION**

(a) The following standards and requirements apply to the treatment of a building for subterranean termite control after construction if the building has a basement or crawl space:

- (1) Access openings shall be provided to permit inspection of all basement and crawl space areas of a building and all open porches.
- (2) Clean up and remove all wood debris and cellulose material, such as wood, paper, and



- cloth, contacting soil in all crawl space areas. This excludes shavings or other cellulose material too small to be raked with the tines of an ordinary garden rake. Remove all visible stumps from all crawl space areas. Remove all visible form boards in contact with soil.
- (3) Remove all earth which is within 12 inches of the bottom edges of floor joists or within eight inches of the bottom edges of subsills or supporting girders, but not below footings of foundation walls. If foundation footings are less than 12 inches below the bottom edges of joists, subsills, or supporting girders, a bank of soil 12 inches to 18 inches wide shall be left adjacent to footings for the purpose of support. Clearance shall be adequate to provide passage of a person to all crawl space areas of a building.
- (4) All visible termite tubes or tunnels on pillars, pilasters, foundation walls, chimneys, step buttresses, sills, pipes, and other structures below the sill line shall be removed.
- (5) Eliminate all wooden parts making contact with the building and soil, either outside or inside, as follows:
- (A) No wood of any access opening shall be in contact with the soil.
- (B) Where wood parts such as door frames, partition walls, posts, stair carriages, or other wood parts can be reasonably ascertained to be making direct soil contact through concrete or where there is evidence of termite activity or damage, such wood parts shall be cut off above the ground or floor level, the wood shall be removed from the concrete, and the resulting hole shall be filled with concrete or covered with a metal plate after the point of contact has been treated with a termiticide.
- (C) Where wood parts such as vertical wood supports or other wood parts under a building or steps outside a building are not resting on solid masonry or concrete bases extending at least two inches above the soil surface or are in direct soil contact and such supports or steps are not removed, the supports and steps shall be cut off and set on a solid masonry or concrete footing extending at least two inches above the ground after the point of contact has been treated with a termiticide.
- (D) When wood skirting and lattice work are suspended, there shall be at least a two-inch clearance between the top of the soil and the bottom edges of the wood skirting or lattice work. If the two-inch clearance is not acceptable to the property owner, it may be closed with solid masonry or concrete, but a minimum clearance of one-fourth of one inch shall be provided between the masonry or concrete and wood.
- (E) Where houses or decks are built on pressure-treated wood pilings, pillars, or all-weather wood foundations, such pilings, pillars, and wood foundation members, including wood step supports, are not subject to Parts (a)(5)(A), (B), or (C) of this Rule.
- (6) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in multiple masonry foundation and bearing walls and all voids created by their placement at and a minimum distance of four feet in all directions from such evidence. Porch foundation walls shall be drilled and treated to a distance of three feet from the main foundation wall and the point of contact with any wooden members. Drill as follows:
- (A) The distance between drill holes shall not exceed 16 lineal inches and holes shall be no more than 16 inches above the footing or, for footings deeper than 16 inches, immediately above the lowest soil level.
- (B) Test drill the main foundation wall behind any porch or slab area to determine if the porch or slab is supported by a wall whose placement creates a void between itself and the main foundation wall. If test reveals that a void exists, drill and treat all voids therein as specified in this Rule.
- (7) Where evidence of either past or present subterranean termite infestation exists, drill and treat all voids in all multiple masonry pillars, pilasters, chimneys, and step buttresses associated or in contact with such evidence and any void created by their placement. Drill as follows:
- (A) The distance between drill holes shall not exceed 16 lineal inches and shall be no more than 16 inches above the footing or, for footings deeper than 16 inches, immediately above the lowest soil level.
- (B) Drilling is not required if solid concrete masonry footings of pillars, pilasters, chimneys, or step buttresses extend eight inches or more above the soil surface.
- (8) Where concrete slabs over dirt-filled areas are at the level of, above the level of, or in contact

with wood foundation members, treat dirt-filled areas with a termiticide as follows:

- (A) Drill vertically three-eighths of one inch or larger holes in the slab, no more than six inches from the building foundation at no more than 12-inch intervals, and treat soil below slab from the bottom of the slab to the top of the footing; or
  - (B) Drill horizontally three-eighths of one inch or larger holes in the foundation wall of the concrete slab, no more than six inches from the building foundation every 16 vertical inches starting immediately below the bottom of the slab, and rod treat all soil adjacent to building foundation from the bottom of the slab to the lowest outside grade.
- (9) Trench or trench and rod treat soil to establish a continuous termiticide barrier in the soil adjacent to, but not more than six inches from:
- (A) all pillars, pilasters, chimneys, pressure-treated wood supports, and step buttresses;
  - (B) inside of foundation walls;
  - (C) outside of foundation walls; and
  - (D) the outside of foundation walls of concrete slabs over dirt-filled areas, and the entire perimeter of a slab foundation wall from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less.

Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where outside concrete slabs adjacent to the foundation prevent trenching of soil, drill three-eighths of one inch or larger holes, not more than 12 inches apart and within six inches of the foundation wall, through slabs or through adjoining foundation wall, and rod treat soil below slabs as indicated above to establish a continuous termiticide barrier at all known points of entry. The soil immediately around pipes and other utility conduits making contact with the structure shall be treated.

- (10) Where stucco or similar materials, including extruded or expanded rigid foam insulation or similar materials, are installed on wood and extend to or below grade, trench soil to a depth below and under the edge of the stucco or similar materials and treat soil to establish a continuous termiticide barrier in the soil. After the soil has been treated, a masonry barrier wall may be erected to hold back the soil from

making direct contact with the stucco or similar materials. Where outside slabs on grade adjacent to foundation prevent trenching of soil, drill three-eighths of one inch or larger holes through slabs within six inches of the foundation wall or through adjoining foundation wall, not more than 12 inches apart, and rod treat soil below slabs. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.

- (11) The requirements set forth in Paragraph (b) of this Rule shall be followed if applicable to basement or crawl space construction.

(b) The following standards and requirements shall apply to the treatment of a building for subterranean termite control after construction if the building has a slab-on-ground construction:

- (1) Treat soil to establish a continuous termiticide barrier in, under, and around all traps and openings in the slab.
- (2) Drill vertically three-eighths inch or larger holes at all visible or known expansion and construction joints, cracks, and crevices in slab and around all utility conduits in the slab at no more than 12-inch intervals and rod treat soil below slab to establish a continuous termiticide barrier from the bottom of the slab to a depth of 30 inches or to the top of the footing, whichever is less, at all known points of entry. Where wooden structural members are in contact with concrete or masonry floors which have joints or cracks beneath the wooden structural members, including wall plates in utility or storage rooms adjoining the main building, the concrete or masonry shall be drilled and treated in order to achieve treatment of the soil beneath them; however, expansion and construction joints at the perimeter of the exterior wall may be rod treated by drilling through the foundation wall at no more than 12-inch intervals directly below the bottom of the slab.

- (3) The requirements set forth in Paragraph (a) of this Rule shall also be followed, where applicable.

(c) Reapplication of Pesticide(s) to a Structure Previously Treated for Subterranean Termite Control:

- (1) Termiticide shall be reapplied if soil test by the Division reveals that the soil is deficient in the termiticide which was applied to the soil.
- (2) Any reapplication of pesticides under this Rule shall be in accordance with the label of the pesticide used.

(d) A licensee may enter into a written agreement for the control or prevention of subterranean termites in a building after it has been constructed without having to comply with Paragraphs (a) and (b) of this Rule provided that:

- (1) The licensee has written proof that he or she or his or her authorized agent treated the entire building for subterranean termites at the time of its construction as required in 02 NCAC 34 .0505 or 02 NCAC 34 .0506 (or comparable rules in effect at the time of treatment); and
- (2) A written agreement is issued in compliance with 02 NCAC 34 .0605.

(e) Paragraphs (a)(3), (a)(6) through (a)(11) and (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure if the licensee provides a warranty for the control of subterranean termites on the entire structure.

(f) If the licensee uses a termiticide that has been approved by the Committee pursuant to 02 NCAC 34 .0502(a)(2)(B) and the licensee complies with the requirements of that subsection, the licensee shall not be required to comply with 02 NCAC 34 .0503(a)(4) and (a)(6) through (11). For a list of termiticides the Committee has approved under 02 NCAC 34 .0502(a)(2)(B), see <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

*History Note: Authority G.S. 106-65.29;  
Eff. July 1, 1976;  
Readopted Eff. November 22, 1977;  
Amended Eff. August 1, 1980;  
Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987;  
Temporary Repeal Expired Eff. September 22, 1987;  
Amended Eff. January 1, 1989;  
Temporary Amendment Eff. January 10, 1997;  
Temporary Amendment Expired Eff. October 31, 1997;  
Amended Eff. January 1, 2017; July 1, 2010; August 1, 2002; July 1, 1998.*

**02 NCAC 34 .0505 SUBTERRANEAN TERMITE PREVENTION/RES BLDGS UNDER CONST**

(a) All treatments performed pursuant to this Rule shall only be performed at the label recommended rate and concentration.

(b) The following standards and requirements shall apply to the treatment of a building for subterranean termite control during construction if the building has a basement or crawl space:

- (1) Establish a vertical termiticide barrier in the soil by trenching or trenching and rodding along the inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in

a manner that will not introduce termiticide into the drainage system.

- (2) After a building or structure has been completed and the excavation filled and leveled so that the final grade has been reached along the outside of the main foundation wall, establish a vertical termiticide barrier in the soil by trenching or trenching and rodding adjacent to the outside of the main foundation wall with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, gutters, etc., attached to the building. The treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
- (4) Establish a horizontal termiticide barrier in the soil under the entire surface of floor slabs, such as basements, porches, entrance platforms, garages, carports, breezeways, and sun rooms. The treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
- (5) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab or floor or, for crawl space construction, at the point of contact with the soil.
- (6) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 02 NCAC 34 .0503(a) or (b) except that the buyer of the property or his or her authorized agent may release the licensee from further treatment of slab areas under this Rule provided such release is obtained in writing on the Subterranean Termite Sub-Slab Release Form provided by the Division. This form shall contain;
  - (A) the name of the builder;
  - (B) the address of the property;
  - (C) an identification of the slab areas not treated;
  - (D) the name and address of the structural pest control company; and

(E) shall be signed by the company representative and the home buyer.

This form may be obtained by writing the North Carolina Department of Agriculture and Consumer Services, Structural Pest Control and Pesticides Division, 1090 Mail Service Center, Raleigh, NC 27699-1090 or by calling (919) 733-6100.

(c) Slab-on-Ground Construction. The requirements set forth in Paragraph (a) of this Rule shall be followed, as applicable, in treating slab-on-ground construction.

(d) All treating requirements specified in this Rule shall be completed within 60 days following the completion of the structure, as described in Subparagraph (b)(2) of this Rule.

(e) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure if the licensee provides a warranty for the control of subterranean termites on the entire structure.

(f) Paragraphs (b) and (c) of this Rule shall not apply to subterranean termite treatment performed using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure if the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure.

(g) No later than the date of the completion of any treatment performed under this Rule, the licensee or his or her employee shall place a durable sticker/label, no less than three inches square, on the meter base, circuit breaker box, inside surface of kitchen cabinet door, or other readily noticeable location providing the following information:

- (1) The statement: "This structure was treated for the prevention of subterranean termites. A warranty has been issued to the builder. If you did not receive your copy of this warranty at closing, contact your builder or the company below for additional warranty information." in boldface type;
- (2) The name, address, and telephone number of the company performing the treatment; and
- (3) The date of final treatment.

(h) If the licensee uses a termiticide that has been approved by the Committee pursuant to 02 NCAC 34 .0502(a)(2)(B) and the licensee complies with the requirements of that subsection, the licensee shall not be required to comply with 02 NCAC 34 .0505. For a list of termiticides the Committee has approved under 02 NCAC 34.0502(a)(2)(B), see <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

*History Note: Authority G.S. 106-65.29; Eff. July 1, 1976; Readopted Eff. November 22, 1977; Amended Eff. August 1, 1980; Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987; Temporary Repeal Expired Eff. September 22, 1987; Amended Eff. January 1, 2017; July 1, 2004; August 1, 2002; April 1, 2001; July 1, 1998; January 1, 1991; January 1, 1989.*

**02 NCAC 34 .0506 MIN  
REQUIRE/SUBTERRANEAN TERMITE  
PREV/COMMERCIAL BLDGS UNDER CONST**

(a) All treatments performed pursuant to this Rule shall be performed at the label recommended rate and concentration only.  
(b) Minimum Treatment Requirements:

- (1) Establish a vertical termiticide barrier in the soil by trenching or trenching and rodding along the inside of the main foundation wall; the entire perimeter of all multiple masonry chimney bases, pillars, pilasters, and piers; and both sides of partition or inner walls with a termiticide from the top of the grade to the bottom of the footing or a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing but not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (2) After a building or structure has been completed and the excavation filled and leveled so that the final grade has been reached along the outside of the main foundation wall, establish a vertical termiticide barrier in the soil adjacent to the outside of the main foundation wall by trenching or trenching and rodding with a termiticide from the top of the grade to the top of the footing or to a minimum depth of 30 inches, whichever is less. Where footings are exposed, treatment shall be performed adjacent to the footing and not below the bottom of the footing. The trench shall be no less than six inches in depth or to the bottom of the footing, whichever is less. Where drain tile, french drains, or other foundation drainage systems present a hazard of contamination outside the treatment zone, treatment shall be performed in a manner that will not introduce termiticide into the drainage system.
- (3) Establish a horizontal termiticide barrier in the soil within three feet of the main foundation, under slabs, such as patios, walkways, driveways, terraces, and gutters. The treatment shall be performed before slab is poured but after fill material or fill dirt has been spread.
- (4) Establish a vertical termiticide barrier in the soil around all critical areas, such as expansion and construction joints and plumbing and utility conduits, at their point of penetration of the slab of floor, or for crawl space construction, at the point of contact with the soil.

- (5) If concrete slabs are poured prior to treatment, treatment of slabs shall be performed as required by 02 NCAC 34 .0503(a) or (b).

(c) Paragraph (b) of this Rule shall not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure if the licensee provides a warranty for the control of subterranean termites on the entire structure.

(d) Paragraph (b) of this Rule shall not apply to subterranean termite treatments using EPA registered topically applied wood treatment termiticides labeled for the protection of the entire structure and the licensee applies the material according to labeled directions and provides a warranty for the control of subterranean termites on the entire structure. When foundation areas contain no wood or cellulose components and the wood treatment termiticide cannot be applied according to label directions, then applications specified in Paragraph (b) or (c) of this Rule shall be required.

(e) If the licensee uses a termiticide that has been approved by the Committee pursuant to 02 NCAC 34 .0502(a)(2)(B) and the licensee complies with the requirements of that subsection, the licensee shall not be required to comply with 02 NCAC 34 .0506. For a list of termiticides the Committee has approved under 02 NCAC 34 .0502(a)(2)(B), see <http://www.ncagr.gov/SPCAP/structural/documents/TTermiticidesApprovedForUseInNorthCarolinapdf.pdf>.

*History Note: Authority G.S. 106-65.29;*

*Eff. January 1, 1991;*

*Amended Eff. January 1, 2017; August 1, 2002; April 1, 2001; July 1, 1998.*

## **TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **10A NCAC 13B .2102 REPORTING REQUIREMENTS**

(a) The Department shall establish the lists of the statewide 100 most frequently reported DRGs, 20 most common outpatient imaging procedures, and 20 most common outpatient surgical procedures performed in the hospital setting to be used for reporting the data required in Paragraphs (c) through (e) of this Rule. The lists shall be determined annually based upon data provided by the certified statewide data processor. The Department shall make the lists available on its website. The methodology to be used by the certified statewide data processor for determining the lists shall be based on the data collected from all licensed facilities in the State in accordance with G.S. 131E-214.2 as follows:

- (1) the 100 most frequently reported DRGs shall be based upon all hospital's discharge data that has been assigned a DRG based on the Centers for Medicare & Medicaid Services grouper for each patient record, then selecting the top 100 to be provided to the Department;
- (2) the 20 most common imaging procedures shall be based upon all outpatient data for both hospitals and ambulatory surgical facilities and represent all occurrences of the diagnostic

radiology imaging codes section of the CPT codes, then selecting the top 20 to be provided to the Department; and

- (3) the 20 most common outpatient surgical procedures shall be based upon the primary procedure code from the ambulatory surgical facilities and represent all occurrences of the surgical codes section of the CPT codes, then selecting the top 20 to be provided to the Department.

(b) Information required or reported in Paragraphs (a), (c), (d), and (i) of this Rule shall be posted on the Department's website at: <http://www.ncdhhs.gov/dhsr/ahc> and may be accessed at no cost.

(c) In accordance with G.S. 131E-214.13, all licensed hospitals shall report the data required in Paragraph (e) of this Rule related to the statewide 100 most frequently reported DRGs to the certified statewide data processor in a format provided by the certified statewide processor. Commencing with the reporting period ending September 30, 2015, an annual data report shall be submitted that includes all sites operated by the licensed hospital. Each annual report shall be submitted by the due date of January 1.

(d) In accordance with G.S. 131E-214.13, all licensed hospitals shall report the data required in Paragraph (e) of this Rule related to the statewide 20 most common outpatient imaging procedures and the statewide 20 most common outpatient surgical procedures to the certified statewide data processor in a format provided by the certified statewide processor. This report shall include the related primary CPT and HCPCS codes. Commencing with the reporting period ending September 30, 2015, an annual data report shall be submitted that includes all sites operated by the licensed hospital. Each annual report shall be submitted by January 1.

(e) The reports as described in Paragraphs (c) and (d) of this Rule shall be specific to each reporting hospital and shall include:

- (1) the average gross charge for each DRG, CPT code, or procedure without a public or private third party payer source;
- (2) the average negotiated settlement on the amount that will be charged for each DRG, CPT code, or procedure as required for patients defined in Subparagraph (e)(1) of this Rule. The average negotiated settlement shall be calculated using the average amount charged all patients eligible for the hospital's financial assistance policy, including self-pay patients;
- (3) the amount of Medicaid reimbursement for each DRG, CPT code, or procedure, including all supplemental payments to and from the hospital;
- (4) the amount of Medicare reimbursement for each DRG, CPT code, or procedure; and
- (5) on behalf of patients who are covered by a Department of Insurance licensed third-party and teachers and State employees, the lowest, average, and highest amount of payments made for each DRG, CPT code, or procedure by each of the hospital's top five largest health insurers.

- (A) each hospital shall determine its five largest health insurers based on the dollar volume of payments received from those insurers;
- (B) the lowest amount of payment shall be reported as the lowest payment from each of the five insurers on the DRG, CPT code, or procedure;
- (C) the average amount of payment shall be reported as the arithmetic average of each of the five health insurers payment amounts;
- (D) the highest amount of payment shall be reported as the highest payment from each of the five insurers on the DRG, CPT code, or procedure; and
- (E) the identity of the top five largest health insurers shall be redacted prior to submission.

(f) The data reported, as defined in Paragraphs (c) through (e) of this Rule, shall reflect the payments received from patients and health insurers for all closed accounts. For the purpose of this Rule, "closed accounts" are patient accounts with a zero balance at the end of the data reporting period.

(g) A minimum of three data elements shall be required for reporting under Paragraphs (c) and (d) of this Rule.

(h) The information submitted in the report shall be in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 45 CFR Part 164.

(i) The Department shall provide the location of each licensed hospital and all specific hospital data reported pursuant to this Rule on its website. Hospitals shall be grouped by category on the website. On each quarterly report, hospitals shall determine one category that most accurately describes the type of facility. The categories are:

- (1) "Academic Medical Center Teaching Hospital," means a hospital as defined in Policy AC-3 of the N.C. State Medical Facilities Plan. The N.C. State Medical Facilities Plan may be accessed at: <http://www.ncdhhs.gov/dhsr/ncsmfp> at no cost.
- (2) "Teaching Hospital," means a hospital that provides medical training to individuals, provided that such educational programs are accredited by the Accreditation Council for Graduated Medical Education to receive graduate medical education funds from the Centers for Medicare & Medicaid Services.
- (3) "Community Hospital," means a general acute hospital that provides diagnostic and medical treatment, either surgical or nonsurgical, to inpatients with a variety of medical conditions, and that may provide outpatient services, anatomical pathology services, diagnostic imaging services, clinical laboratory services, operating room services, and pharmacy services, that is not defined by the categories

listed in this Subparagraph and Subparagraphs (i)(1), (2), or (5) of this Rule.

- (4) "Critical Access Hospital," means a hospital defined in the Centers for Medicare & Medicaid Services' State Operations Manual, Chapter 2 – The Certification Process, 2254D – Requirements for Critical Access Hospitals (Rev. 1, 05-21-04), including all subsequent updates and revisions. The manual may be accessed at the website: [http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap\\_a\\_hospitals.pdf](http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_a_hospitals.pdf) at no cost.

- (5) "Mental Health Hospital," means a hospital providing psychiatric services pursuant to G.S. 131E-176(21).

*History Note: Authority G.S. 131E-214.4; 131E-214.13; Temporary Adoption Eff. December 31, 2014; Eff. September 30, 2015; Temporary Amendment Eff. March 31, 2016; Amended Eff. January 31, 2017.*

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#### **10A NCAC 13C .0206 REPORTING REQUIREMENTS**

(a) The Department shall establish the lists of the statewide 20 most common outpatient imaging procedures and 20 most common outpatient surgical procedures performed in the ambulatory surgical facility setting to be used for reporting the data required in Paragraphs (c) and (d) of this Rule. The lists shall be determined annually based upon data provided by the certified statewide data processor. The Department shall make the lists available on its website. The methodology to be used by the certified statewide data processor for determining the lists shall be based on the data collected from all licensed facilities in the State in accordance with G.S. 131E-214.2 as follows:

- (1) the 20 most common imaging procedures shall be based upon all outpatient data for ambulatory surgical facilities and represent all occurrences of the diagnostic radiology imaging codes section of the CPT codes, then selecting the top 20 to be provided to the Department; and
- (2) the 20 most common outpatient surgical procedures shall be based upon the primary procedure code from the ambulatory surgical facilities and represent all occurrences of the surgical codes section of the CPT codes, then selecting the top 20 to be provided to the Department.

(b) All information required by this Rule shall be posted on the Department's website at: <http://www.ncdhhs.gov/dhsr/ahc> and may be accessed at no cost.

(c) In accordance with G.S. 131E-214.13, all licensed ambulatory surgical facilities shall report the data required in Paragraph (d) of this Rule related to the statewide 20 most common outpatient imaging procedures and the statewide 20 most common outpatient surgical procedures to the certified statewide data processor in a

format provided by the certified statewide processor. This report shall include the related primary CPT and HCPCS codes. Commencing with the reporting period ending September 30, 2015, an annual data report shall be submitted. Each annual report shall be submitted by January 1.

(d) The report as described in Paragraph (c) of this Rule shall be specific to each reporting ambulatory surgical facility and shall include:

- (1) the average gross charge for each CPT code or procedure without a public or private third party payer source;
- (2) the average negotiated settlement on the amount that will be charged for each CPT code or procedure as required for patients defined in Subparagraph (d)(1) of this Rule. The average negotiated settlement shall be calculated using the average amount charged all patients eligible for the facility's financial assistance policy, including self-pay patients;
- (3) the amount of Medicaid reimbursement for each CPT code or procedure, including all supplemental payments to and from the ambulatory surgical facility;
- (4) the amount of Medicare reimbursement for each CPT code or procedure; and
- (5) on behalf of patients who are covered by a Department of Insurance licensed third-party and teachers and State employees, the lowest, average, and highest amount of payments made for each CPT code or procedure by each of the facility's top five largest health insurers.
  - (A) each ambulatory surgical facility shall determine its five largest health insurers based on the dollar volume of payments received from those insurers;
  - (B) the lowest amount of payment shall be reported as the lowest payment from each of the five insurers on the CPT code or procedure;
  - (C) the average amount of payment shall be reported as the arithmetic average of each of the five health insurers payment amounts;
  - (D) the highest amount of payment shall be reported as the highest payment from each of the five insurers on the CPT code or procedure; and
  - (E) the identity of the top five largest health insurers shall be redacted prior to submission.

(e) The data reported, as defined in Paragraphs (c) and (d) of this Rule, shall reflect the payments received from patients and health insurers for all closed accounts. For the purpose of this Rule, "closed accounts" are patient accounts with a zero balance at the end of the data reporting period.

(f) A minimum of three data elements shall be required for reporting under Paragraph (c) of this Rule.

(g) The information submitted in the report shall be in compliance with the federal Health Insurance Portability and Accountability Act of 45 CFR Part 164.

(h) The Department shall provide all specific ambulatory surgical facility data reported pursuant to this Rule on its website.

*History Note: Authority G.S. 131E-147.1; 131E-214.4; 131E-214.13;*

*Temporary Adoption Eff. December 31, 2014;*

*Eff. September 30, 2015;*

*Temporary Amendment Eff. March 31, 2016;*

*Amended Eff. January 31, 2017.*

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#### 10A NCAC 13P .0101 ABBREVIATIONS

As used in this Subchapter, the following abbreviations mean:

- (1) ACS: American College of Surgeons;
- (2) AEMT: Advanced Emergency Medical Technician;
- (3) AHA: American Heart Association;
- (4) ASTM: American Society for Testing and Materials;
- (5) CAAHEP: Commission on Accreditation of Allied Health Education Programs;
- (6) CPR: Cardiopulmonary Resuscitation;
- (7) ED: Emergency Department;
- (8) EMD: Emergency Medical Dispatcher;
- (9) EMR: Emergency Medical Responder;
- (10) EMS: Emergency Medical Services;
- (11) EMS-NP: EMS Nurse Practitioner;
- (12) EMS-PA: EMS Physician Assistant;
- (13) EMT: Emergency Medical Technician;
- (14) FAA: Federal Aviation Administration;
- (15) FAR: Federal Aviation Regulation;
- (16) FCC: Federal Communications Commission;
- (17) GCS: Glasgow Coma Scale;
- (18) ICD: International Classification of Diseases;
- (19) ISS: Injury Severity Score;
- (20) ICU: Intensive Care Unit;
- (21) IV: Intravenous;
- (22) LPN: Licensed Practical Nurse;
- (23) MICN: Mobile Intensive Care Nurse;
- (24) NHTSA: National Highway Traffic Safety Administration;
- (25) OEMS: Office of Emergency Medical Services;
- (26) OR: Operating Room;
- (27) PSAP: Public Safety Answering Point;
- (28) RAC: Regional Advisory Committee;
- (29) RFP: Request For Proposal;
- (30) RN: Registered Nurse;
- (31) SCTP: Specialty Care Transport Program;
- (32) SMARTT: State Medical Asset and Resource Tracking Tool;
- (33) STEMI: ST Elevation Myocardial Infarction;
- (34) TR: Trauma Registrar;
- (35) TPM: Trauma Program Manager; and
- (36) US DOT: United States Department of Transportation.

*History Note: Authority G.S. 143-508(b);  
Temporary Adoption Eff. January 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. January 1, 2009; January 1, 2004;  
Readopted Eff. January 1, 2017.*

#### **10A NCAC 13P .0102 DEFINITIONS**

In addition to the definitions in G.S. 131E-155, the following definitions apply throughout this Subchapter:

- (1) "Affiliated EMS Provider" means the firm, corporation, agency, organization, or association identified to a specific county EMS system as a condition for EMS Provider Licensing as required by Rule .0204(b)(1) of this Subchapter.
- (2) "Affiliated Hospital" means a non-trauma center hospital that is owned by the Trauma Center or there is a contract or other agreement to allow for the acceptance or transfer of the Trauma Center's patient population to the non-trauma center hospital.
- (3) "Affiliate" or "Affiliation" means a reciprocal agreement and association that includes active participation, collaboration, and involvement in a process or system between two or more parties.
- (4) "Alternative Practice Setting" means a clinical environment that may not be affiliated with or under the oversight of the EMS System or EMS System Medical Director.
- (5) "Air Medical Ambulance" means an aircraft configured and medically equipped to transport patients by air. The patient care compartment of air medical ambulances shall be staffed by medical crew members approved for the mission by the Medical Director.
- (6) "Air Medical Program" means a SCTP or EMS System utilizing rotary-wing or fixed-wing aircraft configured and operated to transport patients.
- (7) "Assistant Medical Director" means a physician, EMS-PA, or EMS-NP who assists the Medical Director with the medical aspects of the management of an EMS System or SCTP.
- (8) "Bypass" means a decision made by the patient care technician to transport a patient from the scene of an accident or medical emergency past a receiving facility for the purposes of accessing a facility with a higher level of care, or a hospital of its own volition reroutes a patient from the scene of an accident or medical emergency or referring hospital to a facility with a higher level of care.
- (9) "Contingencies" mean conditions placed on a designation that, if unmet, may result in the loss or amendment of a designation.
- (10) "Convalescent Ambulance" means an ambulance used on a scheduled basis solely to transport patients having a known non-emergency medical condition. Convalescent ambulances shall not be used in place of any other category of ambulance defined in this Subchapter.
- (11) "Deficiency" means the failure to meet essential criteria for a designation that can serve as the basis for a focused review or denial of a designation.
- (12) "Department" means the North Carolina Department of Health and Human Services.
- (13) "Diversion" means the hospital is unable to accept a patient due to a lack of staffing or resources.
- (14) "Educational Medical Advisor" means the physician responsible for overseeing the medical aspects of approved EMS educational programs.
- (15) "EMS Care" means all services provided within each EMS System by its affiliated EMS agencies and personnel that relate to the dispatch, response, treatment, and disposition of any patient.
- (16) "EMS Educational Institution" means any agency credentialed by the OEMS to offer EMS educational programs.
- (17) "EMS Non-Transporting Vehicle" means a motor vehicle operated by a licensed EMS provider dedicated and equipped to move medical equipment and EMS personnel functioning within the scope of practice of an AEMT or Paramedic to the scene of a request for assistance. EMS nontransporting vehicles shall not be used for the transportation of patients on the streets, highways, waterways, or airways of the state.
- (18) "EMS Peer Review Committee" means a committee as defined in G.S. 131E-155(6b).
- (19) "EMS Performance Improvement Self-Tracking and Assessment of Targeted Statistics" means one or more reports generated from the State EMS data system analyzing the EMS service delivery, personnel performance, and patient care provided by an EMS system and its associated EMS agencies and personnel. Each EMS Performance Improvement Self-Tracking and Assessment of Targeted Statistics focuses on a topic of care such as trauma, cardiac arrest, EMS response times, stroke, STEMI (heart attack), and pediatric care.
- (20) "EMS Provider" means those entities defined in G.S. 131E-155(13a) that hold a current license issued by the Department pursuant to G.S. 131E-155.1.
- (21) "EMS System" means a coordinated arrangement of local resources under the authority of the county government (including



- all agencies, personnel, equipment, and facilities) organized to respond to medical emergencies and integrated with other health care providers and networks including public health, community health monitoring activities, and special needs populations.
- (22) "Essential Criteria" means those items that are the requirements for the respective level of trauma center designation (I, II, or III), as set forth in Rule .0901 of this Subchapter.
- (23) "Focused Review" means an evaluation by the OEMS of corrective actions to remove contingencies that are a result of deficiencies following a site visit.
- (24) "Ground Ambulance" means an ambulance used to transport patients with traumatic or medical conditions or patients for whom the need for specialty care or emergency or non-emergency medical care is anticipated either at the patient location or during transport.
- (25) "Hospital" means a licensed facility as defined in G.S. 131E-176.
- (26) "Immediately Available" means the physical presence of the health professional or the hospital resource within the trauma center to evaluate and care for the trauma patient.
- (27) "Inclusive Trauma System" means an organized, multi-disciplinary, evidence-based approach to provide quality care and to improve measurable outcomes for all defined injured patients. EMS, hospitals, other health systems, and clinicians shall participate in a structured manner through leadership, advocacy, injury prevention, education, clinical care, performance improvement, and research resulting in integrated trauma care.
- (28) "Infectious Disease Control Policy" means a written policy describing how the EMS system will protect and prevent its patients and EMS professionals from exposure and illness associated with contagions and infectious disease.
- (29) "Lead RAC Agency" means the agency (comprised of one or more Level I or II trauma centers) that provides staff support and serves as the coordinating entity for trauma planning.
- (30) "Level I Trauma Center" means a hospital that has the capability of providing guidance, research, and total care for every aspect of injury from prevention to rehabilitation.
- (31) "Level II Trauma Center" means a hospital that provides trauma care regardless of the severity of the injury but may lack the comprehensive care as a Level I trauma center and does not have trauma research as a primary objective.
- (32) "Level III Trauma Center" means a hospital that provides assessment, resuscitation, emergency operations, and stabilization, and arranges for hospital transfer as needed to a Level I or II trauma center.
- (33) "Licensed Health Care Facility" means any health care facility or hospital licensed by the Department of Health and Human Services, Division of Health Service Regulation.
- (34) "Medical Crew Member" means EMS personnel or other health care professionals who are licensed or registered in North Carolina and are affiliated with a SCTP.
- (35) "Medical Director" means the physician responsible for the medical aspects of the management of an EMS System, Alternative Practice Setting, SCTP, or Trauma Center.
- (36) "Medical Oversight" means the responsibility for the management and accountability of the medical care aspects of an EMS System, Alternative Practice Setting, or SCTP. Medical Oversight includes physician direction of the initial education and continuing education of EMS personnel or medical crew members; development and monitoring of both operational and treatment protocols; evaluation of the medical care rendered by EMS personnel or medical crew members; participation in system or program evaluation; and directing, by two-way voice communications, the medical care rendered by the EMS personnel or medical crew members.
- (37) "Off-line Medical Control" means medical supervision provided through the EMS System Medical Director or SCTP Medical Director who is responsible for the day-to-day medical care provided by EMS personnel. This includes EMS personnel education, protocol development, quality management, peer review activities, and EMS administrative responsibilities related to assurance of quality medical care.
- (38) "Office of Emergency Medical Services" means a section of the Division of Health Service Regulation of the North Carolina Department of Health and Human Services located at 1201 Umstead Drive, Raleigh, North Carolina 27603.
- (39) "On-line Medical Control" means the medical supervision or oversight provided to EMS personnel through direct communication in-person, via radio, cellular phone, or other communication device during the time the patient is under the care of an EMS professional.
- (40) "Operational Protocols" means the administrative policies and procedures of an EMS System or that provide guidance for the day-to-day operation of the system.
- (41) "Participating Hospital" means a hospital that supplements care within a larger trauma system by the initial evaluation and assessment of

- injured patients for transfer to a designated trauma center if needed.
- (42) "Physician" means a medical or osteopathic doctor licensed by the North Carolina Medical Board to practice medicine in the state of North Carolina.
- (43) "Regional Advisory Committee" means a committee comprised of a lead RAC agency and a group representing trauma care providers and the community, for the purpose of regional trauma planning, establishing, and maintaining a coordinated trauma system.
- (44) "Request for Proposal" means a State document that must be completed by each hospital seeking initial or renewal trauma center designation.
- (45) "Significant Failure to Comply" means a degree of non-compliance determined by the OEMS during compliance monitoring to exceed the ability of the local EMS System to correct, warranting enforcement action pursuant to Section .1500 of this Subchapter.
- (46) "State Medical Asset and Resource Tracking Tool" means the Internet web-based program used by the OEMS both daily in its operations and during times of disaster to identify, record and monitor EMS, hospital, health care and sheltering resources statewide, including facilities, personnel, vehicles, equipment, pharmaceutical and supply caches.
- (47) "Specialty Care Transport Program" means a program designed and operated for the transportation of a patient by ground or air requiring specialized interventions, monitoring and staffing by a paramedic who has received additional training as determined by the program Medical Director beyond the minimum training prescribed by the OEMS, or by one or more other healthcare professional(s) qualified for the provision of specialized care based on the patient's condition.
- (48) "Specialty Care Transport Program Continuing Education Coordinator" means a Level I EMS Instructor within a SCTP who is responsible for the coordination of EMS continuing education programs for EMS personnel within the program.
- (49) "Stretcher" means any wheeled or portable device capable of transporting a person in a recumbent position and may only be used in an ambulance vehicle permitted by the Department.
- (50) "Stroke" means an acute cerebrovascular hemorrhage or occlusion resulting in a neurologic deficit.
- (51) "System Continuing Education Coordinator" means the Level I EMS Instructor designated by the local EMS System who is responsible for the coordination of EMS continuing education programs.
- (52) "System Data" means all information required for daily electronic submission to the OEMS by all EMS Systems using the EMS data set, data dictionary, and file format as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated herein by reference including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost and online at [www.ncems.org](http://www.ncems.org) at no cost.
- (53) "Trauma Center" means a hospital designated by the State of North Carolina and distinguished by its ability to manage, on a 24-hour basis, the severely injured patient or those at risk for severe injury.
- (54) "Trauma Center Criteria" means essential criteria to define Level I, II, or III trauma centers.
- (55) "Trauma Center Designation" means a process of approval in which a hospital voluntarily seeks to have its trauma care capabilities and performance evaluated by experienced on-site reviewers.
- (56) "Trauma Diversion" means a trauma center of its own volition declines to accept an acutely injured patient due to a lack of staffing or resources.
- (57) "Trauma Guidelines" mean standards for practice in a variety of situations within the trauma system.
- (58) "Trauma Minimum Data Set" means the basic data required of all hospitals for submission to the Trauma Registry.
- (59) "Trauma Patient" means any patient with an ICD-CM discharge diagnosis as defined in the "North Carolina Trauma Registry Data Dictionary," incorporated herein by reference in accordance with G.S.150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost and online at <https://www.ncdhhs.gov/dhsr/EMS/trauma/traumaregistry.html> at no cost.
- (60) "Trauma Program" means an administrative entity that includes the trauma service and coordinates other trauma-related activities. It shall also include the trauma Medical Director, trauma program manager/trauma coordinator, and trauma registrar. This program's reporting structure shall give it the ability to interact with at least equal authority with other departments in the hospital providing patient care.
- (61) "Trauma Registry" means a disease-specific data collection composed of a file of uniform

- data elements that describe the injury event, demographics, pre-hospital information, diagnosis, care, outcomes, and costs of treatment for injured patients collected and electronically submitted as defined by the OEMS. The elements of the Trauma Registry can be accessed at <https://www.ncdhhs.gov/dhsr/EMS/trauma/traumaregistry.html> at no cost.
- (62) "Treatment Protocols" means a document approved by the Medical Directors of the local EMS System, Specialty Care Transport Program, Alternative Practice Setting, or Trauma Center and the OEMS specifying the diagnostic procedures, treatment procedures, medication administration, and patient-care-related policies that shall be completed by EMS personnel or medical crew members based upon the assessment of a patient.
- (63) "Triage" means the assessment and categorization of a patient to determine the level of EMS and healthcare facility based care required.
- (64) "Water Ambulance" means a watercraft specifically configured and medically equipped to transport patients.
- (4) Rule .0301(a)(4) of this Subchapter, and ambulance transport within the system;
- (5) at least one licensed EMS Provider;
- (6) a listing of permitted ambulances to provide coverage to the service area 24 hours a day, seven days a week;
- (7) personnel credentialed to perform within the scope of practice of the system and to staff the ambulance vehicles as required by G.S. 131E-158. There shall be a written plan for the use of credentialed EMS personnel for all practice settings used within the system;
- (8) written policies and procedures specific to the utilization of the EMS System's EMS Care data for the daily and on-going management of all EMS System resources;
- (9) a written Infectious Disease Control Policy as defined in Rule .0102(28) of this Subchapter and written procedures that are approved by the EMS System Medical Director that address the cleansing and disinfecting of vehicles and equipment that are used to treat or transport patients;
- (10) a listing of resources that will provide online medical direction for all EMS Providers operating within the EMS System;
- (11) an EMS communication system that provides for:

*History Note: Authority G.S. 131E-155(6b); 131E-162; 143-508(b), 143-508(d)(1); 143-508(d)(2); 143-508(d)(3); 143-508(d)(4); 143-508(d)(5); 143-508(d)(6); 143-508(d)(7); 143-508(d)(8); 143-508(d)(13); 143-518(a)(5);*

*Temporary Adoption Eff. January 1, 2002;*

*Eff. April 1, 2003;*

*Amended Eff. March 3, 2009 pursuant to E.O. 9, Beverly Perdue, March 3, 2009;*

*Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule;*

*Readopted Eff. January 1, 2017.*

#### **10A NCAC 13P .0201 EMS SYSTEM REQUIREMENTS**

(a) County governments shall establish EMS Systems. Each EMS System shall have:

- (1) a defined geographical service area for the EMS System. The minimum service area for an EMS System shall be one county. There may be multiple EMS Provider service areas within an EMS System. The highest level of care offered within any EMS Provider service area shall be available to the citizens within that service area 24 hours a day, seven days a week;
- (2) a defined scope of practice for all EMS personnel functioning in the EMS System within the parameters set forth by the North Carolina Medical Board pursuant to G.S. 143-514;
- (3) written policies and procedures describing the dispatch, coordination, and oversight of all responders that provide EMS care, specialty patient care skills, and procedures as set forth in
- (A) public access to emergency services by dialing 9-1-1 within the public dial telephone network as the primary method for the public to request emergency assistance. This number shall be connected to the PSAP with immediate assistance available such that no caller will be instructed to hang up the telephone and dial another telephone number. A person calling for emergency assistance shall not be required to speak with more than two persons to request emergency medical assistance;
- (B) a PSAP operated by public safety telecommunicators with training in the management of calls for medical assistance available 24 hours a day, seven days a week;
- (C) dispatch of the most appropriate emergency medical response unit or units to any caller's request for assistance. The dispatch of all response vehicles shall be in accordance with a written EMS System plan for the management and deployment of response vehicles including requests for mutual aid; and
- (D) two-way radio voice communications from within the defined service area to the PSAP and to facilities where

- patients are transported. The PSAP shall maintain all required FCC radio licenses or authorizations;
- (11) written policies and procedures for addressing the use of SCTP and Air Medical Programs resources utilized within the system;
  - (12) a written continuing education program for all credentialed EMS personnel, under the direction of a System Continuing Education Coordinator, developed and modified based on feedback from EMS Care system data, review, and evaluation of patient outcomes and quality management peer reviews, that follows the criteria set forth in Rule .0501 of this Subchapter;
  - (13) written policies and procedures to address management of the EMS System that includes:
    - (A) triage and transport of all acutely ill and injured patients with time-dependent or other specialized care issues including trauma, stroke, STEMI, burn, and pediatric patients that may require the by-pass of other licensed health care facilities and that are based upon the expanded clinical capabilities of the selected healthcare facilities;
    - (B) triage and transport of patients to facilities outside of the system;
    - (C) arrangements for transporting patients to identified facilities when diversion or bypass plans are activated;
    - (D) reporting, monitoring, and establishing standards for system response times using system data;
    - (E) weekly updating of the SMARTT EMS Provider information;
    - (F) a disaster plan;
    - (G) a mass-gathering plan;
    - (H) a mass-casualty plan;
    - (I) a weapons plan for any weapon as set forth in Rule .0216 of this Section;
    - (J) a plan on how EMS personnel shall report suspected child abuse pursuant to G.S. 7B-301;
    - (K) a plan on how EMS personnel shall report suspected abuse of the disabled pursuant to G.S. 108A-102; and
    - (L) a plan on how each responding agency is to maintain a current roster of its personnel providing EMS care within the county under the provider number issued pursuant to Paragraph (c) of this Rule, in the OEMS credentialing and information database;
  - (14) affiliation as defined in Rule .0102(3) of this Subchapter with a trauma RAC as required by Rule .1101(b) of this Subchapter; and
  - (15) medical oversight as required by Section .0400 of this Subchapter.
- (b) Each EMS System that utilizes emergency medical dispatching agencies applying the principles of EMD or offering EMD services, procedures, or programs to the public shall have:
    - (1) a defined service area for each agency;
    - (2) appropriate personnel within each agency, credentialed in accordance with the requirements set forth in Section .0500 of this Subchapter, to ensure EMD services to the citizens within that service area are available 24 hours per day, seven days a week; and
    - (3) EMD responsibilities in special situations, such as disasters, mass-casualty incidents, or situations requiring referral to specialty hotlines.
  - (c) The EMS System shall obtain provider numbers from the OEMS for each entity that provides EMS Care within the county.
  - (d) An application to establish an EMS System shall be submitted by the county to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The proposal shall demonstrate that the system meets the requirements in Paragraph (a) of this Rule. System approval shall be granted for a period of six years. Systems shall apply to OEMS for reapproval no more than 90 days prior to expiration.

*History Note: Authority G.S. 131E-155(1); 131E-155(6); 131E-155(7); 131E-155(8); 131E-155(9); 131E-155(13a); 131E-155(15); 143-508(b); 143-508(d)(1); 143-508(d)(2); 143-508(d)(3); 143-508(d)(5); 143-508(d)(8); 143-508(d)(9); 143-508(d)(10); 143-508(d)(13); 143-517; 143-518;*  
*Temporary Adoption Eff. January 1, 2002;*  
*Eff. August 1, 2004;*  
*Amended Eff. January 1, 2009;*  
*Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0209 AIR MEDICAL AMBULANCE:  
VEHICLE AND EQUIPMENT REQUIREMENTS**

To be permitted as an Air Medical Ambulance, an aircraft shall meet the following requirements:

- (1) configuration of the aircraft patient care compartment does not compromise the ability to provide care or prevent performing in-flight emergency patient care procedures as approved by the program Medical Director;
- (2) the aircraft has on-board patient care equipment and supplies as defined in the treatment protocols for the program written by the Medical Director and approved by the OEMS. The equipment and supplies shall be clean, in working order, and secured in the aircraft;
- (3) there is installed in the rotary-wing aircraft an internal voice communication system to allow for communication between the medical and flight crew;
- (4) the program Medical Director designates the combination of medical equipment specified in Item (2) of this Rule that is carried on a mission based on anticipated patient care needs;

- (5) the name of the EMS Provider is permanently displayed on each side of the aircraft;
- (6) the rotary-wing aircraft is equipped with a two-way voice radio licensed by the FCC capable of operation on any frequency required to allow communications with public safety agencies such as fire departments, police departments, ambulance and rescue units, hospitals, and local government agencies, within the service area;
- (7) in addition to equipment required by applicable air worthiness certificates and Federal Aviation Regulations 14 CFR Part 91 and Part 135 which are herein incorporated by reference, including all subsequent amendments and editions, any rotary-wing aircraft permitted shall have the following functioning equipment to help ensure the safety of patients, crew members, and ground personnel, patient comfort, and medical care:
  - (a) Global Positioning System;
  - (b) an external search light that can be operated from inside the aircraft;
  - (c) survival gear appropriate for the service area and the number, age, and type of patients; and
  - (d) permanently installed environmental control unit (ECU) capable of both heating and cooling the patient compartment of the aircraft;
- (8) the availability of one pediatric restraint device to safely transport pediatric patients and children under 40 pounds in the patient compartment of the air medical ambulance;
- (9) the aircraft has no structural or functional defects that may adversely affect the patient, or the EMS personnel; and
- (10) a copy of the patient care treatment protocols set forth in Rules .0405 and .0406 of this Subchapter, either paper or electronic, carried aboard the aircraft.

*History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004; Amended Eff. March 3, 2009 pursuant to E.O. 9, Beverly Perdue, March 3, 2009; Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

**10A NCAC 13P .0214 EMS NON-TRANSPORTING VEHICLE PERMIT CONDITIONS**

- (a) A licensed EMS provider shall apply to the OEMS for an EMS non-transporting Vehicle Permit prior to placing such vehicle in service.

- (b) The OEMS shall issue a permit for a vehicle following verification of compliance with applicable laws and rules.
- (c) Only one EMS Non-transporting Vehicle Permit shall be issued for each vehicle.
- (d) EMS Non-transporting Vehicle Permits shall not be transferred.
- (e) The EMS Non-transporting Vehicle Permit shall be posted on the vehicle by the OEMS inspector.
- (f) Vehicles that are not owned or leased by the licensed EMS Provider are ineligible for permitting.

*History Note: Authority G.S. 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2009; January 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

**10A NCAC 13P .0216 WEAPONS AND EXPLOSIVES FORBIDDEN**

- (a) Weapons, whether lethal or non-lethal, and explosives shall not be worn or carried aboard an ambulance or EMS non-transporting vehicle within the State of North Carolina when the vehicle is operating in any patient treatment or transport capacity or is available for such function.
- (b) Conducted electrical weapons and chemical irritants such as mace, pepper (oleoresin capsicum) spray, and tear gas shall be considered weapons for the purpose of this Rule.
- (c) This Rule shall apply whether or not such weapons and explosives are concealed or visible.
- (d) If any weapon is found to be in the possession of a patient or person accompanying the patient during transportation, the weapon shall be safely secured in accordance with the weapons policy as set forth in Rule .0201(a)(13)(I) of this Section.
- (e) Weapons authorized for use by EMS personnel attached to a law enforcement tactical team in accordance with the weapons policy as set forth in Rule .0201(a)(13)(I) of this Section may be secured in a locked, dedicated compartment or gun safe mounted within the ambulance or non-transporting vehicle for use when dispatched in support of the law enforcement tactical team, but are not to be worn or carried open or concealed by any EMS personnel in the performance of normal EMS duties under any circumstances.
- (f) This Rule shall not apply to duly appointed law enforcement officers.
- (g) Safety flares are authorized for use on an ambulance with the following restrictions:
  - (1) these devices are not stored inside the patient compartment of the ambulance; and
  - (2) these devices shall be packaged and stored so as to prevent accidental discharge or ignition.

*History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0219 STAFFING FOR MEDICAL AMBULANCE/EVACUATION BUS VEHICLES**

Medical Ambulance/Evacuation Bus Vehicles are exempt from the requirements of G.S. 131E-158(a). The EMS System Medical Director, as set forth in Rule .0403(8) of this Subchapter, shall determine the combination and number of EMT, AEMT, or Paramedic personnel that are sufficient to manage the anticipated number and severity of injury or illness of the patients transported in the Medical Ambulance/Evacuation Bus Vehicle.

*History Note:* Authority G.S. 131E-158(b);

*Eff.* July 1, 2011;

*Readopted Eff.* January 1, 2017.

**10A NCAC 13P .0221 PATIENT TRANSPORTATION BETWEEN HOSPITALS**

(a) For the purpose of this Rule, hospital means those facilities as defined in Rule .0102(25) of this Subchapter.

(b) Every ground ambulance when transporting a patient between hospitals shall be occupied by all of the following:

- (1) one person who holds a credential issued by the OEMS as an emergency medical responder or higher who is responsible for the operation of the vehicle and rendering assistance to the patient caregiver when needed; and
- (2) at least one of the following individuals as determined by the transferring physician to manage the anticipated severity of injury or illness of the patient who is responsible for the medical aspects of the mission:
  - (A) emergency medical technician;
  - (B) advanced EMT;
  - (C) paramedic;
  - (D) nurse practitioner;
  - (E) physician;
  - (F) physician assistant;
  - (G) registered nurse; or
  - (H) respiratory therapist.

(c) Information shall be provided to the OEMS by the licensed EMS provider in the application:

- (1) describing the intended staffing pursuant to Rule .0204(a)(3) of this Section; and
- (2) showing authorization pursuant to Rule .0204(a)(4) of this Section by the county where the EMS provider license is issued to use the staffing in Paragraph (b) of this Rule.

(d) Ambulances used for patient transports between hospitals shall contain all medical equipment, supplies, and medications approved by the Medical Director, based upon the NCCEP treatment protocol guidelines. These protocol guidelines set forth in Rules .0405 and .0406 of this Subchapter are available online at no cost at [www.ncoems.org](http://www.ncoems.org).

*History Note:* Authority G.S. 131E-155.1; 131E-158(b); 143-508(d)(1); 143-508(d)(8);

*Eff.* July 1, 2012;

*Readopted Eff.* January 1, 2017.

**10A NCAC 13P .0222 TRANSPORT OF STRETCHER BOUND PATIENTS**

(a) Any person transported on a stretcher as defined in Rule .0102(49) of this Subchapter meets the definition of patient as defined in G.S. 131E-155(16).

(b) Stretchers may only be utilized for patient transport in an ambulance permitted by the OEMS in accordance with G.S. 131E-156 and Rule .0211 of this Section.

(c) The Medical Care Commission exempts wheeled chair devices used solely for the transportation of mobility impaired persons in non-permitted vehicles from the definition of stretcher.

*History Note:* Authority G.S. 131E-156; 131E-157; 143-508(d)(8);

*Eff.* January 1, 2017.

**10A NCAC 13P .0223 REQUIRED DISCLOSURE AND REPORTING INFORMATION**

(a) Applicants for initial and renewal EMS Provider licensing shall disclose the following background information:

- (1) any prior name(s) used for providing emergency medical services in North Carolina or any other state;
- (2) any felony criminal charges and convictions, under Federal or State law, and any civil actions taken against the applicant or any of its owners or officers in North Carolina or any other state;
- (3) any misdemeanor or felony conviction, under Federal or State law, relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance;
- (4) any misdemeanor or felony conviction, under Federal or State law, related to theft, fraud, embezzlement, breach of fiduciary duty, or other financial misconduct in connection with the delivery of EMS care or service;
- (5) any current or prior investigations, including outcomes, for alleged Medicare, Medicaid, or other insurance fraud, tax evasion, and fraud;
- (6) any revocation or suspension of accreditation; and
- (7) any revocation or suspension by any State licensing authority of a license to provide EMS.

(b) Within 30 days of occurrence, a licensed EMS provider shall disclose any changes in the information set forth in Paragraph (a) of this Rule that was provided to the OEMS in its most recent application.

*History Note:* Authority G.S. 131E-155.1(c); 131E-159; 143-508(d)(1); 143-508(d)(5);

*Eff.* January 1, 2017.

**10A NCAC 13P .0301 SPECIALTY CARE TRANSPORT PROGRAM CRITERIA**

(a) EMS Providers seeking designation to provide specialty care transports shall submit an application for program approval to the OEMS at least 60 days prior to field implementation. The application shall document that the program has:

- (1) a defined service area that identifies the specific transferring and receiving facilities the program is intended to service;
- (2) written policies and procedures implemented for medical oversight meeting the requirements of Section .0400 of this Subchapter;
- (3) Service available on a 24 hour a day, seven days a week basis;
- (4) the capability to provide the patient care skills and procedures as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection;"
- (5) a written continuing education program for EMS personnel, under the direction of the Specialty Care Transport Program Continuing Education Coordinator, developed and modified based upon feedback from program data, review and evaluation of patient outcomes, and quality management review that follows the criteria set forth in Rule .0501 of this Subchapter;
- (6) a communication system that provides two-way voice communications for transmission of patient information to medical crew members anywhere in the service area of the program. The SCTP Medical Director shall verify that the communications system is satisfactory for on-line medical direction;
- (7) medical crew members that have completed training conducted every six months regarding:
  - (A) operation of the EMS communications system used in the program; and
  - (B) the medical and patient safety equipment specific to the program;
- (8) written operational protocols for the management of equipment, supplies, and medications. These protocols shall include:
  - (A) a listing of all standard medical equipment, supplies, and medications, approved by the Medical Director as sufficient to manage the anticipated number and severity of injury or illness of the patients, for all vehicles used in the program based on the treatment protocols and approved by the OEMS; and
  - (B) a methodology to ensure that each ground vehicle and aircraft contains the required equipment, supplies, and medications on each response; and
- (9) written policies and procedures specifying how EMS Systems will dispatch and utilize the ground ambulances and aircraft operated by the program.

(b) When transporting patients, staffing for the ground ambulance and aircraft used in the SCTP shall be approved by the SCTP Medical Director as medical crew members, using any of the following as determined by the transferring physician who is

responsible for the medical aspects of the mission to manage the anticipated severity of injury or illness of the patient:

- (1) paramedic;
- (2) nurse practitioner;
- (3) physician;
- (4) physician assistant;
- (5) registered nurse; or
- (6) respiratory therapist.

(c) SCTP as defined in Rule .0102(47) of this Subchapter are exempt from the staffing requirements defined in G.S. 131E-158(a).

(d) SCTP approval is valid for a period to coincide with the EMS Provider License that is issued by OEMS and is valid for six years. Programs shall apply to the OEMS for reapproval.

*History Note: Authority G.S. 131E-155.1(b); 131E-158; 143-508;*

*Temporary Adoption Eff. January 1, 2002;*

*Eff. January 1, 2004;*

*Amended Eff. January 1, 2004;*

*Amended Eff. March 3, 2009 pursuant to E.O. 9, Beverly Perdue, March 3, 2009;*

*Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule;*

*Readopted Eff. January 1, 2017.*

#### **10A NCAC 13P .0302 AIR MEDICAL SPECIALTY CARE TRANSPORT PROGRAM CRITERIA FOR LICENSED EMS PROVIDERS USING ROTARY-WING AIRCRAFT**

(a) Air Medical Programs using rotary-wing aircraft shall document that the program has:

- (1) medical crew members that have all completed training regarding:
  - (A) altitude physiology; and
  - (B) the operation of the EMS communications system used in the program;
- (2) written policies and procedures for transporting patients to designated facilities when diversion or bypass plans are activated;
- (3) written policies and procedures specifying how EMS Systems will dispatch and utilize aircraft operated by the program;
- (4) written triage protocols for trauma, stroke, STEMI, burn, and pediatric patients reviewed and approved by the OEMS Medical Director;
- (5) written policies and procedures specifying how EMS Systems will receive the Specialty Care Transport Services offered under the program when the aircraft are unavailable for service; and
- (6) written policies and procedures specifying how mutual aid assistance will be obtained from both in-state and bordering out-of-state air medical programs.

(b) All patient response, re-positioning, and mission flight legs shall be conducted under FAA part 135 regulations.

*History Note: Authority G.S. 143-508;  
Temporary Adoption Eff. January 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. March 3, 2009 pursuant to E.O. 9, Beverly Perdue,  
March 3, 2009;  
Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the  
General Assembly to disapprove this rule;  
Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0403 RESPONSIBILITIES OF THE  
MEDICAL DIRECTOR FOR EMS SYSTEMS**

(a) The Medical Director for an EMS System is responsible for the following:

- (1) ensuring that medical control as set forth in Rule .0401(5) of this Section is available 24 hours a day, seven days a week;
- (2) the establishment, approval, and annual updating of adult and pediatric treatment protocols;
- (3) EMD programs, the establishment, approval, and annual updating of the Emergency Medical Dispatch Priority Reference System;
- (4) medical supervision of the selection, system orientation, continuing education and performance of all EMS personnel;
- (5) medical supervision of a scope of practice performance evaluation for all EMS personnel in the system based on the treatment protocols for the system;
- (6) the medical review of the care provided to patients;
- (7) providing guidance regarding decisions about the equipment, medical supplies, and medications that will be carried on all ambulances and EMS nontransporting vehicles operating within the system;
- (8) determining the combination and number of EMS personnel sufficient to manage the anticipated number and severity of injury or illness of the patients transported in Medical Ambulance/Evacuation Bus Vehicles defined in Rule .0219 of this Subchapter;
- (9) keeping the care provided up-to-date with current medical practice; and
- (10) developing and implementing an orientation plan for all hospitals within the EMS system that use MICN, EMS-NP, or EMS-PA personnel to provide on-line medical direction to EMS personnel. This plan shall include:
  - (A) a discussion of all EMS System treatment protocols and procedures;
  - (B) an explanation of the specific scope of practice for credentialed EMS personnel, as authorized by the approved EMS System treatment protocols required by Rule .0405 of this Section;
  - (C) a discussion of all practice settings within the EMS System and how

- (D) scope of practice may vary in each setting;  
a mechanism to assess the ability to use EMS System communications equipment, including hospital and prehospital devices, EMS communication protocols, and communications contingency plans as related to on-line medical direction; and
- (E) the completion of a scope of practice performance evaluation that verifies competency in Parts (A) through (D) of this Subparagraph and that is administered under the direction of the Medical Director.

(b) Any tasks related to Paragraph (a) of this Rule may be completed, through the Medical Director's written delegation, by assisting physicians, physician assistants, nurse practitioners, registered nurses, EMDs, or paramedics.

(c) The Medical Director may suspend temporarily, pending review, any EMS personnel from further participation in the EMS System when he or she determines that the individual's actions are detrimental to the care of the patient, the individual committed unprofessional conduct, or the individual failed to comply with credentialing requirements. During the review process, the Medical Director may:

- (1) restrict the EMS personnel's scope of practice pending completion of remediation on the identified deficiencies;
- (2) continue the suspension pending completion of remediation on the identified deficiencies; or
- (3) permanently revoke the EMS personnel's participation in the EMS System.

*History Note: Authority G.S. 143-508(b); 143-508(d)(3); 143-508(d)(7);  
Temporary Adoption Eff. January 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. January 1, 2009; January 1, 2004;  
Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0409 EMS PEER REVIEW  
COMMITTEE FOR SPECIALTY CARE TRANSPORT  
PROGRAMS**

(a) The EMS Peer Review Committee for a Specialty Care Transport Program shall:

- (1) be composed of membership as defined in G.S. 131E-155(6b);
- (2) appoint a physician as chairperson;
- (3) meet at least quarterly;
- (4) analyze program data to evaluate the ongoing quality of patient care and medical direction within the program;
- (5) use information gained from program data analysis to make recommendations regarding the content of continuing education programs for medical crew members;



- (6) review adult and pediatric treatment protocols of the Specialty Care Transport Programs and make recommendations to the Medical Director for changes;
- (7) establish and implement a written procedure to guarantee due process reviews for medical crew members temporarily suspended by the Medical Director;
- (8) record and maintain minutes of committee meetings throughout the approval period of the Specialty Care Transport Program;
- (9) establish and implement EMS system performance improvement guidelines that meet or exceed the statewide standard as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection;" and
- (10) adopt written guidelines that address:
  - (A) structure of committee membership;
  - (B) appointment of committee officers;
  - (C) appointment of committee members;
  - (D) length of terms of committee members;
  - (E) frequency of attendance of committee members;
  - (F) establishment of a quorum for conducting business; and
  - (G) confidentiality of medical records and personnel issues.

(b) County government representation is not required for committee membership for approved Air Medical Programs.

*History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004; Amended Eff. March 3, 2009 pursuant to E.O. 9, Beverly Perdue, March 3, 2009; Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

**10A NCAC 13P .0501 EDUCATIONAL PROGRAMS**

- (a) EMS educational programs that qualify credentialed EMS personnel to perform within their scope of practice shall be offered by an EMS educational institution as set forth in Section .0600 of this Subchapter, or by an EMS educational institution in another state where the education and credentialing requirements have been approved for legal recognition by the Department pursuant to G.S. 131E-159 as determined using the professional judgment of OEMS staff following comparison of out-of-state standards with the program standards set forth in this Rule.
- (b) Educational programs approved to qualify EMS personnel for credentialing shall meet the educational content of the "US DOT NHTSA National EMS Education Standards," which is hereby incorporated by reference, including subsequent amendments and

editions. This document is available online at no cost at [www.ems.gov/education.html](http://www.ems.gov/education.html).

(c) Educational programs approved to qualify EMD personnel for credentialing shall conform with the "ASTM F1258 – 95(2006): Standard Practice for Emergency Medical 'Dispatch'" incorporated by reference including subsequent amendments and editions. This document is available from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA, 19428-2959 USA, at a cost of forty dollars (\$40.00) per copy.

(d) Instructional methodology courses approved to qualify Level I EMS instructors shall conform with the "US DOT NHTSA 2002 National Guidelines for Educating EMS Instructors" incorporated by reference including subsequent amendments and additions. This document is available online at no cost at [www.ems.gov/education.html](http://www.ems.gov/education.html).

(e) Continuing educational programs approved by the OEMS to qualify EMS personnel for renewal of credentials shall be approved by demonstrating the ability to assess cognitive competency in the skills and medications for the level of application as defined by the North Carolina Medical Board pursuant to G.S. 143-514.

(f) Refresher courses shall comply with the requirements defined in Rule .0513 of this Section.

*History Note: Authority G.S. 143-508(d)(3); 143-508(d)(4); 143-514;*

*Temporary Adoption Eff. January 1, 2002;*

*Eff. January 1, 2004;*

*Amended Eff. January 1, 2009;*

*Readoption Eff. January 1, 2017.*

**10A NCAC 13P .0502 INITIAL CREDENTIALING REQUIREMENTS FOR EMR, EMT, AEMT, PARAMEDIC, AND EMD**

(a) In order to be credentialed by the OEMS as an EMR, EMT, AEMT, or Paramedic, individuals shall:

- (1) be at least 18 years of age. An examination may be taken at age 17; however, the EMS credential shall not be issued until the applicant has reached the age of 18.
- (2) complete an approved educational program as set forth in Rule .0501(b) of this Section for their level of application.
- (3) complete a scope of practice performance evaluation that uses performance measures based on the cognitive, psychomotor, and affective educational objectives set forth in Rule .0501(b) of this Section and that is consistent with their level of application, and approved by the OEMS. This scope of practice evaluation shall be completed no more than one year prior to examination. This evaluation shall be conducted by a Level I or Level II EMS Instructor credentialed at or above the level of application or under the direction of the primary credentialed EMS instructor or educational medical advisor for the approved educational program.

- (4) within 90 days from their course graded date as reflected in the OEMS credentialing database, complete a written examination administered by the OEMS. If the applicant fails to register and complete a written examination within the 90 day period, the applicant shall obtain a letter of authorization to continue eligibility for testing from his or her EMS Educational Institution's program coordinator to qualify for an extension of the 90 day requirement set forth in this Paragraph. If the EMS Educational Institution's program coordinator declines to provide a letter of authorization, the applicant shall be disqualified from completing the credentialing process. Following a review of the applicant's specific circumstances, OEMS staff will determine, based on professional judgment, if the applicant qualifies for EMS credentialing eligibility. The OEMS shall notify the applicant in writing within 10 business days of the decision.

- (A) a maximum of three attempts within nine months shall be allowed.
- (B) if the individual fails to pass a written examination, the individual may continue eligibility for examination for an additional three attempts within the following nine months by submitting to the OEMS evidence the individual repeated a course-specific scope of practice evaluation as set forth in Subparagraph (a)(3) of this Rule, and evidence of completion of a refresher course as set forth in Rule .0513 of this Section for the level of application; or
- (C) if unable to pass the written examination requirement after six attempts within an 18 month period following course grading date as reflected in the OEMS credentialing database, the educational program shall become invalid and the individual may only become eligible for credentialing by repeating the requirements set forth in Rule .0501 of this Section.

- (5) submit to a criminal background history check as set forth in Rule .0511 of this Section.
- (6) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s).

(b) An individual seeking credentialing as an EMR, EMT, AEMT or Paramedic may qualify for initial credentialing under the legal recognition option set forth in G.S. 131E-159(c).

(c) In order to be credentialed by the OEMS as an EMD, individuals shall:

- (1) be at least 18 years of age;

- (2) complete the educational requirements set forth in Rule .0501(c) of this Section;
- (3) complete, within one year prior to application, an AHA CPR course or a course determined by the OEMS to be equivalent to the AHA CPR course, including infant, child, and adult CPR;
- (4) submit to a criminal background history check as defined in Rule .0511 of this Section;
- (5) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s); and
- (6) possess an EMD nationally recognized credential pursuant to G.S. 131E-159(d).

(d) Pursuant to G.S. 131E-159(h), the Department shall not issue an EMS credential for any person listed on the Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration if committed at a time when registration would have been required by law.

*History Note: Authority G.S. 131E-159(a); 131E-159(b); 131E-159(g); 131E-159(h); 143-508(d)(3); 143B-952; Temporary Adoption Eff. January 1, 2002; Eff. February 1, 2004; Amended Eff. January 1, 2009; Readopted Eff. January 1, 2017.*

#### **10A NCAC 13P .0503 TERM OF CREDENTIALS FOR EMS PERSONNEL**

Credentials for EMS Personnel shall be valid for a period of four years, barring any delay in expiration as set forth in Rule .0504(f) of this Section.

*History Note: Authority G.S. 131E-159(a); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

#### **10A NCAC 13P .0504 RENEWAL OF CREDENTIALS FOR EMR, EMT, AEMT, PARAMEDIC, AND EMD**

(a) EMR, EMT, AEMT, and Paramedic applicants shall renew credentials by meeting the following criteria:

- (1) presenting documentation to the OEMS or an approved EMS educational institution as set forth in Rule .0601 or .0602 of this Subchapter that they have completed an approved educational program as described in Rule .0501(e) or (f) of this Section;
- (2) submit to a criminal background history check as set forth in Rule .0511 of this Section;
- (3) submit evidence of completion of all court conditions resulting from applicable misdemeanor or felony conviction(s); and
- (4) be a resident of North Carolina or affiliated with an EMS provider approved by the Department.

(b) An individual may renew credentials by presenting documentation to the OEMS that he or she holds a valid EMS

credential for his or her level of application issued by the National Registry of Emergency Medical Technicians or by another state where the education and credentialing requirements have been determined by OEMS staff in their professional judgment to be equivalent to the educations and credentialing requirements set forth in this Section.

(c) EMD applicants shall renew credentials by presenting documentation to the OEMS that he or she holds a valid EMD credential issued by a national credentialing agency using the education criteria set forth in Rule .0501(c) of this Section.

(d) Upon request, an EMS professional may renew at a lower credentialing level by meeting the requirements defined in Paragraph (a) of this Rule. To restore the credential held at the higher level, the individual shall meet the requirements set forth in Rule .0512 of this Section.

(e) EMS credentials may not be renewed through a local credentialed institution more than 90 days prior to the date of expiration.

(f) Pursuant to G.S. 150B-3(a), if an applicant makes a timely and sufficient application for renewal, the EMS credential shall not expire until a decision on the credential is made by the Department. If the application is denied, the credential shall remain effective until the last day for applying for judicial review of the Department's order.

(g) Pursuant to G.S. 131E-159(h), the Department shall not renew the EMS credential for any person listed on the North Carolina Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration at a time when registration would have been required by law.

*History Note: Authority G.S. 131E-159(a); 131E-159(g); 131E-159(h); 143-508(d)(3); 143B-952; 150B-3(a); Temporary Adoption Eff. January 1, 2002; Eff. February 1, 2004; Amended Eff. January 1, 2009; Readopted Eff. January 1, 2017.*

#### **10A NCAC 13P .0506 PRACTICE SETTINGS FOR EMS PERSONNEL**

(a) Credentialed EMS Personnel may function in the following practice settings in accordance with the protocols approved by the OEMS and by the Medical Director of the EMS System or Specialty Care Transport Program with which they are affiliated:

- (1) at the location of a physiological or psychological illness or injury, including transportation to a treatment facility if required;
- (2) at public or community health facilities in conjunction with public and community health initiatives;
- (3) in hospitals and clinics;
- (4) in residences, facilities, or other locations as part of wellness or injury prevention initiatives within the community and the public health system; and
- (5) at mass gatherings or special events.

(b) Individuals functioning in an alternative practice setting as defined in Rule .0102(4) of this Subchapter consistent with the

areas identified in Subparagraphs (a)(2) through (a)(4) of this Rule that are not affiliated with an EMS System shall:

- (1) be under the medical oversight of a physician licensed by the North Carolina Medical Board that is associated with the practice setting where the individual will function; and
- (2) be restricted to performing within the scope of practice as defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the individual's level of EMS credential.

(c) Individuals holding a valid EMR or EMT credential that are not affiliated with an approved first responder program or EMS agency and that do not administer medications or utilize advanced airway devices are approved to function as a member of an industrial or corporate first aid safety team without medical oversight or EMS System affiliation.

*History Note: Authority G.S. 143-508(d)(7); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

#### **10A NCAC 13P .0507 CREDENTIALING REQUIREMENTS FOR LEVEL I EMS INSTRUCTORS**

(a) Applicants for credentialing as a Level I EMS Instructor shall:

- (1) be currently credentialed by the OEMS as an EMT, AEMT, or Paramedic;
- (2) have three years experience at the scope of practice for the level of application;
- (3) within one year prior to application, complete an evaluation that demonstrates the applicant's ability to provide didactic and clinical instruction based on the cognitive, psychomotor, and affective educational objectives in Rule .0501(b) of this Section consistent with their level of application and approved by the OEMS:
  - (A) for a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and
  - (B) for a credential to teach at the AEMT or Paramedic levels, this evaluation shall be conducted under the direction of the educational medical advisor, or a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;
- (4) have 100 hours of teaching experience at the level of application in an approved EMS educational program or a program determined by OEMS staff in their professional judgment equivalent to an EMS education program;

- (5) complete an educational program as described in Rule .0501(d) of this Section;
  - (6) within one year prior to application, attend an OEMS Instructor workshop sponsored by the OEMS. A listing of scheduled OEMS Instructor workshops is available from the OEMS at <https://cis.emspic.org/CIS/Go>; and
  - (7) have a high school diploma or General Education Development certificate.
- (b) An individual seeking credentialing for Level I EMS Instructor may qualify for initial credentialing under the legal recognition option defined in G.S. 131E-159(c).
- (c) The credential of a Level I EMS Instructor shall be valid for four years, or less pursuant to G.S. 131E-159(c) unless any of the following occurs:
- (1) the OEMS imposes an administrative action against the instructor credential; or
  - (2) the instructor fails to maintain a current EMT, AEMT, or Paramedic credential at the highest level that the instructor is approved to teach.
- (d) Pursuant to the provisions of G.S. 131E-159(h), the Department shall not issue an EMS credential for any person listed on the Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration if committed at a time when registration would have been required by law.

*History Note: Authority G.S. 131E-159; 143-508(d)(3);  
Temporary Adoption Eff. January 1, 2002;  
Eff. February 1, 2004;  
Amended Eff. January 1, 2009;  
Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0508 CREDENTIALING  
REQUIREMENTS FOR LEVEL II EMS INSTRUCTORS**

- (a) Applicants for credentialing as a Level II EMS Instructor shall:
- (1) be currently credentialed by the OEMS as an EMT, AEMT, or Paramedic;
  - (2) have completed post-secondary level education equal to or exceeding an Associate Degree;
  - (3) within one year prior to application, complete an evaluation that demonstrates the applicant's ability to provide didactic and clinical instruction based on the cognitive, psychomotor, and affective educational objectives in Rule .0501(b) of this Section consistent with their level of application and approved by the OEMS:
    - (A) for a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and
    - (B) for a credential to teach at the AEMT or Paramedic level, this evaluation shall be conducted under the direction of the educational medical advisor, or

- a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;
  - (4) have two years teaching experience as a Level I EMS Instructor at the level of application in an approved EMS educational program or teaching experience determined by OEMS staff in their professional judgment to be equivalent to an EMS Level I education program;
  - (5) complete the "EMS Education Administration Course" conducted by a North Carolina Community College or the National Association of EMS Educators Level II Instructor Course; and
  - (6) within one year prior to application, attend an OEMS Instructor workshop sponsored by the OEMS. A listing of scheduled OEMS Instructor workshops is available from the OEMS at <https://cis.emspic.org/CIS/Go>.
- (b) An individual seeking credentialing for Level II EMS Instructor may qualify for initial credentialing under the legal recognition option defined in G.S. 131E-159(c).
- (c) The credential of a Level II EMS Instructor is valid for four years, or less pursuant to G.S. 131E-159(c) unless any of the following occurs:
- (1) the OEMS imposes an administrative action against the instructor credential; or
  - (2) the instructor fails to maintain a current EMT, AEMT, or Paramedic credential at the highest level that the instructor is approved to teach.
- (d) Pursuant to the provisions of G.S. 131E-159(h) the Department shall not issue an EMS credential for any person listed on the Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration if committed at a time when registration would have been required by law.

*History Note: Authority G.S. 131E-159; 143-508(d)(3);  
Temporary Adoption Eff. January 1, 2002;  
Eff. February 1, 2004;  
Amended Eff. January 1, 2009;  
Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0510 RENEWAL OF CREDENTIALS  
FOR LEVEL I AND LEVEL II EMS INSTRUCTORS**

- (a) Level I and Level II EMS Instructor applicants shall renew credentials by presenting documentation to the OEMS that they:
- (1) are credentialed by the OEMS as an EMT, AEMT or Paramedic;
  - (2) within one year prior to application, complete an evaluation that demonstrates the applicant's ability to provide didactic and clinical instruction based on the cognitive, psychomotor, and affective educational objectives in Rule .0501(b) of this Section consistent with their level of application and approved by the OEMS:

- (A) to renew a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and
- (B) to renew a credential to teach at the AEMT or Paramedic level, this evaluation shall be conducted under the direction of the educational medical advisor, or a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;
- (3) completed 96 hours of EMS instruction at the level of application; and
- (4) completed 24 hours of educational professional development as defined by the educational institution that provides for:
  - (A) enrichment of knowledge;
  - (B) development or change of attitude in students; or
  - (C) acquisition or improvement of skills; and
- (5) within one year prior to renewal application, attend an OEMS Instructor workshop sponsored by the OEMS.

(b) An individual may renew a Level I or Level II EMS Instructor credential under the legal recognition option defined in G.S. 131E-159(c).

(c) The credential of a Level I or Level II EMS Instructor is valid for four years, or less pursuant to G.S. 131E-159(c) unless any of the following occurs:

- (1) the OEMS imposes an administrative action against the instructor credential; or
- (2) the instructor fails to maintain a current EMT, AEMT, or Paramedic credential at the highest level that the instructor is approved to teach.

(d) Pursuant to the provisions of G.S. 131E-159(h), the Department shall not issue an EMS credential for any person listed on the Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration if committed at a time when registration would have been required by law.

*History Note: Authority G.S. 131E-159(a); 131E-159(b); 143-508(d)(3); Eff. February 1, 2004; Amended Eff. February 1, 2009; Readopted Eff. January 1, 2017.*

#### **10A NCAC 13P .0511 CRIMINAL HISTORIES**

(a) The criminal background histories for all individuals who apply for, seek to renew, or hold EMS credentials shall be reviewed pursuant to G.S. 131E-159(g).

(b) In addition to Paragraph (a) of this Rule, the OEMS shall carry out the following for all EMS Personnel whose primary residence is outside North Carolina, individuals who have resided in North Carolina for 60 months or less, and individuals under

investigation by the OEMS who may be subject to administrative enforcement action by the Department under the provisions of Rule .1507 of this Subchapter:

- (1) obtain a signed consent form for a criminal history check;
- (2) obtain fingerprints on an SBI identification card or live scan electronic fingerprinting system at an agency approved by the North Carolina Department of Public Safety;
- (3) obtain the criminal history from the Department of Public Safety; and
- (4) collect any processing fees from the individual identified in Paragraph (a) or (b) of this Rule as required by the Department of Public Safety pursuant to G.S. 143B-952 prior to conducting the criminal history background check.

(c) An individual who makes application for renewal of a current EMS credential or advancement to a higher level EMS credential who has previously submitted a criminal background history required under the criteria contained in Paragraph (b) of this Rule may be exempt from the residency requirements of Paragraph (b) of this Rule if determined by OEMS that no other circumstances warrant another criminal history check as set forth in Paragraph (b) of this Rule.

(d) An individual shall not be eligible for initial or renewal of EMS credentials if the applicant refuses to consent to any criminal history check as required by G.S. 131E-159(g). Since payment is required before the fingerprints may be processed by the Department of Public Safety, failure of the applicant or credentialed EMS personnel to pay the required fee in advance shall be considered a refusal to consent for the purposes of issuance or retention of an EMS credential.

*History Note: Authority G.S. 131E-159(g); 143-508(d)(3); 143-508(10); 143B-952; Eff. January 1, 2009; Amended Eff. January 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

#### **10A NCAC 13P .0512 REINSTATEMENT OF LAPSED EMS CREDENTIAL**

(a) EMS personnel enrolled in an OEMS approved continuing education program as set forth in Rule .0601 of this Subchapter and that was eligible for renewal of an EMS credential prior to expiration, may request the EMS educational institution submit documentation of the continuing education record to the OEMS. OEMS shall renew the EMS credential to be valid for four years from the previous expiration date.

(b) An individual with a lapsed North Carolina EMS credential is eligible for reinstatement through the legal recognition option defined in G.S. 131E-159(c) and Rule .0502 of this Section.

(c) EMR, EMT, AEMT, and Paramedic applicants for reinstatement of an EMS credential, lapsed up to 24 months, shall:

- (1) be ineligible for legal recognition pursuant to G.S. 131E-159(c);
- (2) be a resident of North Carolina or affiliated with a North Carolina EMS Provider;

- (3) at the time of application, present evidence that renewal education requirements were met prior to expiration or complete a refresher course at the level of application taken following expiration of the credential;
  - (4) EMRs and EMTs shall complete an OEMS administered written examination for the individual's level of credential application;
  - (5) undergo a criminal history check performed by the OEMS; and
  - (6) submit evidence of completion of all court conditions resulting from applicable misdemeanor or felony conviction(s).
- (d) EMR and EMT applicants for reinstatement of an EMS credential, lapsed more than 24 months, must:
- (1) be ineligible for legal recognition pursuant to G.S. 131E-159(c); and
  - (2) meet the provisions for initial credentialing set forth in Rule .0502 of this Section.
- (e) AEMT and Paramedic applicants for reinstatement of an EMS credential, lapsed between 24 and 48 months, shall:
- (1) be ineligible for legal recognition pursuant to G.S. 131E-159(c);
  - (2) be a resident of North Carolina or affiliated with a North Carolina EMS Provider;
  - (3) present evidence of completion of a refresher course at the level of application taken following expiration of the credential;
  - (4) complete an OEMS administered written examination for the individuals level of credential application;
  - (5) undergo a criminal history check performed by the OEMS; and
  - (6) submit evidence of completion of all court conditions resulting from applicable misdemeanor or felony conviction(s).
- (f) AEMT and Paramedic applicants for reinstatement of an EMS credential, lapsed more than 48 months, shall:
- (1) be ineligible for legal recognition pursuant to G.S. 131E-159(c); and
  - (2) meet the provisions for initial credentialing set forth in Rule .0502 of this Section.
- (g) EMD applicants shall renew a lapsed credential by meeting the requirements for initial credentialing set forth in Rule .0502 of this Section.
- (h) Pursuant to G.S. 131E-159(h), the Department shall not issue or renew an EMS credential for any person listed on the Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration if committed at a time when registration would have been required by law.

*History Note:* Authority G.S. 131E-159; 143-508(d)(3); 143B-952;  
Eff. January 1, 2017.

#### **10A NCAC 13P .0513 REFRESHER COURSES**

- (a) Approved EMS educational institutions as set forth in Rule .0601 and .0602 of this Subchapter may develop refresher courses for the renewal or reinstatement of EMS credentials.
- (b) The application for OEMS approval of a refresher course shall include:
- (1) course objectives, content outline, and time allocation to topics of the course;
  - (2) teaching methodologies for measuring the student's abilities to perform at his or her level of application; and
  - (3) the method to be used to conduct a technical scope of practice evaluation for students seeking reinstatement of a lapsed EMS credential for their level of application.
- (c) EMR, EMT, AEMT and paramedic refresher courses developed for the renewal or reinstatement of an EMS credential shall meet the following criteria:
- (1) an application for approval of a refresher course shall be completed at least 30 days prior to the expected date of enrollment and shall include evidence of complying with the requirements of Paragraph (b) of this Rule for refresher courses.
    - (A) refresher course approval shall be for a period not to exceed two years; and
    - (B) any changes in curriculum shall be approved by the OEMS prior to implementation.
  - (2) course curricula shall:
    - (A) meet the National Registry of Emergency Medical Technicians' recertification requirements, which is hereby incorporated by reference including subsequent amendments and additions. This document is available from the National Registry of Emergency Medical Technicians, online at [www.nremt.org/rwd/public/document/recertification](http://www.nremt.org/rwd/public/document/recertification) at no cost; and
    - (B) demonstrate the ability to assess student knowledge and competency in the skills and medications as defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the proposed level of EMS credential application.

*History Note:* Authority G.S. 143-508(d)(3); 143B-952;  
Eff. January 1, 2017.

#### **10A NCAC 13P .0601 CONTINUING EDUCATION EMS EDUCATIONAL INSTITUTION REQUIREMENTS**

- (a) Continuing Education EMS Educational Institutions shall be credentialed by the OEMS to provide EMS continuing education programs. An application for credentialing as an approved EMS continuing education institution shall be submitted to the OEMS for review.

(b) Continuing Education EMS Educational Institutions shall have:

- (1) at least a Level I EMS Instructor as program coordinator and shall hold a Level I EMS Instructor credential at a level equal to or greater than the highest level of continuing education program offered in the EMS System or Specialty Care Transport Program;
- (2) a continuing education program shall be consistent with the services offered by the EMS System or Specialty Care Transport Program;
  - (A) In an EMS System, the continuing education programs shall be reviewed and approved by the system continuing education coordinator and Medical Director; and
  - (B) In a Specialty Care Transport Program, the continuing education program shall be reviewed and approved by Specialty Care Transport Program Continuing Education Coordinator and the Medical Director;
- (3) written educational policies and procedures to include each of the following;
  - (A) the delivery of educational programs in a manner where the content and material is delivered to the intended audience, with a limited potential for exploitation of such content and material;
  - (B) the record-keeping system of student attendance and performance;
  - (C) the selection and monitoring of EMS instructors; and
  - (D) student evaluations of faculty and the program's courses or components, and the frequency of the evaluations;
- (4) access to instructional supplies and equipment necessary for students to complete educational programs as defined in Rule .0501(b) of this Subchapter;
- (5) meet at a minimum, the educational program requirements as defined in Rule .0501(e) of this Subchapter;
- (6) Upon request, the approved EMS continuing education institution shall provide records to the OEMS in order to verify compliance and student eligibility for credentialing; and
- (7) unless accredited in accordance with Rule .0605 of this Section, approved education institution credentials are valid for a period not to exceed four years.

(c) Assisting physicians delegated by the EMS System Medical Director as authorized by Rule .0403(b) of this Subchapter or SCTP Medical Director as authorized by Rule .0404(b) of this Subchapter for provision of medical oversight of continuing education programs must meet the Education Medical Advisor criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight."

*History Note: Authority G.S. 143-508(d)(4); 143-508(d)(13); Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004; Amended Eff. January 1, 2009; Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0602 BASIC AND ADVANCED EMS EDUCATIONAL INSTITUTION REQUIREMENTS**

(a) Basic and Advanced EMS Educational Institutions may offer educational programs for which they have been credentialed by the OEMS.

(b) For initial courses, Basic EMS Educational Institutions shall meet all of the requirements for continuing EMS educational institutions defined in Rule .0601 of this Section and shall have:

- (1) at least a Level I EMS Instructor as each lead course instructor for EMR and EMT courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (2) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a combination of staff who cumulatively meet the requirements of the Level II EMS Instructor set forth in this Subparagraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Subparagraph (b)(5) of this Rule;
- (3) written educational policies and procedures that include:
  - (A) the written educational policies and procedures set forth in Rule .0601(b)(4) of this Section;
  - (B) the delivery of cognitive and psychomotor examinations in a manner that will protect and limit the potential for exploitation of such content and material;
  - (C) the exam item validation process utilized for the development of validated cognitive examinations;
  - (D) the selection and monitoring of all in-state and out-of-state clinical education and field internship sites;
  - (E) the selection and monitoring of all educational institutionally approved clinical education and field internship preceptors;
  - (F) utilization of EMS preceptors providing feedback to the student and EMS program;
  - (G) the evaluation of preceptors by their students, including the frequency of evaluations;

- (H) the evaluation of the clinical education and field internship sites by their students, including the frequency of evaluations; and
- (I) completion of an annual evaluation of the program to identify any correctable deficiencies;
- (4) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection;" and
- (5) written educational policies and procedures describing the delivery of educational programs, the record-keeping system detailing student attendance and performance, and the selection and monitoring of EMS instructors.

(c) For initial courses, Advanced Educational Institutions shall meet all requirements defined in Paragraph (b) of this Rule, and have a Level II EMS Instructor as lead instructor for AEMT and Paramedic initial courses. The lead instructor shall be credentialed at a level equal to or higher than the course offered.

(d) Basic and Advanced EMS Educational Institution credentials shall be valid for a period of four years, unless the institution is accredited in accordance with Rule .0605 of this Section.

*History Note: Authority G.S. 143-508(d)(4); 143-508(d)(13); Temporary Adoption Eff. January 1, 2002; Eff. January 1, 2004; Amended Eff. January 1, 2009; Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0603 ADVANCED EMS EDUCATIONAL INSTITUTION REQUIREMENTS**

*History Note: Authority G.S. 143-508(d)(4); 143-508(d)(13); Temporary Adoption Eff. January 1, 2002; Eff. February 1, 2004; Amended Eff. January 1, 2009; Repealed Eff. January 1, 2017.*

**10A NCAC 13P .0605 ACCREDITED EMS EDUCATIONAL INSTITUTION REQUIREMENTS**

(a) EMS Educational Institutions who already possess accreditation by the CAAHEP shall be credentialed by the OEMS by presenting:

- (1) an application for credentialing;
- (2) evidence of current CAAHEP accreditation;
- (3) a copy of the self study;
- (4) a copy of the executive analysis; and
- (5) documentation reflecting compliance with Rule .0602(b) and (c) of this Section.

(b) Accredited EMS Educational Institutions may offer initial and renewal educational programs for EMS personnel as defined in Rule .0501 of this Subchapter.

(c) Accredited EMS Educational Institutions maintaining CAAHEP accreditation shall renew credentials no more than 12 months prior to expiration of the OEMS credentials by providing the information detailed in Paragraph (a) of this Rule.

(d) Accredited EMS Educational Institutions that fail to maintain CAAHEP accreditation shall be subject to the credentialing and renewal criteria set forth in Rule .0602 of this Section.

(e) Accredited EMS Educational Institution credentials are valid for a period of five years.

*History Note: Authority G.S. 143-508(d)(4); 143-508(d)(13); Eff. January 1, 2017.*

**10A NCAC 13P .0901 TRAUMA CENTER CRITERIA**

To receive designation as a Level I, Level II, or Level III Trauma Center, a hospital shall:

- (1) have a trauma program and a trauma service that have been operational for at least 12 months prior to application for designation;
- (2) at least 12 months prior to submitting a RFP, have membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry, in accordance with the North Carolina Trauma Registry Data Dictionary incorporated by reference including subsequent amendments and editions. This document is available from the OEMS online at [www.ncdhhs.gov/dhsr/EMS/trauma/traumaregistry.html](http://www.ncdhhs.gov/dhsr/EMS/trauma/traumaregistry.html) at no cost;
- (3) meet the verification criteria for designation as a Level I, Level II, or Level III Trauma Center, as defined in the "American College of Surgeons: Resources for Optimal Care of the Injured Patient," which is hereby incorporated by reference, including subsequent amendments and editions. This document can be downloaded at no cost online at [www.facs.org](http://www.facs.org); and
- (4) meet all requirements of the designation level applied for initial designation set forth in Rule .0904 of this Section or for renewal designation set forth in Rule .0905 of this Section.

*History Note: Authority G.S. 131E-162; 143-508(d)(2); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2009; January 1, 2004; Readopted Eff. January 1, 2017.*

**10A NCAC 13P .0902 LEVEL II TRAUMA CENTER CRITERIA**

**10A NCAC 13P .0903 LEVEL III TRAUMA CENTER CRITERIA**

*History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. January 1, 2009; January 1, 2004; Repealed Eff. January 1, 2017.*



**10A NCAC 13P .0904 INITIAL DESIGNATION PROCESS**

(a) For initial Trauma Center designation, the hospital shall request a consult visit by OEMS and the consult shall occur within one year prior to submission of the RFP.

(b) A hospital interested in pursuing Trauma Center designation shall submit a letter of intent 180 days prior to the submission of an RFP to the OEMS. The letter shall define the hospital's primary trauma catchment area. Simultaneously, Level I or II applicants shall also demonstrate the need for the Trauma Center designation by submitting one original and three copies of documents that include:

- (1) the population to be served and the extent that the population is underserved for trauma care with the methodology used to reach this conclusion;
- (2) geographic considerations, to include trauma primary and secondary catchment area and distance from other Trauma Centers; and
- (3) evidence the Trauma Center will admit at least 1200 trauma patients yearly or show that its trauma service will be taking care of at least 240 trauma patients with an ISS greater than or equal to 15 yearly. These criteria shall be met without compromising the quality of care or cost effectiveness of any other designated Level I or II Trauma Center sharing all or part of its catchment area or by jeopardizing the existing Trauma Center's ability to meet this same 240-patient minimum.

(c) The hospital shall be participating in the State Trauma Registry as defined in Rule .0102(61) of this Subchapter, and submit data to the OEMS weekly a minimum of 12 months prior to application that includes all the Trauma Center's trauma patients as defined in Rule .0102(59) of this Subchapter who are:

- (1) diverted to an affiliated hospital;
- (2) admitted to the Trauma Center for greater than 24 hours from an ED or hospital;
- (3) die in the ED;
- (4) are DOA; or
- (5) are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital).

(d) OEMS shall review the regional Trauma Registry data from both the applicant and the existing trauma center(s), and ascertain the applicant's ability to satisfy the justification of need information required in Subparagraphs (b)(1) through (3) of this Rule. The OEMS shall notify the applicant's primary RAC of the application and provide the regional data submitted by the applicant in Subparagraphs (b)(1) through (3) of this Rule for review and comment. The RAC shall be given 30 days to submit written comments to the OEMS.

(e) OEMS shall notify the respective Board of County Commissioners in the applicant's primary catchment area of the request for initial designation to allow for comment during the same 30 day comment period.

(f) OEMS shall notify the hospital in writing of its decision to allow submission of an RFP. If approved, the RAC and Board of

County Commissioners in the applicant's primary catchment area shall also be notified by the OEMS that an RFP will be submitted.

(g) Once the hospital is notified that an RFP will be accepted, the hospital shall complete and submit an electronic copy of the completed RFP with signatures to the OEMS at least 45 days prior to the proposed site visit date.

(h) The RFP shall demonstrate that the hospital meets the standards for the designation level applied for as found in Rule .0901 of this Section.

(i) If OEMS does not recommend a site visit based upon failure to comply with Rule .0901 of this Section, the OEMS shall send the written reasons to the hospital within 30 days of the decision. The hospital may reapply for designation within six months following the submission of an updated RFP. If the hospital fails to respond within six months, the hospital shall reapply following the process outlined in Paragraphs (a) through (h) of this Rule.

(j) If after review of the RFP, the OEMS recommends the hospital for a site visit, the OEMS shall notify the hospital within 30 days and the site visit shall be conducted within six months of the recommendation. The hospital and the OEMS shall agree on the date of the site visit.

(k) Except for OEMS representatives, any in-state reviewer for a Level I or II visit shall be from outside the local or adjacent RAC, unless mutually agreed upon by the OEMS and the trauma center seeking designation where the hospital is located. The composition of a Level I or II state site survey team shall be as follows:

- (1) one out-of-state trauma surgeon who is a Fellow of the ACS, experienced as a site surveyor, who shall be the primary reviewer;
- (2) one in-state emergency physician who currently works in a designated trauma center, is a member of the American College of Emergency Physicians or American Academy of Emergency Medicine, and is boarded in emergency medicine by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine;
- (3) one in-state trauma surgeon who is a member of the North Carolina Committee on Trauma;
- (4) for Level I designation, one out-of-state trauma program manager with an equivalent license from another state;
- (5) for Level II designation, one in-state program manager who is licensed to practice professional nursing in North Carolina in accordance with the Nursing Practice Act, Article 9A, Chapter 90 of the North Carolina General Statutes; and
- (6) OEMS Staff.

(l) All site team members for a Level III visit shall be from in-state, and, except for the OEMS representatives, shall be from outside the local or adjacent RAC where the hospital is located. The composition of a Level III state site survey team shall be as follows:

- (1) one trauma surgeon who is a Fellow of the ACS, who is a member of the North Carolina Committee on Trauma and shall be the primary reviewer;

- (2) one emergency physician who currently works in a designated trauma center, is a member of the North Carolina College of Emergency Physicians or American Academy of Emergency Medicine, and is boarded in emergency medicine by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine;
  - (3) one trauma program manager who is licensed to practice professional nursing in North Carolina in accordance with the Nursing Practice Act, Article 9A, Chapter 90 of the North Carolina General Statutes; and
  - (4) OEMS Staff.
- (m) On the day of the site visit, the hospital shall make available all requested patient medical charts.
- (n) The primary reviewer of the site review team shall give a verbal post-conference report representing a consensus of the site review team. The primary reviewer shall complete and submit to the OEMS a written consensus report within 30 days of the site visit.
- (o) The report of the site survey team and the staff recommendations shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that the request for Trauma Center designation be approved or denied.
- (p) All criteria defined in Rule .0901 of this Section shall be met for initial designation at the level requested.
- (q) Hospitals with a deficiency(ies) resulting from the site visit shall be given up to 12 months to demonstrate compliance. Satisfaction of deficiency(ies) may require an additional site visit. The need for an additional site visit is on a case-by-case basis based on the type of deficiency. If compliance is not demonstrated within the time period set by OEMS, the hospital shall submit a new application and updated RFP and follow the process outlined in Paragraphs (a) through (h) of this Rule.
- (r) The final decision regarding Trauma Center designation shall be rendered by the OEMS.
- (s) The OEMS shall notify the hospital in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (t) If a trauma center changes its trauma program administrative structure such that the trauma service, trauma Medical Director, trauma program manager, or trauma registrar are relocated on the hospital's organizational chart at any time, it shall notify OEMS of this change in writing within 30 days of the occurrence.
- (u) Initial designation as a trauma center shall be valid for a period of three years.

*History Note: Authority G.S. 131E-162; 143-508(d)(2);  
Temporary Adoption Eff. January 1, 2002;  
Eff. April 1, 2003;  
Amended Eff. January 1, 2009;  
Readopted Eff. January 1, 2017.*

## **10A NCAC 13P .0905 RENEWAL DESIGNATION PROCESS**

- (a) Hospitals may utilize one of two options to achieve Trauma Center renewal:
- (1) undergo a site visit conducted by OEMS to obtain a four-year renewal designation; or
  - (2) undergo a verification visit by the ACS, in conjunction with the OEMS, to obtain a three-year renewal designation.
- (b) For hospitals choosing Subparagraph (a)(1) of this Rule:
- (1) prior to the end of the designation period, the OEMS shall forward to the hospital an RFP for completion. The hospital shall, within 10 business days of receipt of the RFP, define for OEMS the Trauma Center's trauma primary catchment area. Upon this notification, OEMS shall notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for renewal to allow 30 days for comment.
  - (2) hospitals shall complete and submit an electronic copy of the RFP to the OEMS and the specified site surveyors at least 30 days prior to the site visit. The RFP shall include information that supports compliance with the criteria contained in Rule .0901 of this Section as it relates to the Trauma Center's level of designation.
  - (3) all criteria defined in Rule .0901 of this Section, as it relates to the Trauma Center's level of designation, shall be met for renewal designation.
  - (4) a site visit shall be conducted within 120 days prior to the end of the designation period. The hospital and the OEMS shall agree on the date of the site visit.
  - (5) the composition of a Level I or II site survey team shall be the same as that specified in Rule .0904(k) of this Section.
  - (6) the composition of a Level III site survey team shall be the same as that specified in Rule .0904(l) of this Section.
  - (7) on the day of the site visit, the hospital shall make available all requested patient medical charts.
  - (8) the primary reviewer of the site review team shall give a verbal post-conference report representing a consensus of the site review team. The primary reviewer shall complete and submit to the OEMS a written consensus report within 30 days of the site visit.
  - (9) the report of the site survey team and a staff recommendation shall be reviewed by the NC Emergency Medical Services Advisory Council at its next regularly scheduled meeting following the site visit. Based upon the site visit report and the staff recommendation, the NC Emergency Medical Services Advisory

Council shall recommend to the OEMS that the request for Trauma Center renewal be:

- (A) approved;
- (B) approved with a contingency(ies) due to a deficiency(ies) requiring a focused review;
- (C) approved with a contingency(ies) not due to a deficiency(ies) requiring a consultative visit; or
- (D) denied.

- (10) hospitals with a deficiency(ies) shall have up to 10 business days prior to the NC Emergency Medical Services Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in this period prior to the NC Emergency Medical Services Advisory Council meeting, the hospital, shall be given 12 months by the OEMS to demonstrate compliance and undergo a focused review that may require an additional site visit. The need for an additional site visit is on a case-by-case basis based on the type of deficiency. The hospital shall retain its Trauma Center designation during the focused review period. If compliance is demonstrated within the prescribed time period, the hospital shall be granted its designation for the four-year period from the previous designation's expiration date. If compliance is not demonstrated within the 12 month time period, the Trauma Center designation shall not be renewed. To become redesignated, the hospital shall submit an updated RFP and follow the initial applicant process outlined in Rule .0904 of this Section.
- (11) the final decision regarding trauma center renewal shall be rendered by the OEMS.
- (12) the OEMS shall notify the hospital in writing of the NC Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the NC Emergency Medical Services Advisory Council meeting.
- (13) hospitals with a deficiency(ies) shall submit an action plan to the OEMS to address the deficiency(ies) within 10 business days following receipt of the written final decision on the trauma recommendations.

(c) For hospitals choosing Subparagraph (a)(2) of this Rule:

- (1) at least six months prior to the end of the Trauma Center's designation period, the trauma center shall notify the OEMS of its intent to undergo an ACS verification visit. It shall simultaneously define in writing to the OEMS its trauma primary catchment area. Trauma Centers choosing this option shall then comply with all the ACS' verification procedures, as well as any additional state criteria as defined in

Rule .0901 of this Section, that apply to their level of designation.

- (2) when completing the ACS' documentation for verification, the Trauma Center shall ensure access to the ACS on-line PRQ (pre-review questionnaire) to OEMS. The Trauma Center shall simultaneously complete any documents supplied by OEMS and forward these to the OEMS.
- (3) the OEMS shall notify the Board of County Commissioners within the trauma center's trauma primary catchment area of the Trauma Center's request for renewal to allow 30 days for comments.
- (4) the Trauma Center shall make sure the site visit is scheduled to ensure that the ACS' final written report, accompanying medical record reviews and cover letter are received by OEMS at least 30 days prior to a regularly scheduled NC Emergency Medical Services Advisory Council meeting to ensure that the Trauma Center's state designation period does not terminate without consideration by the NC Emergency Medical Services Advisory Council.
- (5) any in-state review for a hospital choosing Subparagraph (a)(2) of this Rule, except for the OEMS staff, shall be from outside the local or adjacent RAC in which the hospital is located.
- (6) the composition of a Level I, II, or III site survey team for hospitals choosing Subparagraph (a)(2) of this Rule shall be as follows:
  - (A) one out-of-state trauma surgeon who is a Fellow of the ACS, experienced as a site surveyor, who shall be the primary reviewer;
  - (B) one out-of-state emergency physician who works in a designated trauma center, is a member of the American College of Emergency Physicians or the American Academy of Emergency Medicine, and is boarded in emergency medicine by the American Board of Emergency Physicians or the American Osteopathic Board of Emergency Medicine;
  - (C) one out-of-state trauma program manager with an equivalent license from another state; and
  - (D) OEMS staff.
- (7) the date, time, and all proposed members of the site visit team shall be submitted to the OEMS for review at least 45 days prior to the site visit. The OEMS shall approve the site visit schedule if the schedule does not conflict with the ability of attendance by required OEMS staff. The OEMS shall approve the proposed site visit team members if the OEMS determines there is

- no conflict of interest, such as previous employment, by any site visit team member associated with the site visit.
- (8) all state Trauma Center criteria shall be met as defined in Rule .0901 of this Section for renewal of state designation. ACS' verification is not required for state designation. ACS' verification does not ensure a state designation.
  - (9) The ACS final written report and supporting documentation described in Subparagraph (c)(4) of this Rule shall be used to generate a report following the post conference meeting for presentation to the NC Emergency Medical Services Advisory Council for renewal designation.
  - (10) the final written report issued by the ACS' verification review committee, the accompanying medical record reviews from which all identifiers shall be removed and cover letter shall be forwarded to OEMS within 10 business days of its receipt by the Trauma Center seeking renewal.
  - (11) the OEMS shall present its summary of findings report to the NC Emergency Medical Services Advisory Council at its next regularly scheduled meeting. The NC Emergency Medical Services Advisory Council shall recommend to the Chief of the OEMS that the request for Trauma Center renewal be:
    - (A) approved;
    - (B) approved with a contingency(ies) due to a deficiency(ies) requiring a focused review;
    - (C) approved with a contingency(ies) not due to a deficiency(ies); or
    - (D) denied.
  - (12) the OEMS shall send the hospital written notice of the NC Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the NC Emergency Medical Services Advisory Council meeting.
  - (13) the final decision regarding trauma center designation shall be rendered by the OEMS.
  - (14) hospitals with contingencies as the result of a deficiency(ies), as determined by OEMS, shall have up to 10 business days prior to the NC Emergency Medical Services Advisory Council meeting to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in this time period, the hospital, may undergo a focused review to be conducted by the OEMS whereby the Trauma Center shall be given 12 months by the OEMS to demonstrate compliance. Satisfaction of contingency(ies) may require an additional site visit. The need for an additional site visit is on a case-by-case basis based on the type of deficiency. The hospital shall retain its Trauma Center designation during the focused review period. If compliance is demonstrated within the prescribed time period, the hospital shall be granted its designation for the three-year period from the previous designation's expiration date. If compliance is not demonstrated within the 12 month time period, the Trauma Center designation shall not be renewed. To become redesignated, the hospital shall submit a new RFP and follow the initial applicant process outlined in Rule .0904 of this Section.
  - (15) hospitals with a deficiency(ies) shall submit an action plan to the OEMS to address the deficiency(ies) within 10 business days following receipt of the written final decision on the trauma recommendations.
- (d) If a Trauma Center currently using the ACS' verification process chooses not to renew using this process, it must notify the OEMS at least six months prior to the end of its state trauma center designation period of its intention to exercise the option in Subparagraph (a)(1) of this Rule. Upon notification, the OEMS shall extend the designation for one additional year to ensure consistency with hospitals using Subparagraph (a)(1) of this Rule.
- History Note: Authority G.S. 131E-162; 143-508(d)(2); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003; Amended Eff. April 1, 2009; January 1, 2009; January 1, 2004; Readoption Eff. January 1, 2017.*

#### 10A NCAC 13P .1101 STATE TRAUMA SYSTEM

- (a) The state trauma system shall consist of regional plans, policies, guidelines, and performance improvement initiatives by the RACs to create an Inclusive Trauma System monitored by the OEMS.
- (b) Each hospital and EMS System shall affiliate as defined in Rule .0102(3) of this Subchapter and participate with the RAC that includes the Level I or II Trauma Center where the majority of trauma patient referrals and transports occur. Each hospital and EMS System shall submit to the OEMS upon request patient transfer patterns from data sources that support the choice of their primary RAC affiliation. Each RAC shall include at least one Level I or II Trauma Center.
- (c) The OEMS shall notify each RAC of its hospital and EMS System membership annually.
- (d) Each hospital and each EMS System shall update and submit its RAC affiliation information to the OEMS no later than July 1 of each year. RAC affiliation may only be changed during this annual update and only if supported by a change in the majority of transfer patterns to a Level I or Level II Trauma Center. Documentation of these new transfer patterns shall be included in the request to change affiliation. If no change is made in RAC affiliation, written notification shall be required annually to the OEMS to maintain current RAC affiliation.

*History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003;*

*Amended Eff. January 1, 2009;  
Pursuant to G.S. 150B-21.3A, rule is necessary without  
substantive public interest Eff. February 2, 2016;  
Amended Eff. January 1, 2017.*

**10A NCAC 13P .1102 REGIONAL TRAUMA SYSTEM PLAN**

(a) After consultation with all Level I and II Trauma Centers within their catchment areas, a Level I or II Trauma Center shall be selected as the lead RAC agency by the OEMS to facilitate development of and provide RAC staff support that includes the following:

- (1) the trauma Medical Director(s) from the lead RAC agency;
- (2) a trauma nurse coordinator(s) or program manager(s) from the lead RAC agency; and
- (3) an individual to coordinate RAC activities.

(b) The RAC membership shall include the following:

- (1) the trauma Medical Director(s) and the trauma nurse coordinator(s) or program manager(s) from the lead RAC agency;
- (2) if on staff, the outreach coordinator(s), or designee(s) from the lead RAC agency;
- (3) if on staff, an injury prevention coordinator(s), or designees(s) from the lead RAC agency;
- (4) the RAC registrar or designee(s) from the lead RAC agency;
- (5) a senior level hospital administrator from the lead RAC agency;
- (6) an emergency physician from the lead RAC agency;
- (7) a representative from each EMS system participating in the RAC;
- (8) a representative from each hospital participating in the RAC;
- (9) community representatives from the lead RAC agency's catchment area; and
- (10) An EMS System Medical Director or Assistant Medical Director from the lead RAC agency's catchment area.

(c) The lead RAC agency shall develop a plan within one year of notification of the RAC membership a regional trauma system plan containing:

- (1) organizational structures, including the roles of the members of the system;
- (2) goals and objectives, including the orientation of the providers to the regional system;
- (3) RAC membership list, rules of order, terms of office, and meeting schedule. Meetings shall be held at least two times per year;
- (4) information required by the OEMS as set forth in Rule .1103 of this Section;
- (5) the regional trauma system evaluation tools to be utilized;
- (6) written verification of regional support from members of the RAC for the regional trauma system plan; and

- (7) performance improvement activities, including utilization of regional trauma system patient care data.

(d) The RAC shall prepare an annual progress report no later than July 1 of each year that assesses compliance with the regional trauma system plan and specifies any updates to the plan. This report shall be made available to the OEMS for review upon request.

(e) Upon OEMS' receipt of a letter of intent for initial Level I or II Trauma Center designation by a hospital in the lead RAC agency's catchment area as set forth in Rule .0904(b) of this Subchapter, the applicant's lead RAC agency shall be provided the applicant's data from the OEMS for distribution to all RAC members for review and comment, as set forth in Rule .0904(d) of this Subchapter.

(f) The RAC membership has 30 days to comment on the request for initial designation. All comments shall be sent from each RAC member directly to the OEMS, with the lead RAC agency provided a copy of their response, within this 30 day comment period.

(g) The OEMS shall notify the regional RAC of the OEMS approval of a hospital to submit an RFP for trauma center designation.

*History Note: Authority G.S. 131E-162; 143-508(d)(5); 143-508(d)(12);*

*Temporary Adoption Eff. January 1, 2002;*

*Eff. April 1, 2003;*

*Amended Eff. January 1, 2009;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;*

*Amended Eff. January 1, 2017.*

**10A NCAC 13P .1401 CHEMICAL ADDICTION OR ABUSE TREATMENT PROGRAM REQUIREMENTS**

(a) The OEMS shall provide a treatment program for aiding in the recovery and rehabilitation of EMS personnel subject to disciplinary action for being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of use of alcohol, drugs, chemicals, or any other type of material as set forth in Rule .1507(b)(9) of this Subchapter.

(b) This program requires:

- (1) an initial assessment by a healthcare professional specialized in chemical dependency approved by the treatment program;
- (2) a treatment plan developed by the healthcare professional described in Subparagraph (b)(1) of this Rule for the individual using the findings of the initial assessment;
- (3) random body fluid screenings using a standardized methodology designed by OEMS program staff to ensure reliability in verifying compliance with program standards;
- (4) the individual attend three self-help recovery meetings each week for the first year of participation, and two each week for the remainder of participation in the treatment program;

- (5) monitoring by OEMS program staff of the individual for compliance with the treatment program; and
- (6) written progress reports, shall be made available for review by OEMS upon completion of the initial assessment of the treatment program, upon request by OEMS throughout the individual's participation in the treatment program, and upon completion of the treatment program. Written progress reports shall include:
  - (A) progress or response to treatment and when the individual is safe to return to practice;
  - (B) compliance with program criteria;
  - (C) a summary of established long-term program goals; and
  - (D) contain pertinent medical, laboratory, and psychiatric records with a focus on chemical dependency.

*History Note:* Authority G.S. 131E-159(f); 143-508(b); 143-508(d)(10);  
*Eff. October 1, 2010;*  
*Readopted Eff. January 1, 2017.*

**10A NCAC 13P .1402 PROVISIONS FOR PARTICIPATION IN THE CHEMICAL ADDICTION OR ABUSE TREATMENT PROGRAM**

The OEMS shall use the screening criteria set forth in this Section to determine whether an individual may enter the treatment program established by Rule .1401 of this Section. The individual may enter the program if the individual:

- (1) acknowledges, in writing, the actions that violated the performance requirements found in this Subchapter;
- (2) has not been charged or convicted at any time in his or her past, of diverting chemicals for the purpose of distribution, dealing, or selling illicit drugs;
- (3) is not under current criminal investigation or subject to pending criminal charges by law enforcement;
- (4) ceases in the direct delivery of any patient care and surrenders all EMS credentials until either the individual is eligible for issuance of an encumbered EMS credential pursuant to Rule .1403 of this Section, or has completed the treatment program established in Rule .1401 of this Section; and
- (5) agrees to accept responsibility for all costs including assessment, treatment, monitoring, and body fluid screening.

*History Note:* Authority G.S. 131E-159(f); 143-508(b); 143-508(d)(10);  
*Eff. October 1, 2010;*  
*Readopted Eff. January 1, 2017.*

**10A NCAC 13P .1403 CONDITIONS FOR RESTRICTED PRACTICE WITH LIMITED PRIVILEGES**

(a) In order to assist in determining eligibility for an individual to return to restricted practice, the OEMS shall create a standing Reinstatement Committee that shall consist of at least the following members:

- (1) one physician licensed by the North Carolina Medical Board, representing EMS Systems, who shall serve as Chair of this committee;
- (2) one counselor trained in chemical addiction or abuse therapy; and
- (3) the OEMS staff member responsible for managing the treatment program as set forth in Rule .1401 of this Section.

(b) Individuals who have surrendered his or her EMS credential(s) as a condition of entry into the treatment program, as required in Rule .1402(4) of this Section, shall be reviewed by the OEMS Reinstatement Committee to determine if a recommendation to the OEMS for issuance of an encumbered EMS credential is warranted by the Department.

(c) In order to obtain an encumbered credential with limited privileges, an individual shall:

- (1) be compliant for a minimum of 90 consecutive days with the treatment program described in Rule .1401(b) of this Section;
- (2) be recommended in writing for review by the individual's treatment counselor;
- (3) be interviewed by the OEMS Reinstatement Committee; and
- (4) be recommended in writing by the OEMS Reinstatement Committee for issuance of an encumbered EMS credential. The OEMS Reinstatement Committee shall detail in their recommendation all restrictions and limitations to the individual's practice privileges.

(d) The individual shall agree to sign a consent agreement with the OEMS that details the practice restrictions and privilege limitations of the encumbered EMS credential, and that contains the consequences of failure to abide by the terms of this agreement.

(e) The individual shall be issued the encumbered credential by the OEMS within 10 business days following execution of the consent agreement described in Paragraph (d) of this Rule.

(f) The encumbered EMS credential shall be valid for a period not to exceed four years.

*History Note:* Authority G.S. 131E-159(f); 143-508(b); 143-508(d)(10);  
*Eff. October 1, 2010;*  
*Readopted Eff. January 1, 2017.*

**10A NCAC 13P .1405 FAILURE TO COMPLETE THE CHEMICAL ADDICTION OR ABUSE TREATMENT PROGRAM**

Individuals who fail to complete the treatment program established in Rule .1401 of this Section, upon review by the OEMS, are subject to revocation of their EMS credential.

*History Note: Authority G.S. 131E-159(f); 143-508(b); 143-508(d)(10); Eff. October 1, 2010; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. January 1, 2017.*

**10A NCAC 13P .1502 LICENSED EMS PROVIDERS**

(a) The OEMS shall deny an initial or renewal EMS Provider license for any of the following reasons:

- (1) significant failure to comply, as defined in Rule .0102(45) of this Subchapter, with the applicable licensing requirements in Rule .0204 of this Subchapter;
- (2) making false statements or representations to the OEMS or willfully concealing information in connection with an application for licensing;
- (3) tampering with or falsifying any record used in the process of obtaining an initial license or in the renewal of a license; or
- (4) disclosing information as defined in Rule .0223 of this Subchapter that is determined by OEMS staff based upon review of documentation, to disqualify the applicant from licensing.

(b) The Department shall amend any EMS Provider license by amending it to reduce the license from a full license to a provisional license whenever the Department finds that:

- (1) the licensee failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article;
- (2) there is a probability that the licensee can take corrective measures to resolve the issue of non-compliance with Rule .0204 of this Subchapter, and be able thereafter to remain in compliance within a reasonable length of time determined by OEMS staff on a case-by-case basis; and
- (3) there is a probability, determined by OEMS staff using their professional judgment, based upon analysis of the licensee's ability to take corrective measures to resolve the issue of non-compliance with the licensure rules, that the licensee will be able thereafter to remain in compliance with the licensure rules.

(c) The Department shall give the licensee written notice of the amendment of the EMS Provider license. This notice shall be given personally or by certified mail and shall set forth:

- (1) the duration of the provisional EMS Provider license;
- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and
- (4) notice of the EMS provider's right to a contested case hearing, as set forth in Rule .1509 of this Subchapter, on the amendment of the EMS Provider license.

(d) The provisional EMS Provider license is effective upon its receipt by the licensee and shall be posted in a location at the primary business location of the EMS Provider, accessible to public view, in lieu of the full license. Pursuant to G.S. 131E-

155.1(d), the provisional license remains in effect until the Department:

- (1) restores the licensee to full licensure status; or
- (2) revokes the licensee's license.

(e) The Department shall revoke or suspend an EMS Provider license whenever the Department finds that the licensee:

- (1) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article and it is not probable that the licensee can remedy the licensure deficiencies within 12 months or less;
- (2) failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that Article and, although the licensee may be able to remedy the deficiencies, it is not probable that the licensee will be able to remain in compliance with licensure rules;
- (3) failed to comply with the provision of G.S. 131E, Article 7, and the rules adopted under that Article that endanger the health, safety, or welfare of the patients cared for or transported by the licensee;
- (4) obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS Provider license through fraud or misrepresentation;
- (5) continues to repeat the same deficiencies placed on the licensee in previous compliance site visits;
- (6) has recurring failure to provide emergency medical care within the defined EMS service area in a manner as determined by the EMS System;
- (7) failed to disclose or report information in accordance with Rule .0223 of this Subchapter;
- (8) was deemed by OEMS to place the public at risk because the owner or any officer or agent was convicted in any court of a crime involving fiduciary misconduct or a conviction of a felony;
- (9) altered, destroyed, attempted to destroy, withheld, or delayed release of evidence, records, or documents needed for a complaint investigation being conducted by the OEMS; or
- (10) continues to operate within an EMS System after a Board of County Commissioners has terminated its affiliation with the licensee, resulting in a violation of the licensing requirement set forth in Rule .0204(a)(1) of this Subchapter.

(f) The Department shall give the EMS Provider written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the EMS Provider's right to a contested case hearing, as set forth in Rule .1509 of this Section, on the revocation of the EMS Provider's license.

(g) The issuance of a provisional EMS Provider license is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (e) of this Rule.

*History Note: Authority G.S. 131E-155.1(d); 143-508(d)(10); Eff. January 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;*  
*Amended Eff. January 1, 2017.*

**10A NCAC 13P .1505 EMS EDUCATIONAL INSTITUTIONS**

(a) For the purpose of this Rule, "focused review" means an evaluation by the OEMS of an educational institution's corrective actions to remove contingencies that are a result of deficiencies identified in the initial or renewal application process.

(b) The Department shall deny the initial or renewal designation, without first allowing a focused review, of an EMS Educational Institution for any of the following reasons:

- (1) significant failure to comply with the provisions of Section .0600 of this Subchapter; or
- (2) attempting to obtain an EMS Educational Institution designation through fraud or misrepresentation.

(c) When an EMS Educational Institution is required to have a focused review, it shall demonstrate compliance with the provisions of Section .0600 of this Subchapter within 12 months or less.

(d) The Department shall revoke an EMS Educational Institution designation at any time whenever the Department finds that the EMS Educational Institution has significant failure to comply, as defined in Rule .0102(45) of this Subchapter, with the provisions of Section .0600 of this Subchapter, and:

- (1) it is not probable that the EMS Educational Institution can remedy the deficiencies within 12 months or less as determined by OEMS staff based upon analysis of the educational institution's ability to take corrective measures to resolve the issue of non-compliance with Section .0600 of this Subchapter;
- (2) although the EMS Educational Institution may be able to remedy the deficiencies, it is not probable that the EMS Educational Institution shall be able to remain in compliance with credentialing rules;
- (3) failure to produce records upon request as required in Rule .0601(b)(6) of this Subchapter;
- (4) the EMS Educational Institution failed to meet the requirements of a focused review within 12 months, as set forth in Paragraph (c) of this Rule;
- (5) the failure to comply endangered the health, safety, or welfare of patients cared for as part of an EMS educational program as determined by OEMS staff in their professional judgment based upon a complaint investigation, in consultation with the Department and Department of Justice, to verify the results of

the investigations are sufficient to initiate enforcement action pursuant to G.S. 150B; or the EMS Educational Institution altered, destroyed, or attempted to destroy evidence needed for a complaint investigation.

(6)

(e) The Department shall give the EMS Educational Institution written notice of revocation and denial. This notice shall be given personally or by certified mail and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to be violated; and
- (3) notice of the EMS Educational Institution's right to a contested case hearing, set forth in Rule .1509 of this Section, on the revocation of the designation.

(f) Focused review is not a procedural prerequisite to the revocation of a designation as set forth in Rule .1509 of this Section.

(g) If determined by the educational institution that suspending its approval to offer EMS educational programs is necessary, the EMS Educational Institution may voluntarily surrender its credential without explanation by submitting a written request to the OEMS stating its intention. The voluntary surrender shall not affect the original expiration date of the EMS Educational Institution's designation. To reactivate the designation:

- (1) the institution shall provide OEMS written documentation requesting reactivation; and
- (2) the OEMS shall verify the educational institution is compliant with all credentialing requirements set forth in Section .0600 of this Subchapter prior to reactivation of the designation by the OEMS.

(h) If the institution fails to resolve the issues that resulted in a voluntary surrender, the Department shall revoke the EMS Educational Institution designation.

(i) In the event of a revocation or voluntary surrender, the Department shall provide written notification to all EMS Systems within the EMS Educational Institution's defined service area. The Department shall provide written notification to all EMS Systems within the EMS Educational Institution's defined service area when the voluntary surrender reactivates to full credential.

(j) When an accredited EMS Educational Institution as defined in Rule .0605 of this Subchapter has administrative action taken against its accreditation, the OEMS shall determine if the cause of action is sufficient for revocation of the EMS Educational Institution designation or imposing a focused review pursuant to Paragraphs (b) and (c) of this Rule is warranted.

*History Note: Authority G.S. 143-508(d)(4); 143-508(d)(10); Eff. January 1, 2013;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;*  
*Amended Eff. January 1, 2017.*

**10A NCAC 13P .1507 EMS PERSONNEL CREDENTIALS**

(a) An EMS credential that has been forfeited under G.S. 15A-1331.1 may not be reinstated until the person has complied with the court's requirements, has petitioned the Department for



reinstatement, has completed the disciplinary process, and has received Department reinstatement approval.

(b) The Department shall amend, deny, suspend, or revoke the credentials of EMS personnel for any of the following:

- (1) significant failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;
- (2) making false statements or representations to the Department, or concealing information in connection with an application for credentials;
- (3) making false statements or representations, concealing information, or failing to respond to inquiries from the Department during a complaint investigation;
- (4) tampering with, or falsifying any record used in the process of obtaining an initial EMS credential, or in the renewal of an EMS credential;
- (5) in any manner or using any medium, engaging in the stealing, manipulating, copying, reproducing, or reconstructing of any written EMS credentialing examination questions, or scenarios;
- (6) cheating, or assisting others to cheat while preparing to take, or when taking a written EMS credentialing examination;
- (7) altering an EMS credential, using an EMS credential that has been altered, or permitting or allowing another person to use his or her EMS credential for the purpose of alteration. "Altering" includes changing the name, expiration date, or any other information appearing on the EMS credential;
- (8) unprofessional conduct, including a significant failure to comply with the rules relating to the function of credentialed EMS personnel contained in this Subchapter, or the performance of or attempt to perform a procedure that is detrimental to the health and safety of any person, or that is beyond the scope of practice of credentialed EMS personnel or EMS instructors;
- (9) being unable to perform as credentialed EMS personnel with reasonable skill and safety to patients and the public by reason of illness that will compromise skill and safety, use of alcohol, drugs, chemicals, or any other type of material, or by reason of any physical impairment;
- (10) conviction in any court of a crime involving moral turpitude, a conviction of a felony, a conviction requiring registering on a sex offender registry, or conviction of a crime involving the scope of practice of credentialed EMS personnel;
- (11) by false representations obtaining or attempting to obtain, money or anything of value from a patient;
- (12) adjudication of mental incompetence;
- (13) lack of competence to practice with a reasonable degree of skill and safety for patients, including a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently, or performance of a procedure that is not within the scope of practice of credentialed EMS personnel or EMS instructors;
- (14) performing as a credentialed EMS personnel in any EMS System in which the individual is not affiliated and authorized to function;
- (15) performing or authorizing the performance of procedures, or administration of medications detrimental to a student or individual;
- (16) delay or failure to respond when on-duty and dispatched to a call for EMS assistance;
- (17) testing positive, whether for-cause or at random, through urine, blood, or breath sampling, for any substance, legal or illegal, that is likely to impair the physical or psychological ability of the credentialed EMS personnel to perform all required or expected functions while on duty;
- (18) failure to comply with G.S. 143-518 regarding the use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, Alternative Practice Settings, or patients;
- (19) refusing to consent to any criminal history check required by G.S. 131E-159;
- (20) abandoning or neglecting a patient who is in need of care, without making arrangements for the continuation of such care;
- (21) falsifying a patient's record or any controlled substance records;
- (22) harassing, abusing, or intimidating a patient, student, bystander, or OEMS staff, either physically, verbally, or in writing;
- (23) engaging in any activities of a sexual nature with a patient, including kissing, fondling, or touching while responsible for the care of that individual;
- (24) any criminal arrests that involve charges that have been determined by the Department to indicate a necessity to seek action in order to further protect the public pending adjudication by a court;
- (25) altering, destroying, or attempting to destroy evidence needed for a complaint investigation being conducted by the OEMS;
- (26) significant failure to comply with a condition to the issuance of an encumbered EMS credential with limited and restricted practices for persons in the chemical addiction or abuse treatment program;
- (27) unauthorized possession of lethal or non-lethal weapons, chemical irritants to include mace, pepper (oleoresin capsicum) spray and tear gas,

or explosives while in the performance of providing emergency medical services;

- (28) significant failure to comply to provide EMS care records to the licensed EMS provider for submission to the OEMS as required by Rule .0204 of this Subchapter;
- (29) continuing to provide EMS care after local suspension of practice privileges by the local EMS System, Medical Director, or Alternative Practice Setting; or
- (30) representing or allowing others to represent that the credentialed EMS personnel has a credential that the credentialed EMS personnel does not in fact have.

(c) Pursuant to the provisions of G.S. 131E-159(h), the OEMS shall not issue an EMS credential for any person listed on the North Carolina Department of Public Safety, Sex Offender and Public Protection Registry, or who was convicted of an offense that would have required registration if committed at a time when the registration would have been required by law.

(d) Pursuant to the provisions of G.S. 50-13.12, upon notification by the court, the OEMS shall revoke an individual's EMS credential until the Department has been notified by the court that evidence has been obtained of compliance with a child support order. The provisions of G.S. 50-13.12 supersede the requirements of Paragraph (f) of this Rule.

(e) When a person who is credentialed to practice as an EMS professional is also credentialed in another jurisdiction and the other jurisdiction takes disciplinary action against the person, the Department shall summarily impose the same or lesser disciplinary action upon receipt of the other jurisdiction's action. The EMS professional may request a hearing before the EMS Disciplinary Committee. At the hearing the issues shall be limited to:

- (1) whether the person against whom action was taken by the other jurisdiction and the Department are the same person;
- (2) whether the conduct found by the other jurisdiction also violates the rules of the N.C. Medical Care Commission; and
- (3) whether the sanction imposed by the other jurisdiction is lawful under North Carolina law.

(f) The OEMS shall provide written notification of the amendment, denial, suspension, or revocation. This notice shall be given personally or by certified mail, and shall set forth:

- (1) the factual allegations;
- (2) the statutes or rules alleged to have been violated; and
- (3) notice of the individual's right to a contested hearing, set forth in Rule .1509 of this Section, on the revocation of the credential.

(g) The OEMS shall provide written notification to the EMS professional within five business days after information has been entered into the National Practitioner Data Bank and the Healthcare Integrity and Protection Integrity Data Bank.

*History Note:* Authority G.S. 131E-159; 143-508(d)(10); 143-519;  
Eff. January 1, 2013;

*Readopted Eff. January 1, 2017.*

**10A NCAC 13P .1510 PROCEDURES FOR THE VOLUNTARY SURRENDER OR MODIFICATION OF THE LEVEL OF AN EMS CREDENTIAL**

(a) An individual who holds a valid North Carolina EMS credential may request to voluntarily surrender the credential to the OEMS by:

- (1) providing written notice stating the individual's desire to surrender the credential and explaining the circumstances surrounding the request; and
- (2) returning the pocket credential and wall certificate to the OEMS upon notification the request has been approved.

(b) An individual who holds a valid North Carolina EMS credential may request to voluntarily modify the current credentialing level from a higher level to a lower level by the OEMS by:

- (1) providing written notice stating the individual's desire to lower his or her current level and explaining the circumstances surrounding the request and stating the desired level of credentialing; and
- (2) returning the pocket credential and wall certificate to the OEMS upon notification the request has been approved.

(c) The OEMS shall provide a written response to the individual within 10 business days following receipt of the request either approving or denying the request. This response shall describe the reason(s) for approval or denial.

(d) If the individual seeks to restore the credential to the previous status, the individual shall:

- (1) wait a minimum of six months from the date the action was taken;
- (2) provide written notice stating the individual's desire to restore the previous credential;
- (3) provide evidence of continuing education at a minimum of two hours per month at the level of the EMS credential being sought; and
- (4) undergo a criminal history background check.

(e) If the OEMS denies the individual's request for restoration of the EMS credential, the OEMS shall provide in writing the reason(s) for denial and inform the individual of the procedures for contested case hearing as set forth in Rule .1509 of this Section.

*History Note:* Authority G.S. 131E-159(g); 143-508(d)(3); 143-508(d)(10);  
Eff. January 1, 2017.

**10A NCAC 13P .1511 PROCEDURES FOR QUALIFYING FOR AN EMS CREDENTIAL FOLLOWING ENFORCEMENT ACTION**

(a) Any individual who has been subject to denial, suspension, revocation, or amendment of an EMS credential shall submit in writing to the OEMS a request for review to determine eligibility for credentialing.

(b) Factors the Department shall consider when determining eligibility shall include:

- (1) the reason for administrative action, including:
    - (A) criminal history;
    - (B) patient care;
    - (C) substance abuse; and
    - (D) failure to meet credentialing requirements;
  - (2) the length of time since the administrative action was taken; and
  - (3) any mitigating or aggravating factors relevant to obtaining a valid EMS credential.
- (c) In order to be considered for eligibility, the individual shall:
- (1) wait a minimum of 36 months following administrative action before seeking review; and
  - (2) undergo a criminal history background check. If the individual has been charged or convicted of a misdemeanor or felony in this or any other state or country within the previous 36 months, the 36 month waiting period shall begin from the date of the latest charge or conviction.
- (d) If determined to be eligible, the Department shall grant authorization for the individual to begin the process for EMS credentialing as set forth in Rule .0502 of this Subchapter.
- (e) Prior to enrollment in an EMS educational program, the individual shall disclose the prior administrative action taken against the individual's credential in writing to the EMS Educational Institution.
- (f) An individual who has undergone administrative action against his or her EMS credential is not eligible for legal recognition as defined in G.S. 131E-159(d) or issuance of a temporary EMS credential as defined in G.S. 131E-159(e).
- (g) For a period of 10 years following restoration of the EMS credential, the individual shall disclose the prior administrative action taken against his or her credential to every EMS System, Medical Director, EMS Provider, and EMS Educational Institution where he or she is affiliated and provide a letter to the OEMS from each verifying disclosure.
- (h) If the Department determines the individual is ineligible for EMS credentialing pursuant to this Rule, the Department shall provide in writing the reason(s) for denial and inform him or her of the procedures for contested case hearing as set forth in Rule .1509 of this Section.

*History Note: Authority G.S. 131E-159(g); 143-508(d)(3); 143-508(d)(10); Eff. January 1, 2017.*

## TITLE 12 – DEPARTMENT OF JUSTICE

### 12 NCAC 09A .0103 DEFINITIONS

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

- (1) "Active Duty Military" means, for the purpose of determining eligibility for certification pursuant to 12 NCAC 09B .0401 and 12 NCAC 09B .0403, full-time duty in the active military

service of the United States. Such term includes full-time training duty, annual training duty, and attendance while in the active military service at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

- (2) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).
- (3) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of the Department of Public Safety as authorized by G.S. 18B-500.
- (4) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (5) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (6) "Convicted" or "Conviction" means, for purposes of this Chapter, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3), and excluding Correctional officers and probation/parole officers.
- (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (2) of this Rule.
- (9) "Department Head" means the chief administrator of any criminal justice agency, and specifically includes any chief of police or agency director. "Department Head" also includes a designee appointed in writing by the Department Head.
- (10) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (11) "Educational Points" means points earned toward the Professional Certificate Programs for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally-accredited institution of higher learning. Each semester hour of college

credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

- (12) "Enrolled" means that an individual is currently actively participating in an on-going presentation of a Commission-certified basic training course that has not concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:

- (a) for law enforcement officers, that the officer is attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
- (b) for Department of Public Safety, Division of Adult Correction and Juvenile Justice personnel, that the officer is attending the last or final phase of the approved training course necessary for satisfying the total course completion requirements.

- (13) "High School" means an educational program that meets the compulsory attendance requirements in the jurisdiction in which the school is located.

- (14) "In-Service Training" means all training prescribed in 12 NCAC 09E .0105 that must be completed, with passing scores achieved, by all certified law enforcement officers during each full calendar year of certification.

- (15) "In-Service Training Coordinator" means the person designated by a Criminal Justice Agency head to administer the agency's In-Service Training program.

- (16) "Lateral Transfer" means the employment of a criminal justice officer by a Criminal Justice Agency based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.

- (17) "Law Enforcement Code of Ethics" means the code adopted by the Commission on September 19, 1973, that reads as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be

exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God or by affirmation to my chosen profession law enforcement.

- (18) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.

- (19) "Juvenile Justice Officer" means a person designated by the Secretary of the Department of Public Safety, Division of Adult Correction and Juvenile Justice to provide for the care and supervision of juveniles placed in the physical custody of the Department.

- (20) "Law Enforcement Officer" means an appointee of a Criminal Justice Agency, an agency of the State, or of any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title "Law Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.

- (21) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of

- Commission-approved law enforcement training equals one law enforcement training point.
- (22) "LIDAR" is an acronym for "Light Detection and Ranging" and means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (23) "Local Confinement Personnel" means any officer, supervisor, or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor, or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or any officer, supervisor, or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (24) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
- (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly-enacted ordinance, or criminal statute of this State that is not classified as a Class B Misdemeanor pursuant to Sub-item (24)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Excluded from "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions or duly enacted ordinances of an authorized governmental entity, with the exception of the offense of impaired driving that is included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level

three G.S. 20-179(i), level four G.S. 20-179(j), or level five G.S. 20-179(k). Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, or criminal statute of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

(b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice, incorporated herein by reference, and shall include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. The publication is available from the Commission's website:

<http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-Misdemeanor-Manual-2005.aspx>.

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

- (i) either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a

- (ii) term of more than six months but not more than two years; driving while license permanently revoked or permanently suspended;
  - (iii) those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual; and
  - (iv) an act committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.
- (25) "Qualified Assistant" means an additional staff person designated by the School Director to assist in the administration of a course when an institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.
- (26) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band, the 24,050 to 24,250 MHZ frequency (K) band, or the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- (27) "Resident" means any youth committed to a facility operated by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (28) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (29) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (30) "Speed-Measuring Instruments" (SMI) means those devices or systems, including RADAR, Time-Distance and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all devices or systems described or referenced in 12 NCAC 09C .0601.
- (31) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (32) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;  
 Eff. January 1, 1981;  
 Amended Eff. November 1, 1981; August 15, 1981;  
 Readopted Eff. July 1, 1982;  
 Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;  
 Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989;  
 Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995;  
 Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998;  
 January 1, 1995;  
 Temporary Amendment Eff. January 1, 2001;  
 Amended Eff. August 1, 2002; April 1, 2001;  
 Temporary Amendment Eff. April 15, 2003;  
 Amended Eff. January 1, 2017; February 1, 2016; January 1, 2015; January 1, 2006; June 1, 2005; April 1, 2004.*

**12 NCAC 09B .0203 ADMISSION OF TRAINEES**

- (a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.
- (c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.
- (d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.
- (e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014,

(<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test within one year prior to admission to Basic Law Enforcement Training and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

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

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

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

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

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

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;

- (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as Class A Misdemeanors, except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
- (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

*History Note:* Authority G.S. 17C-6; 17C-10;  
*Eff. January 1, 1981;*  
*Amended Eff. January 1, 2017; February 1, 2016; November 1, 2015; March 1, 2015; January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.*

**12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION**

(a) General Instructor Certification issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
  - (A) is a high school, college or university graduate, or has received a high school equivalency credential as recognized by the issuing state; and
  - (B) has acquired four years of practical experience as a Criminal Justice Officer, an administrator or specialist in a field directly related to the criminal justice system, or as an employee of a Criminal Justice Agency.
- (2) Present evidence showing completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a

subsequent Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses shall possess General Instructor Certification.

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

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2017; February 1, 2016; January 1, 2015; January 1, 2006; May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1, 1985; January 1, 1985.*

**12 NCAC 09B .0303 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission a favorable recommendation from a School Director or In-Service Training Coordinator accompanied by a certification on a Commission Instructor Evaluation Form F-16 that the instructor taught a minimum of eight hours of Commission-accredited basic training course, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B .1302, or 10B .2005 during the probationary period. The instructor shall achieve a minimum of 64 points on all instruction evaluations submitted to the Commission. The Commission Instructor Evaluation Form F-16 is located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6aa-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(c) The term of certification as a general instructor is indefinite, provided the instructor completes during each calendar year a minimum of one hour of instructor refresher training provided by North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of instructors who have met this requirement during the previous calendar year.

(d) If the instructor fails to meet the instructor refresher training specified in Paragraph (c) of this Rule, he or she shall deliver eight hours of evaluated instruction in a Commission-accredited basic training, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B .1302, or 10B .2005, and complete the instructor refresher training specified in Paragraph (c) of this Rule within 60 days from the last day of the previous calendar year.

(e) If an instructor fails to meet the requirements of Paragraph (c) or (d) of this Rule, the certification period for the instructor shall cease, and the instructor shall be required to complete the requirements of Rule 09B .0302 of this Section in order to obtain probationary instructor status.

(f) The use of guest participants in a delivery of the Basic Law Enforcement Training Course is permissible. However, such guest participants are subject to the direct on-site supervision of a



Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

(g) "Commission-recognized in-service training" shall mean training meeting the following requirements:

- (1) training is taught by an instructor certified by the Commission;
- (2) training utilizes a lesson plan in the Instructional Systems Design format; and
- (3) completion of training shall be demonstrated by a passing score on a written test as follows:
  - (A) a written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
  - (B) a student shall pass each test by achieving 70 percent correct answers; and
  - (C) 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.
  - (D) Topics delivered pursuant to 12 NCAC 09E .0104(1) and 12 NCAC 09E .0105(a)(1) shall not require written testing.

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

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2017; December 1, 2007; November 1, 2007; August 1, 2006; January 1, 2006; August 1, 2000; July 1, 1991; October 1, 1985; January 1, 1985; January 1, 1983.*

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

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a Specialized Instructor within 60 days after the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) Where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor

Certification are issued on the same date, the instructor is required to instruct, within 36 months after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification, the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

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

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and
  - (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form (Form F-12A) that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to

Rule 12 NCAC 09C .0401, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005;

- (B) a favorable written evaluation by a School Director, In-Service Training Coordinator, or another Specialized Instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or in-service training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005 during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>;
- (C) proof that the applicant has met the requirement set forth in Rule .0303(c) of this Section;
- (D) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal; and
- (E) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

(e) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

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

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2017; February 1, 2016; August 1, 2015; May 1, 2014; June 1, 2012; November 1, 2007; January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.*

## **12 NCAC 09B .0312 INSTRUCTOR CERTIFICATION RENEWAL**

(a) Individuals who hold Specialized Instructor certification may, for just cause, be granted an extension of the three-year period to teach the 12 hour minimum requirement, pursuant to Rule .0305(d) of this Subchapter. The Director may grant such extensions on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

(b) The Director may, for just cause, grant an extension of the 90-day period in which an instructor's renewal application must be submitted as specified in 12 NCAC 09B .0305(d). Such extension, however, shall not exceed 12 months and shall not extend the instructor's certification period beyond its specified expiration period.

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

*Eff. March 1, 1990;*

*Amended Eff. January 1, 2017; August 1, 2006; January 1, 2006; August 1, 2000; January 1, 1995.*

## **12 NCAC 09B .0403 EVALUATION FOR TRAINING WAIVER**

(a) The Standards Division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been completed as specified in Rule .0402(a) of this Section. Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by Standards Division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

- (1) Persons having completed a Commission-accredited basic training program and not having been duly appointed and sworn as a law enforcement officer within one year of completion of the program shall complete a subsequent Commission-accredited basic

- training program, as prescribed in Rule .0405(a) of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to obtaining probationary law enforcement certification, unless the Director determines that a delay in applying for certification was not due to neglect on the part of the applicant, in which case the Director shall accept a Commission-accredited basic training program that is over one year old. The appointing agency shall request in writing the extension of the one year period, which shall not exceed 30 days from the first year anniversary of the passing of the state comprehensive examination;
- (2) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees shall not have a break in service exceeding one year. At a minimum, out-of-state transferees shall have two years' full-time, sworn law enforcement experience and have completed a basic law enforcement training course accredited by the transferring State. Prior to employment as a certified law enforcement officer, out-of-state transferees shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E .0106. In addition, out-of-state transferees shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
  - (3) Persons who have completed a 369-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1984, and have been separated from a sworn position for over one year but less than three years who have had a minimum of two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period. Prior to employment as a certified law enforcement officer, these persons shall complete with a passing score the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E;
  - (4) Persons out of the law enforcement profession for over one year but less than three years who have had less than two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and achieve a passing score on the State Comprehensive Examination;
  - (5) Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a Commission-accredited basic training program, as prescribed in Rule .0405(a) of this Section, and shall achieve a passing score on the State Comprehensive Examination;
  - (6) Persons who separated from law enforcement employment during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for more than one year shall complete a subsequent Commission-accredited basic training program and shall achieve a passing score on the State Comprehensive Examination;
  - (7) Persons who separated from a sworn law enforcement position during their probationary period after having completed a Commission-accredited basic training program and who have separated from a sworn law enforcement position for less than one year shall serve a new 12 month probationary period as prescribed in Rule .0401(a) of this Section, but shall not be required to complete an additional training program;
  - (8) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973, and continuing through September 30, 1978, and who have separated from a sworn law enforcement position for over one year but less than two years shall complete the Legal Unit and the topical area entitled "Law Enforcement Driver Training" of a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) and .0205(b)(5)(C) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
  - (9) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973, and continuing through September 30, 1978, and have been

- separated from a sworn law enforcement position for two or more years shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, regardless of training and experience and shall achieve a passing score on the State Comprehensive Examination;
- (10) Persons who have completed a minimum 240-hour basic law enforcement training program accredited by the Commission under guidelines administered beginning October 1, 1978, and continuing through September 30, 1984, and have been separated from a sworn position over one year but less than three years shall complete the Legal Unit in a Commission-accredited Basic Law Enforcement Training Course as prescribed in Rule .0205(b)(1) of this Subchapter and shall achieve a passing score on the State Comprehensive Examination within the 12 month probationary period;
  - (11) Persons previously holding law enforcement certification in accordance with G.S. 17C-10(a) who have been separated from a sworn law enforcement position for over one year and who have not previously completed a minimum basic training program accredited by either the North Carolina Criminal Justice Training and Standards Council or the Commission shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to employment;
  - (12) Persons who have completed training as a federal law enforcement officer and are candidates for appointment as a sworn law enforcement officer in North Carolina shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination;
  - (13) Applicants with part-time experience who have a break in service in excess of one year shall complete a Commission-accredited basic training program, as prescribed in Rule .0405 of this Section, and shall achieve a passing score on the State Comprehensive Examination prior to employment;
  - (14) Applicants who hold or previously held certification issued by the North Carolina Sheriffs' Education and Training Standards Commission (Sheriffs' Commission) shall be subject to evaluation based on the applicant's active or inactive certification status with the Sheriffs' Commission. A deputy sheriff certified with the Sheriffs' Commission shall be considered active if he or she has performed any law enforcement function during the previous 12 months. A deputy sheriff certified with the Sheriffs' Commission is considered inactive if he or she has not performed a law enforcement function during the previous 12 months.
- (A) The Standards Division shall issue certification to an applicant holding active general certification with the Sheriffs' Commission provided that the applicant:
    - (i) Does not have a break in service of greater than 12 months;
    - (ii) Has completed the mandatory in-service training requirements pursuant to 12 NCAC 10B .2005 for each year certification was held; and
    - (iii) Held active status with the Sheriffs' Commission within 12 months of the date the applicant achieved a passing score on the Basic Law Enforcement Training state comprehensive examination.
  - (B) The Standards Division shall issue certification to an applicant holding inactive certification with the Sheriffs' Commission provided that the applicant:
    - (i) Holds inactive probationary or general certification with the Sheriffs' Commission;
    - (ii) Has served a minimum of 24 months of full time sworn service or does not have a break in service of greater than 12 months;
    - (iii) Has completed the mandatory in-service training requirements pursuant to 12 NCAC 10B .2005, with the exception of Firearms Training and Qualification, during each year certification was held; and
    - (iv) Held active status with the Sheriffs' Commission within 12 months of the date the applicant achieved a passing score on the Basic Law Enforcement Training state comprehensive examination.
  - (C) An applicant awarded certification with the Sheriffs' Commission by means of the Sheriffs' Standards BLET Challenge as prescribed in 12 NCAC 10B .0505(9)(b) shall meet the following requirements in order to

- obtain probationary certification from the Commission:
    - (i) Have a minimum of 24 months of sworn, full-time law enforcement service;
    - (ii) Not have a break in service of greater than 12 months; and
    - (iii) Have completed all mandatory in-service requirements pursuant to 12 NCAC 10B .0505 during the previous 2 years.
  - (D) An applicant defined as a criminal justice officer, as defined in G.S. 17C-2(3), who is elected Sheriff shall not be required to maintain certification with the Sheriffs' Commission for the time period he or she serves as Sheriff. The applicant's certification shall be reinstated by the Commission upon the conclusion of the period of service as Sheriff, and in conformance with 12 NCAC 09C .0303.
- (15) Alcohol law enforcement agents who received basic alcohol law enforcement training prior to November 1, 1993, and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.
- (16) Wildlife enforcement officers who separate from employment with the Wildlife Enforcement Division and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The Standards Division staff shall determine the amount of training required of these applicants, based upon the type of certification held by the applicant and the length of any break in the applicant's sworn, full-time service.
- (17) Active duty, guard, or reserve military members failing to complete all of the required annual in-service training topics, as defined in 12 NCAC 09E .0105 of this Chapter, due to military obligations, are subject to the following training requirements as a condition for return to active criminal justice status. The agency head shall verify the person's completion of the appropriate training by submitting a statement, on Form F-9C, Return to Duty Request form. This form is located on the agency's website: <http://www.ncdoj.gov/getdoc/ac22954d-5e85-4a33-87af-308ba2248f54/F-9C-6-11.aspx>.
- (A) Active duty members of the armed forces eligible for probationary certification pursuant to Paragraph (18) of this Rule, and active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for up to a period of three years, shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete with a passing score the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;
  - (B) Active duty, guard, or reserve military members holding probationary or general certification as a criminal justice officer who fail to complete all of the required annual in-service training topics due to military obligations for a period greater than three years shall complete the following topic areas within the following time frames:
    - (i) The person shall complete the previous year's required in-service training topics, the current year's required in-service training topics, and complete the appointing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 09E prior to their return to active criminal justice status;
    - (ii) The person shall achieve a passing score on the practical skills testing for the First Responder, Law Enforcement Driver Training, and Subject Control Arrest Techniques topics enumerated in Rule .0205(b)(5) of this Subchapter prior to returning to active criminal justice status. This practical skills testing may be completed either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a

- Commission-Certified instructor for that particular skill. The person shall complete one physical fitness assessment in lieu of the Fitness Assessment and Testing topic. The person shall also be examined by a physician per Rule .0104(b) of this Subchapter; and
- (iii) The person shall complete some of the topics in the legal unit of instruction in the Basic Law Enforcement Training course as set forth in Rule .0205(b)(1) of this Subchapter. The required topics include Motor Vehicle Law; Juvenile Laws and Procedures; Arrest, Search and Seizure/Constitutional Law; and ABC Laws and Procedures. The person shall achieve a passing score on the appropriate topic tests for each course delivery. The person may undertake each of these legal unit topics of instruction either in a Commission-accredited Basic Law Enforcement Training course or under the instruction of a Commission certified instructor for that particular topic of instruction. The person shall complete each of the enumerated topics of instruction within 12 months from the beginning of his or her return to active criminal justice status.
- (18) An active duty member of the armed forces who completes the basic training course in its entirety as prescribed in Rule .0405 of this Subchapter, and annually completes the mandatory in-service training topics as prescribed in 12 NCAC .0105, with the exception of the Firearms Qualification and Testing requirements contained in 12 NCAC 09E .0105(a)(1), for each year subsequent to the completion of the basic training course and achieves a passing score on the state comprehensive examination as prescribed in Rule .0406 of this Subchapter within five years of separating from active duty status shall be eligible for probationary certification as prescribed in 12 NCAC 09C .0303 for a period of 12 months from the date he or she separates from active duty status in the armed forces. All mandatory in-service training topics as prescribed in 12 NCAC 09E .0105 shall be completed by the individual prior to receiving probationary certification as prescribed in 12 NCAC 09E .0105.
- (b) In the event the applicant's prior training is not equivalent to the Commission's standards, the Commission shall prescribe as a condition of certification supplementary or remedial training to equate previous training with current standards.
- (c) Where certifications issued by the Commission require satisfactory performance on a written examination as part of the training, the Commission shall require the examinations for the certification.
- (d) Where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Basic Law Enforcement Training Course would be impractical, the Director of the Standards Division is authorized to exercise his or her discretion in determining the amount of training those persons shall complete during their probationary period.
- (e) The following criteria shall be used by Standards Division staff in evaluating prior training and experience of local confinement personnel to determine eligibility for a waiver of training requirements:
- (1) Persons who hold probationary, general, or grandfather certification as local confinement personnel and separate after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and have been separated for one year or more shall complete a subsequent Commission-accredited training course and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section;
  - (2) Persons who separated from a local confinement personnel position after having completed a Commission-accredited course as prescribed in Rule .0224 or .0225 of this Subchapter and who have been separated for less than one year shall serve a new 12 month probationary period, but shall be required to complete an additional training program;
  - (3) Applicants who hold or previously held "Detention Officer Certification" issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. No additional training shall be required where the applicant obtained certification and successfully completed the required 120 hour training course and has not had a break in service in excess of one year; and
  - (4) Persons holding certification for local confinement facilities who transfer to a district or county confinement facility shall complete the course for district and county confinement facility personnel, as adopted by reference in

Rule .0224 of this Subchapter, and achieve a passing score on the State Comprehensive Examination during the probationary period as prescribed in Rule .0401(a) of this Section.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1*

*Eff. January 1, 1981;*

*Amended Eff. January 1, 2017; October 1, 2016; November 1, 2014; August 1, 2000; November 1, 1993; March 1, 1992; July 1, 1989; February 1, 1987.*

## **12 NCAC 09G .0102 DEFINITIONS**

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means, the entry of:
  - (a) a plea of guilty;
  - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
  - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means either or both of the two classes of officers employed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice: correctional officer or probation/parole officer.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (7) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

- (8) "High School" means a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (9) "In-Service Training Coordinator" means a person designated by a Criminal Justice Agency head to administer the agency's In-Service Training program.
- (10) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as the following as set forth in G.S. or other state or federal law:
  - (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)
  - (b) 14-27.7 Intercourse and sexual offenses with certain victims (If defendant is school personnel other than a teacher, school administrator, student teacher, or coach)
  - (c) 14-32.1(f) Assault on handicapped persons
  - (d) 14-32.2(b)(4) Patient abuse and neglect, punishments
  - (e) 14-32.3 Exploitation by caretaker of disabled/elder adult in domestic setting; resulting in loss of less than one thousand dollars (\$1000) (August 1, 2001-December 1, 2005. Repealed December 1, 2005)
  - (f) 14-33(b)(9) Assault, battery against sports official
  - (g) 14-33(c) Assault, battery with circumstances
  - (h) 14-34 Assault by pointing a gun
  - (i) 14-34.6(a) Assault on Emergency Personnel
  - (j) 14-54 Breaking or Entering into buildings generally (14-54(b))
  - (k) 14-72 Larceny of property; receiving stolen goods etc.; not more than one thousand dollars (\$1000.00)(14-72(a))
  - (l) 14-72.1 Concealment of merchandise (14-72.1(e); third or subsequent offense)
  - (m) 14-76 Larceny, mutilation, or destruction of public records/papers
  - (n) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)
  - (o) CH 14 Art. 19B Financial transaction card crime (14-113.17(a))
  - (p) 14-114(a) Fraudulent disposal of personal property on which there is a security interest
  - (q) 14-118 Blackmailing
  - (r) 14-118.2 Obtaining academic credit by fraudulent means (14-118.2(b))

(s)	14-122.1 Falsifying documents issued by a school (14-122.1(c))	(ww)	14.288.6(a) Looting; trespassing during emergency
(t)	14-127 Willful and wanton injury to real property	(xx)	14-288.7(c) Transporting weapon or substance during emergency
(u)	14-160 Willful and wanton injury to personal property greater than two hundred dollars (\$200.00)(14-160(b))	(yy)	14-288.9(c) Assault on emergency personnel; punishments
(v)	14-190.5 Preparation of obscene photographs	(zz)	14-315(a) Selling or giving weapons to minors
(w)	14-190.9 Indecent Exposure	(aaa)	14-315.1 Storage of firearms to protect minors
(x)	14-190.14 Displaying material harmful to minors (14-190.14(b))	(bbb)	14-316.1 Contributing to delinquency
(y)	14-190.15 Disseminating harmful material to minors (14-190.15(d))	(ccc)	14-318.2 Child abuse
(z)	14-202.2 Indecent liberties between children	(ddd)	14-360 Cruelty to animals
(aa)	14-202.4 Taking indecent liberties with a student	(eee)	14-361 Instigating or promoting cruelty to animals
(bb)	14-204 Prostitution (14-207; 14-208)	(fff)	14-401.14 Ethnic intimidation; teaching any technique to be used for (14-401.14(a) and (b))
(cc)	14-223 Resisting officers	(ggg)	14-454(a) or (b) Accessing computers
(dd)	14-225 False, etc., reports to law enforcement agencies or officers	(hhh)	14-458 Computer trespass (Damage less than two thousand five hundred dollars (\$2500.00))
(ee)	14-230 Willfully failing to discharge duties	(iii)	15A-266.11 Unauthorized use of DNA databank; willful disclosure (15A-266.11(a) and (b))
(ff)	14-231 Failing to make reports and discharge other duties	(jjj)	15A-287 Interception and disclosure of wire etc. communications
(gg)	14-232 Swearing falsely to official records	(kkk)	15B-7(b) Filing false or fraudulent application for compensation award
(hh)	14-239 Allowing prisoners to escape punishment	(lll)	18B-902(c) False statements in application for ABC permit (18B-102(b))
(ii)	14-255 Escape of working prisoners from custody	(mmm)	20-37.8(a) & (c) Fraudulent use of a fictitious name for a special identification card
(jj)	14-256 Prison breach and escape	(nnn)	20-102.1 False report of theft or conversion of a motor vehicle
(kk)	14-258.1(b) Furnishing certain contraband to inmates	(ooo)	20-111(5) Fictitious name or address in application for registration
(ll)	14-259 Harboring or aiding certain persons	(ppp)	20-130.1 Use of red or blue lights on vehicles prohibited (20-130.1(e))
(mm)	CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268)	(qqq)	20-137.2 Operation of vehicles resembling law-enforcement vehicles (20-137.2(b))
(nn)	14-269.2 Weapons on campus or other educational property (14-269.2(d), (e) and (f))	(rrr)	20-138.1 Driving while impaired (punishment level 1 (20-179(g)) or 2 (20-179(h))
(oo)	14-269.3(a) Weapons where alcoholic beverages are sold and consumed	(sss)	20-138.2I Impaired driving in commercial vehicle (20-138.2(e))
(pp)	14-269.4 Weapons on state property and in courthouses	(ttt)	20-141.5(a) Speeding to elude arrest
(qq)	14-269.6 Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))	(uuu)	20-166(b) Duty to stop in event of accident or collision
(rr)	14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1) and (e))	(vvv)	20-166(c) Duty to stop in event of accident or collision
(ss)	14-277.2(a) Weapons at parades, etc., prohibited	(www)	20-166(c1) Duty to stop in event of accident or collision
(tt)	14-277.3 Stalking (14-277.3(b))	(xxx)	50B-4.1 Knowingly violating valid protective order
(uu)	14-288.2(b) Riot		
(vv)	14-288.2(d) Inciting to riot		



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|--------|---|--------|--|
| (yyy)  | 58-33-105 False statement in applications for insurance   | (vi)   | Common-Law Uttering of Forged paper  |
| (zzz)  | 58-81-5 Careless or negligent setting of fires  | (vii)  | Forcible Trespass  |
| (aaaa) | 62A-12 Misuse of 911 system   | (viii) | Unlawful Assembly  |
| (bbbb) | 90-95(d)(2) Possession of schedule II, III, IV  | (ix)   | Common-Law Obstruction of Justice  |
| (cccc) | 90-95(d)(3) Possession of Schedule V  | (www)  | Those offenses occurring in other jurisdictions that are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule.  |
| (dddd) | 90-95(d)(4) Possession of Schedule VI (when punishable as Class 1 misdemeanor)  | (xxx)  | Any offense proscribed by 18 U.S.C. 922 (1996), ( <a href="http://www.gpo.gov/fdsys/pkg/USC-ODE-2011-title18/pdf/USCODE-2011-title18-partI-chap44-sec922.pdf">http://www.gpo.gov/fdsys/pkg/USC-ODE-2011-title18/pdf/USCODE-2011-title18-partI-chap44-sec922.pdf</a> ), that would prohibit possessing a firearm or ammunition.   |
| (eeee) | 90-95(e)(4) Conviction of 2 or more violations of Art. 5  | (11)   | "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are used to develop new training course curricula.  |
| (ffff) | 90-95(e)(7) Conviction of 2 or more violations of Art. 5  | (12)   | "Probation/Parole Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Adult Correction and Juvenile Justice. |
| (gggg) | 90-113.22 Possession of drug paraphernalia (90-113.22(b))   | (13)   | "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.   |
| (hhhh) | 90-113.23 Manufacture or delivery of drug paraphernalia (90-113.23(c))  | (14)   | "School" means an institution, college, university, academy, or agency that offers penal or corrections training for correctional officers or probation/parole officers. "School" includes the corrections training course curricula, instructors, and facilities.   |
| (iiii) | 97-88.2(a) Misrepresentation to get worker's compensation payment   | (15)   | "School Director" means the person designated by the Secretary of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice to administer the School.  |
| (jjjj) | 108A-39(a) Fraudulent misrepresentation of public assistance  | (16)   | "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.  |
| (kkkk) | 108A-53 Fraudulent misrepresentation of foster care and adoption assistance payments  | (17)   | "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by successful completion of Commission-approved corrections training courses. Twenty classroom hours of  |
| (llll) | 108A-64(a) Medical assistance recipient fraud; less than four hundred dollars (\$400.00) (108-64(c)(2))                                   |        |  |
| (mmmm) | 108A-80 Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b))                          |        |  |
| (nnnn) | 108A-80 Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c)) |        |  |
| (oooo) | 113-290.1(a)(2) Criminally negligent hunting; no bodily disfigurement   |        |  |
| (pppp) | 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement  |        |  |
| (qqqq) | 113-290.1(a)(4) Criminally negligent hunting; death results   |        |  |
| (rrrr) | 113-290.1(d) Criminally negligent hunting; person convicted/suspended license   |        |  |
| (ssss) | 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c))  |        |  |
| (tttt) | 148-45(d) Aiding escape or attempted escape from prison   |        |  |
| (uuuu) | 162-55 Injury to prisoner by jailer   |        |  |
| (vvvv) | Common-Law misdemeanors:  |        |  |
|        | (i) Going Armed to the Terror of the People   |        |  |
|        | (ii) Common-Law Mayhem  |        |  |
|        | (iii) False Imprisonment  |        |  |
|        | (iv) Common-Law Robbery   |        |  |
|        | (v) Common-Law Forgery  |        |  |

Commission-approved corrections training equals one State Corrections training point.

*History Note:* Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;  
*Temporary Adoption Eff.* January 1, 2001;  
*Eff.* August 1, 2002;  
*Amended Eff.* January 1, 2017; January 1, 2015; April 1, 2009;  
 August 1, 2004.

**12 NCAC 09G .0308 GENERAL INSTRUCTOR CERTIFICATION**

(a) General Instructor Certifications issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category, specified in Rule .0310 of this Section. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule .0310 of this Subchapter, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
  - (A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state; and
  - (B) has acquired four years of practical experience as a Criminal Justice Officer, Corrections Officer, Probation/Parole Officer an administrator or specialist in a field related to the criminal justice system, or an employee of a Criminal Justice Agency.
- (2) Present evidence showing successful completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as specified in 12 NCAC 09B .0413(d), within 60 days of completion of the Commission-accredited instructor training program.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive written examination administered by the Commission for the Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.

*History Note:* Authority G.S. 17C-6;  
*Temporary Adoption Eff.* January 1, 2001;  
*Eff.* August 1, 2002;  
*Amended Eff.* January 1, 2017; February 1, 2016; November 1, 2015; January 1, 2015; January 1, 2006.

**12 NCAC 09G .0309 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission a favorable recommendation from a School Director or In-Service Training Coordinator accompanied by a certification on a Commission Instructor Evaluation Form F-16 that the instructor taught a minimum of eight hours in Commission-accredited basic training course or Commission-recognized in-service training course during the probationary period. The instructor shall achieve a minimum of 64 points on all instruction evaluations submitted to the Commission. The Commission Instructor Evaluation Form F-16 is located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6aa-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(c) The term of certification as a general instructor is indefinite, provided the instructor completes during each calendar year a minimum of one hour of instructor refresher training provided by North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of instructors who have met this requirement during the previous calendar year.

(d) If the instructor fails to complete the instructor refresher training specified in Paragraph (c) of this Rule, he or she shall deliver eight hours of evaluated instruction in a Commission-accredited basic or Commission-recognized training course and complete the instructor refresher training specified in Paragraph (c) of this Rule within 60 days.

(e) If an instructor fails to meet the requirements of Paragraph (c) and (d) of this Rule, the certification period for the instructor shall cease, and the instructor shall be required to complete the requirements of Rule .0308 of this Section in order to obtain probationary instructor status.

(f) "Commission-recognized in-service training" shall mean training meeting the following requirements:

- (1) training is taught by an instructor certified by the Commission;
- (2) training utilizes a lesson plan in the Instructional Systems Design format; and
- (3) completion of training shall be demonstrated by a passing score on a written test as follows:
  - (A) a written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
  - (B) a student shall pass each test by achieving 70 percent correct answers; and
  - (C) 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.

the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed 36 months. An application for renewal shall contain, in addition to the requirements listed in Rule .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, or Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and
  - (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule .0310 of this Section, or Commission-recognized in-service training course;
  - (B) a favorable written evaluation by a School Director, In-Service Training Coordinator, or another instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, or Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such

*History Note: Authority G.S. 17C-6;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Amended Eff. January 1, 2017; June 1, 2012; August 1, 2006;  
January 1, 2006.*

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

- (a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.
- (b) Where certifications for both General Probationary Instructor and Specialized Instructor are issued on the same date, the instructor shall be required to instruct within 36 months after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.
- (c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification the specialized instructor may satisfy the teaching requirement for

evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website:

<http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

- (C) has met the requirement set forth in Rule .0309(c) of this Section.

(e) The use of guest participants in a delivery of a Commission-mandated training course pursuant to this Section shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

*History Note: Authority G.S. 17C-6;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Amended Eff. January 1, 2017; May 1, 2014; June 1, 2012;  
January 1, 2006.*

## **12 NCAC 09G .0312 INSTRUCTOR CERTIFICATION RENEWAL**

(a) Individuals who hold Specialized Instructor Certification may, for just cause, be granted an extension of the three-year period to teach the 12 hour minimum requirement, pursuant to Rule .0311(c) of this Section. The Director of the Standards Division may grant such extensions on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

(b) The Director of the Standards Division may, for just cause, grant an extension of the 90-day period in which an instructor's renewal application must be submitted as specified in 12 NCAC 09G .0311(c). Such extension, however, shall not exceed 12 months and shall not extend the instructor's certification period beyond its specified expiration period.

*History Note: Authority G.S. 17C-6;  
Temporary Adoption Eff. January 1, 2001;  
Eff. August 1, 2002;  
Amended Eff. January 1, 2017; August 1, 2006; January 1, 2006.*

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## **12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS**

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly

increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

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

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

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

- (1) Career Survival: Stop! Think About What You Are Doing;
- (2) Communicable Diseases;
- (3) Detention Intelligence Update;
- (4) Understanding PREA; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

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

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

(e) The 2017 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Positively Impacting Today's Youth;
- (3) Domestic Violence: Protecting Victims of Domestic Violence;
- (4) Improving Decision Making Skills;

- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.
- (f) The 2017 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:
  - (1) Detention Legal Update;
  - (2) Detention Intelligence Update;
  - (3) Recognizing Substance Abuse and Withdrawal;
  - (4) Improving Decision-Making Skills; and
  - (5) Any topic areas of the Sheriff's or Department Head's choosing.
- (g) The 2017 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:
  - (1) Post Critical Incident Stress Management;
  - (2) Protecting Victims of Domestic Violence;
  - (3) Improving Decision Making Skills;
  - (4) Law Enforcement Intelligence Update; and
  - (5) Any topic areas of the Sheriff's or Department Head's choosing.

*History Note:* Authority G.S. 17E-4; 17E-7;  
*Eff. January 1, 2007;*  
*Amended Eff. January 1, 2017; January 1, 2016; January 1, 2015; February 1, 2014; January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.*

## **TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **15A NCAC 10F .0346 ARROWHEAD BEACH SUBDIVISION**

- (a) Regulated Areas. This Rule applies to the following waters or portions of waters in Chowan County:
  - (1) Chowan River: that portion adjoining the shoreline of the Arrowhead Beach Subdivision Park and having dimensions of approximately 350 by 600 feet, containing a marked swimming area and the area within 200 feet of the pier;
  - (2) Indian Creek: that portion adjoining the Arrowhead Beach Subdivision; and
  - (3) Chowan River: the waters of an unnamed canal in Arrowhead Beach Subdivision, shore to shore at its intersection with the Chowan River at 36.22508 N, 76.70787 W.
- (b) Swimming Area. No person operating or responsible for the operation of a vessel shall permit it to enter the swimming area described in Subparagraph (a)(1) of this Rule.
- (c) Obstruction of Swimmers or Boats. No person shall place or maintain within the recreational area described in Subparagraph (a)(1) of this Rule any poles, cables, lines, nets, trotlines, fish traps or other obstructions or hazards to swimmers or boats, excepting those necessary to mark the area pursuant to this Rule.

- (d) Speed Limit. No person shall operate a vessel at greater than no-wake speed in the area described in Subparagraphs (a)(2) and (3) of this Rule.
- (e) Placement and Maintenance of Markers. The board of Commissioners of Chowan County is designated a suitable agency for the 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. On condition that the said board of commissioners exercise its supervisory responsibility, it may delegate the actual placement and maintenance of markers to some responsible person or organization.

*History Note:* Authority G.S. 75A-3; 75A-15;  
*Eff. August 1, 1983;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016;*  
*Amended Eff. January 1, 2017.*

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 06 – BOARD OF BARBER EXAMINERS**

#### **21 NCAC 06F .0127 STATE AUTHORIZATION AS A POSTSECONDARY INSTITUTION**

- (a) If a barber school seeks to be authorized by the Board as a postsecondary educational institution as set forth in 34 C.F.R. 600.9:
  - (1) the school handbooks and enrollment agreements required by 21 NCAC 06F .0125 shall require prospective students to have a high school diploma or equivalent; and
  - (2) the school shall submit a copy of the student's high school diploma or equivalency documentation with each Form BAR-3 required by 21 NCAC 06N .0104 within the time frame set forth in 21 NCAC 06F .0113(a).
- (b) If a barber school meets the requirements set forth in Paragraph (a) of this Rule, the Board shall include the phrase "Postsecondary Institution" on the barber school permit issued under G.S. 86A-13. If the school already holds a school permit issued by the Board, the Board shall issue the permit with the phrase "Postsecondary Institution" at no additional cost, and the school shall relinquish the permit without the phrase to the Board.
- (c) The Board shall determine that a school no longer complies with Paragraph (a) based on an inspection or investigation, notification to the Board by the school, or a failure by the school to comply with Paragraph (a)(2) of this Rule. If the Board makes this determination:
  - (1) the Board shall issue at no charge a duplicate copy of the permit without the phrase "Postsecondary Institution";
  - (2) the school shall relinquish to the Board the permit with the phrase "Postsecondary Institution"; and

- (3) the Board shall notify the federal Department of Education of the school's change in postsecondary status.

(d) This Rule shall not be construed to authorize the Board to delay issuing a permit without the phrase "Postsecondary Institution" to a school that otherwise meets the requirements of the North Carolina General Statutes and the rules of the Board.

*History Note: Authority G.S. 86A-13; 86A-22; 20 U.S.C. 1001; 20 U.S.C. 1002; 34 C.F.R. 600.9; Eff. January 1, 2017.*

**21 NCAC 06L .0115 INSPECTIONS OF SHOPS**

(a) The Board's Executive Director and its inspectors may enter and make inspections of any shop during its business hours for the purpose of determining whether or not G.S. 86A and the Board's administrative rules are being followed. Persons authorized to make an inspection of shops shall prepare a report according to Rule .0119 of this Section. The report shall be signed by the inspector and shall be available free of charge upon request by the owner or manager or any member of the public. The copy of any violation notice shall be left with the owner or manager, and retained within the barbering area until the violation is resolved with the Board.

(b) The Board's Executive Director and its inspectors may inspect all areas of the shop, including the backstand and its drawers and cabinets, and any other drawers, closets or other enclosures within the permitted shop.

(c) The Board's Executive Director and its inspectors may determine and assign numerical and letter sanitary grades to a shop following inspections as set forth in Rules .0118 and .0119 of this Section. The grade shall be displayed in a place visible to the public at the front of the shop.

*History Note: Authority G.S. 86A-5(a)(1); 86A-15; Eff. June 1, 2008; Amended Eff. April 1, 2010; Readopted Eff. July 1, 2016; Amended Eff. January 1, 2017.*

**21 NCAC 06N .0105 FORM BAR-4**

(a) The Form BAR-4 shall be filed by one applying to take the examination to receive a registered apprentice certificate. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant;
- (2) the name of any barber school attended and the date of enrollment and graduation; and
- (3) the place of proposed employment as an apprentice barber.

(b) The course training certification shall be filled in by the manager of the barber school the applicant last attended.

(c) The fee in Rule .0101(a)(5) of this Section shall be submitted with the application.

(d) The Form BAR-4 shall be notarized.

*History Note: Authority G.S. 86A-1; 86A-10; 86A-24; 86A-25; 93B-14; Eff. February 1, 1976;*

*Readopted Eff. February 8, 1978;  
Amended Eff. March 1, 1983;  
Legislative Objection Lodged Eff. March 7, 1983;  
Curative Amended Eff. April 6, 1983;  
Amended Eff. September 1, 2013; May 1, 1989;  
Readopted Eff. July 1, 2016;  
Amended Eff. January 1, 2017.*

**21 NCAC 06N .0109 FORM BAR-8**

(a) The Form BAR-8 shall be filed by one who has practiced as a barber in a state other than North Carolina for three years or more and is applying to obtain a certificate as a registered barber in North Carolina. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant;
- (2) the name and address of any barber school attended in another state; and
- (3) barbering experience and the status of each barber license in another state.

(b) The fee in Rule .0101(a)(21) of this Section shall accompany this form.

(c) The Form BAR-8 shall be notarized.

(d) The Form BAR-8 shall be accompanied by verification from the applicant's out-of-state agency of the applicant's licensure in that state.

*History Note: Authority G.S. 86A-1; 86A-12; 86A-25; Eff. March 1, 1983;  
Legislative Objection Lodged Eff. March 7, 1983;  
Curative Eff. April 6, 1983;  
Amended Eff. September 1, 2013; May 1, 1989;  
Readopted Eff. July 1, 2016;  
Amended Eff. January 1, 2017.*

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**CHAPTER 50 – BOARD OF EXAMINERS OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS**

**21 NCAC 50 .0106 LOCATION OF OFFICE**

The mailing address of The State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors is 1109 Dresser Court, Raleigh, NC 27609. The office hours are set forth on the Board website, [www.nclicensing.org](http://www.nclicensing.org).

*History Note: Authority G.S. 87-16; 87-18; Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. January 1, 2003; August 1, 2002; June 11, 1998;  
November 1, 1993; April 1, 1991;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;  
Amended Eff. January 1, 2017.*

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**CHAPTER 63 – SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

**21 NCAC 63 .0505      RELATIONSHIPS WITH COLLEAGUES**

Social workers shall act with integrity in their relationships with colleagues and other professionals. They shall consider the practice areas and knowledge or expertise of other professionals to whom they make referrals and with whom they collaborate in serving clients.

- (1) When expressing judgment on the views, qualifications and findings of colleagues, social workers shall not misrepresent the colleague's license level, degree, or other professional qualification in any written or oral communication and shall avoid the use of demeaning or derogatory language.
- (2) Social workers shall maintain knowledge of the professional and community resources available to the client population they serve and when referring clients, social workers shall refer to professionals and community resources that are able to provide the services required.
- (3) If a social worker's services are sought by an individual who is already receiving similar services from another professional, the client's welfare shall be the primary consideration before agreeing to provide services. To minimize confusion and conflict, social workers shall discuss with the prospective client the nature of the existing professional relationship, the client's needs, the therapeutic issues involved, and the benefits and risks associated with entering into a relationship with a new service provider.

- (4) Social workers shall provide competent professional guidance to colleagues, employees, supervisees, and students. They shall foster working conditions that provide fairness, privacy and protection from physical or mental harm. Social workers supervising associate licensees shall evaluate without bias, the work performance of those under their supervision, and share evaluations with supervisees. Social Workers shall not engage in sexual relationships with supervisees, students, trainees, or other colleagues over whom they exercise professional authority. They shall not abuse the power inherent in their supervisory position for personal or financial gain.
- (5) A social worker certified or licensed under this Chapter who has knowledge of conduct that would constitute grounds for disciplinary action under this Chapter or the Chapter governing the practice of another licensed healthcare provider shall report the conduct to the licensing authority that oversees the healthcare provider believed to be engaged in misconduct. Social workers shall provide information to assist colleagues defending themselves against allegations of unethical or incompetent practice.

*History Note: Authority G.S. 90B-6; 90B-11;  
Eff. March 1, 1994;  
Amended Eff. February 1, 2017.*

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission February 16, 2017 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 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

### **RULES REVIEW COMMISSION MEMBERS**

#### **Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jay Hemphill  
Jeffrey A. Poley

#### **Appointed by House**

Garth Dunklin (Chair)  
Stephanie Simpson (2<sup>nd</sup> Vice Chair)  
Paul Powell  
Jeanette Doran

### **COMMISSION COUNSEL**

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

### **RULES REVIEW COMMISSION MEETING DATES**

February 16, 2017	March 16, 2017
April 20, 2017	May 18, 2017

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### **AGENDA**

#### **RULES REVIEW COMMISSION**

**THURSDAY, FEBRUARY 16, 2017 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
  - Commission for Mental Health, Developmental Disabilities and Substance Abuse Services - 10A NCAC 27G .6702; 27H .0201, .0202, .0203, .0204, .0205, .0206, .0207 (May)
  - Social Services Commission - 10A NCAC 70A .0103; 70B .0102; 70M .0402, .0603; 70P .0101, .0102, .0103, .0104, .0105 (Reeder)
  - Department of Insurance - 11 NCAC 05A .0105, .0201, .0301, .0501, .0505, .0508, .0511, .0603, .0703, .0704 (Hammond)
  - Manufactured Housing Board - 11 NCAC 08 .0904 (Thomas)
  - State Human Resources Commission 25 NCAC 01C .0402, .1004; 01D .0101, .0102, .0105, .0112, .0114, .0201, .0301, .0401, .0608, .0901, .1001, .2701, .2702; 01O .0108 (Thomas)
- IV. Review of Log of Filings (Permanent Rules) for rules filed December 21, 2016 through January 20, 2017
  - Board of Agriculture (Thomas)
  - Historical Commission (May)
  - Radiation Protection Commission (Reeder)
  - Department of Labor (Hammond)
  - Environmental Management Commission (Hammond)
  - Department of Revenue (Hammond)
  - Medical Board (Reeder)
  - Midwifery Joint Committee (Reeder)
  - Board of Nursing (Reeder)
  - Board of Pharmacy (May)
  - Veterinary Medical Board (Reeder)



- Building Code Council (Reeder)
  - 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
    1. Review of Reports
    1. 10A NCAC 01- Department of Health and Human Services (May)
    2. 15A NCAC 01D - Department of Environmental Quality (May)
    3. 15A NCAC 1E - Department of Environmental Quality (May)
    - Not scheduled for review this month
    - 4. 21 NCAC 34 – Board of Funeral Service (Hammond)
  - VII. Commission Business
    - Next meeting: Thursday, March 16, 2017
- 

**Commission Review**  
**Log of Permanent Rule Filings**  
**December 21, 2016 through January 20, 2017**

**AGRICULTURE, BOARD OF**

The rules in Chapter 9 are from the Food and Drug Protection Division.

The rules in Subchapter 9C concern current good manufacturing practices for specific food industries including food banks (.0300); smoked and smoke-flavored fish (.0500); processing of eggs (.0600); and bottled water (.0700).

<u>General: Current Good Manufacturing Practices</u>	02	NCAC	09C	.0501
Readopt with Changes/*				
<u>Definitions</u>	02	NCAC	09C	.0502
Readopt with Changes/*				
<u>Plants and Grounds</u>	02	NCAC	09C	.0503
Readopt without Changes/*				
<u>Sanitary Facilities</u>	02	NCAC	09C	.0504
Readopt without Changes/*				
<u>Sanitary Operations</u>	02	NCAC	09C	.0505
Readopt without Changes/*				
<u>Equipment and Procedures</u>	02	NCAC	09C	.0506
Readopt with Changes/*				
<u>Processes and Controls</u>	02	NCAC	09C	.0507
Readopt without Changes/*				
<u>Commingling of Shell and Egg Prohibited</u>	02	NCAC	09C	.0601
Readopt without Changes/*				
<u>Scope</u>	02	NCAC	09C	.0701
Readopt with Changes/*				
<u>Definitions</u>	02	NCAC	09C	.0702
Readopt without Changes/*				
<u>Source Approval</u>	02	NCAC	09C	.0703
Readopt with Changes/*				

The rules in Subchapter 09E concern feed.

<u>Terms Used In Reference to Commercial Feeds</u>	02	NCAC	09E	.0102
Readopt without Changes/*				

<u>Commodities Declared Exempt</u>	02	NCAC	09E	.0103
Readopt with Changes/*				

The rules in Subchapter 9G concern milk and milk products including the pasteurized milk ordinance (.0100); and grade a milk sanitation (.2000).

<u>Adoption by Reference</u>	02	NCAC	09G	.0101
Readopt with Changes/*				
<u>General - Adoption by Reference</u>	02	NCAC	09G	.2001
Readopt with Changes/*				
<u>Modifications of the Adoption by Reference</u>	02	NCAC	09G	.2002
Repeal/*				
<u>Definitions</u>	02	NCAC	09G	.2003
Readopt with Changes/*				
<u>Permits Required</u>	02	NCAC	09G	.2004
Readopt with Changes/*				
<u>Issuance of Permit</u>	02	NCAC	09G	.2005
Readopt with Changes/*				
<u>Permit Suspension and Revocation</u>	02	NCAC	09G	.2006
Repeal/*				
<u>Enforcement and Penalties</u>	02	NCAC	09G	.2007
Repeal/*				
<u>Severability</u>	02	NCAC	09G	.2008
Readopt without Changes/*				
<u>Restriction on Dispensing Raw Milk</u>	02	NCAC	09G	.2010
Repeal/*				

The rules in Subchapter 9H concern the disposition of damaged or unclean foods.

<u>Unavoidable Defect Levels for Cornmeal and Flour Samples</u>	02	NCAC	09H	.0109
Readopt without Changes/*				

The rules in Subchapter 9J concern testing for aflatoxin in cornmeal.

<u>Cornmeal Testing</u>	02	NCAC	09J	.0101
Readopt without Changes/*				
<u>Records Maintained</u>	02	NCAC	09J	.0102
Readopt without Changes/*				

The rules in Subchapter 9K concern sampling and testing of milk and cream (.0100); and frozen desserts (.0200).

<u>Definitions</u>	02	NCAC	09K	.0101
Readopt with Changes/*				
<u>General Sampling Procedures</u>	02	NCAC	09K	.0102
Readopt with Changes/*				
<u>Approval of Testing Procedure Used</u>	02	NCAC	09K	.0103
Readopt with Changes/*				
<u>Place of Testing</u>	02	NCAC	09K	.0104
Readopt without Changes/*				
<u>Responsibility for Test</u>	02	NCAC	09K	.0105
Readopt without Changes/*				

<u>Test Reading</u>	02	NCAC	09K	.0106
Readopt with Changes/*				
<u>Test Reporting</u>	02	NCAC	09K	.0107
Readopt with Changes/*				
<u>Incorrect Tests</u>	02	NCAC	09K	.0108
Readopt without Changes/*				
<u>Sampling and Testing for Fresh Milk Samples</u>	02	NCAC	09K	.0109
Readopt with Changes/*				
<u>Sampling Cream</u>	02	NCAC	09K	.0112
Readopt without Changes/*				
<u>Procedure for Testing Cream</u>	02	NCAC	09K	.0113
Readopt with Changes/*				
<u>Reference Method</u>	02	NCAC	09K	.0114
Readopt with Changes/*				
<u>Specific Requirements</u>	02	NCAC	09K	.0201
Readopt with Changes/*				
<u>Definitions</u>	02	NCAC	09K	.0202
Readopt without Changes/*				
<u>Inspection Certificates</u>	02	NCAC	09K	.0203
Readopt without Changes/*				
<u>Suspension of Inspection Certificate/Penalties</u>	02	NCAC	09K	.0204
Readopt without Changes/*				
<u>Standards for Mobile Frozen Dessert Units</u>	02	NCAC	09K	.0205
Readopt without Changes/*				
<u>Frozen Dessert Mix/Standards for Use</u>	02	NCAC	09K	.0206
Readopt with Changes/*				
<u>Frozen Dessert Mix/Standard of Identity</u>	02	NCAC	09K	.0207
Readopt without Changes/*				
<u>Dietary Frozen Dessert Standards</u>	02	NCAC	09K	.0208
Readopt without Changes/*				
<u>Quiescently Frozen Dairy Confections</u>	02	NCAC	09K	.0209
Readopt without Changes/*				
<u>Quiescently Frozen Confections</u>	02	NCAC	09K	.0210
Readopt without Changes/*				
<u>Imitation Frozen Dessert Standards</u>	02	NCAC	09K	.0211
Readopt with Changes/*				
<u>Bacterial Plate Count and Coliform Counts</u>	02	NCAC	09K	.0212
Readopt without Changes/*				
<u>Standards of Identity for Milkshake and Related Products</u>	02	NCAC	09K	.0213
Readopt without Changes/*				
<u>Standards of Identity for Frozen Yogurt</u>	02	NCAC	09K	.0214
Readopt with Changes/*				

The rules in Subchapter 9O concern the marketing of shell eggs.

<u>Definitions</u>	02	NCAC	09O	.0101
Readopt with Changes/*				
<u>Loose Egg Displays</u>	02	NCAC	09O	.0102
Readopt without Changes/*				
<u>Standards for Shell Eggs</u>	02	NCAC	09O	.0103
Readopt with Changes/*				

<u>Sanitation and Materials</u>	02	NCAC	09O	.0104
Readopt with Changes/*				
<u>Sale of Inedible or Loss Eggs to Consumer Prohibited</u>	02	NCAC	09O	.0105
Readopt without Changes/*				
<u>Determining Grades</u>	02	NCAC	09O	.0106
Readopt without Changes/*				
<u>Special Requirements</u>	02	NCAC	09O	.0107
Readopt without Changes/*				

The rules in Chapter 38 are enforced by the standards division and include purpose and definitions (.0100); approval of weighing and measuring devices (.0200); package and labeling requirements (.0300); method of sale and commodities (.0400); leaf tobacco (.0500); sale of petroleum products (.0600); standards for storage, handling and installation of LP gas (.0700); and liquid fertilizers (.0800).

<u>Adoption by Reference</u>	02	NCAC	38	.0201
Readopt with Changes/*				
<u>Weighing and Measuring Devices</u>	02	NCAC	38	.0202
Readopt without Changes/*				
<u>Adoption by Reference</u>	02	NCAC	38	.0301
Readopt without Changes/*				
<u>Adoption by Reference</u>	02	NCAC	38	.0401
Readopt with Changes/*				
<u>Retail Motor Fuel Dispensers/Half-Pricing</u>	02	NCAC	38	.0601
Readopt with Changes/*				
<u>Price Posting/Cash Discounts for Retail Motor Fuel Sales</u>	02	NCAC	38	.0604
Readopt with Changes/*				
<u>Adoption by Reference</u>	02	NCAC	38	.0701
Readopt with Changes/*				

## **HISTORICAL COMMISSION**

The rules in Chapter 4 are from the Division of Archives and History.

The rules in Subchapter 4R concern the archaeology and historic preservation section including general provisions (.0100); environmental review (.0200); national register: plan (.0300); historic properties and historic districts commissions (.0500); designation of historic properties under the state building code (.0600); archaeological resources protection act (.0700); archaeology services (.0800); tax act certification review (.0900); exploration: recovery: and salvage (.1000); historic preservation and conservation agreements (.1400); survey and planning services (.1500); and archaeological permits.

<u>Statement of Purpose</u>	07	NCAC	04R	.0101
Repeal/*				
<u>Purpose</u>	07	NCAC	04R	.0201
Amend/*				
<u>Definitions</u>	07	NCAC	04R	.0202
Amend/*				
<u>Submissions for Review</u>	07	NCAC	04R	.0203
Readopt with Changes/*				
<u>Underwater Archaeological Review</u>	07	NCAC	04R	.0204
Repeal/*				
<u>Architectural Review</u>	07	NCAC	04R	.0205
Repeal/*				
<u>Procedures for State Undertakings Affecting a National Re...</u>	07	NCAC	04R	.0206
Readopt with Changes/*				

<u>National Register Advisory Committee</u> Amend/*	07	NCAC	04R	.0301
<u>Public Suggestions for National Register</u> Repeal/*	07	NCAC	04R	.0302
<u>Nomination Procedures</u> Amend/*	07	NCAC	04R	.0303
<u>Review and Processing</u> Readopt with Changes/*	07	NCAC	04R	.0304
<u>National Register Nomination Priorities</u> Repeal/*	07	NCAC	04R	.0305
<u>Review of Commission Reports</u> Amend/*	07	NCAC	04R	.0501
<u>Review of Appeals</u> Amend/*	07	NCAC	04R	.0502
<u>Certificates of Appropriateness</u> Amend/*	07	NCAC	04R	.0503
<u>Adequate Information</u> Repeal/*	07	NCAC	04R	.0504
<u>Statement of Purpose</u> Amend/*	07	NCAC	04R	.0601
<u>General Application Process; Criteria for Designation</u> Amend/*	07	NCAC	04R	.0602
<u>Criteria for Designation</u> Repeal/*	07	NCAC	04R	.0603
<u>Designating Buildings as Historic for Building Code Purposes</u> Repeal/*	07	NCAC	04R	.0604
<u>Documentation Required</u> Amend/*	07	NCAC	04R	.0605
<u>Appeals Procedure</u> Repeal/*	07	NCAC	04R	.0606
<u>Operating Hours</u> Repeal/*	07	NCAC	04R	.0801
<u>Disposition of Artifacts; Loans</u> Readopt with Changes/*	07	NCAC	04R	.0802
<u>Curation of Archaeological Collections</u> Readopt with Changes/*	07	NCAC	04R	.0803
<u>Deaccessions</u> Repeal/*	07	NCAC	04R	.0804
<u>Access to Archaeological Collections</u> Repeal/*	07	NCAC	04R	.0805
<u>Archaeological Site Files</u> Repeal/*	07	NCAC	04R	.0806
<u>Public Access to Excavations</u> Repeal/*	07	NCAC	04R	.0807
<u>Archaeological Survey and Evaluation Report Guidelines</u> Repeal/*	07	NCAC	04R	.0808
<u>Definitions</u> Repeal/*	07	NCAC	04R	.1002
<u>Department Authorized to Grant Permits and Licenses</u> Repeal/*	07	NCAC	04R	.1003
<u>Exceptions</u> Repeal/*	07	NCAC	04R	.1004

<u>Permit for Exploration: Recovery or Salvage</u> Repeal/*	07	NCAC	04R	.1005
<u>Terms and Conditions of Permits</u> Repeal/*	07	NCAC	04R	.1006
<u>Appeals Relating to Permits</u> Repeal/*	07	NCAC	04R	.1007
<u>Ownership and Division of Recovered Items</u> Repeal/*	07	NCAC	04R	.1008
<u>Protected Areas</u> Repeal/*	07	NCAC	04R	.1009
<u>Special Areas for Sport and Hobby Operations</u> Repeal/*	07	NCAC	04R	.1010
<u>Reporting Requirements</u> Repeal/*	07	NCAC	04R	.1011
<u>Report Review</u> Repeal/*	07	NCAC	04R	.1012
<u>Termination of Permit</u> Repeal/*	07	NCAC	04R	.1013
<u>Operating Hours</u> Repeal/*	07	NCAC	04R	.1501
<u>Historic Structure Site Files and Maps</u> Repeal/*	07	NCAC	04R	.1502
<u>Visitation Policy</u> Amend/*	07	NCAC	04R	.1503
<u>Definitions</u> Adopt/*	07	NCAC	04R	.1601
<u>Archaeological Investigations on State Lands</u> Adopt/*	07	NCAC	04R	.1602
<u>Applications for Archaeological Permits</u> Adopt/*	07	NCAC	04R	.1603
<u>Requirements for Issuance of Permits</u> Adopt/*	07	NCAC	04R	.1604
<u>Duration, Extension, and Renewal of Permits</u> Adopt/*	07	NCAC	04R	.1605
<u>Terms and Conditions of Permits</u> Adopt/*	07	NCAC	04R	.1606
<u>Permit Denial, Suspension, Revocation</u> Adopt/*	07	NCAC	04R	.1607
<u>Appeals for Relating to Permits</u> Adopt/*	07	NCAC	04R	.1608
<u>Emergency Archaeological Investigations</u> Adopt/*	07	NCAC	04R	.1609
<u>Protected Areas</u> Adopt/*	07	NCAC	04R	.1610
<u>Reporting Requirements for General Permits; Review</u> Adopt/*	07	NCAC	04R	.1611
<u>Reporting Requirements for Specific Reports; Review</u> Adopt/*	07	NCAC	04R	.1612
<u>Custody of Resources Under Terms of Permits</u> Adopt/*	07	NCAC	04R	.1613

The rules in Subchapter 4T concern the highway historical marker program.

Criteria  
Amend/\*

07 NCAC 04T .0104

## **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>Exemptions for Source Material</u> <u>Amend/*</u>	10A NCAC 15 .0302
<u>Exempt Quantities: Other than Source Material</u> <u>Amend/*</u>	10A NCAC 15 .0304
<u>Exempt Item Containing Other than Source Material</u> <u>Amend/*</u>	10A NCAC 15 .0305
<u>General Licenses: Source Material</u> <u>Amend/*</u>	10A NCAC 15 .0307
<u>General Licenses: Other than Source Material</u> <u>Amend/*</u>	10A NCAC 15 .0308
<u>General Licenses: Measuring Gauging: Controlling Devices</u> <u>Amend/*</u>	10A NCAC 15 .0309
<u>General Licenses: Manufacture, Transfer, Install, General...</u> <u>Amend/*</u>	10A NCAC 15 .0310
<u>General Licenses: Transportation</u> <u>Amend/*</u>	10A NCAC 15 .0316
<u>Specific Licenses: Filing Application and General Require...</u> <u>Amend/*</u>	10A NCAC 15 .0317
<u>Specific Licenses: Exempt Gas and Aerosol Detectors</u> <u>Amend/*</u>	10A NCAC 15 .0327
<u>Specific Licenses: Manufacture Devices to Persons Licensed</u> <u>Amend/*</u>	10A NCAC 15 .0328
<u>Specific Licenses: Luminous Safety Devices in Aircraft</u> <u>Amend/*</u>	10A NCAC 15 .0329
<u>Specific Licenses: Manufacture of Calibration Sources</u> <u>Amend/*</u>	10A NCAC 15 .0330
<u>Specific Licenses - Manufacture of In Vitro Test Kits</u> <u>Amend/*</u>	10A NCAC 15 .0331
<u>Specific Licenses: Manufacture of Ice Detection Devices</u> <u>Amend/*</u>	10A NCAC 15 .0332
<u>Specific Licenses: Products Containing Depleted Uranium</u> <u>Amend/*</u>	10A NCAC 15 .0335
<u>Issuance of Specific Licenses and Sealed Source and Devic...</u> <u>Amend/*</u>	10A NCAC 15 .0337
<u>Specific Terms and Conditions of Licenses</u> <u>Amend/*</u>	10A NCAC 15 .0338

<u>Transfer of Material</u> Amend/*	10A	NCAC	15	.0343
<u>Modification Revocation: and Termination of Licenses and ...</u> Amend/*	10A	NCAC	15	.0344
<u>Financial Assurance and Record-Keeping for Decommissioning</u> Amend/*	10A	NCAC	15	.0353
<u>Methods of Financial Assurance for Decommissioning</u> Amend/*	10A	NCAC	15	.0354
<u>Financial Tests: Self-And Parent Co. Guarantees: Decommis...</u> Amend/*	10A	NCAC	15	.0355
<u>Reporting Requirements</u> Amend/*	10A	NCAC	15	.0357
<u>Measurements/Dosages of Unsealed Radioactive Material for...</u> Amend/*	10A	NCAC	15	.0359
<u>Performance Requirements for Radiography Equipment</u> Amend/*	10A	NCAC	15	.0521
<u>Notifications and Reports to Individuals</u> Amend/*	10A	NCAC	15	.1004
<u>Surveys</u> Amend/*	10A	NCAC	15	.1613
<u>Reports of Theft or Loss of Licensed Radioactive Material</u> Amend/*	10A	NCAC	15	.1645
<u>Radiological Requirements for License Termination</u> Amend/*	10A	NCAC	15	.1653

#### **LABOR, DEPARTMENT OF**

The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

<u>Definitions</u> Amend/*	13	NCAC	13	.0101
<u>North Carolina Commission</u> Amend/*	13	NCAC	13	.0203
<u>Owner-User Inspection Agency</u> Amend/*	13	NCAC	13	.0205

#### **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources.

The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100); classifications and groundwater quality standards (.0200); the assignments of underground water classifications (.0300); risk-based assessment and corrective action for petroleum underground storage tanks (.0400); and risk-based assessment and correction action for non-UST petroleum releases (.0500).

<u>Reclassification of Risk Levels</u> Amend/*	15A	NCAC	02L	.0507
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#### **REVENUE, DEPARTMENT OF**



The rules in Chapter 5 concern corporate franchise, income, and insurances taxes. The rules in Subchapter 5G concern market based sourcing for apportionment of income including general rules (.0100); general principles of application (.0200); rules of reasonable approximation (.0300); exclusion of receipts from the sales factor (.0400); changes in methodology (.0500); further guidance (.0600); sale of a service (.0700); sale of in-person services (.0800); services delivered to a customer or on behalf of a customer, or delivered electronically through the customer (.0900); professional services (.1000); license or lease of intangible property (.1100); sale of intangible property (.1200); and special rules (.1300).

<u>Scope</u>	17	NCAC	05G	.0101
Adopt/*				
<u>Definitions</u>	17	NCAC	05G	.0102
Adopt/*				
<u>Assignment of Receipts from Sales of Other than Tangible ...</u>	17	NCAC	05G	.0201
Adopt/*				
<u>In General</u>	17	NCAC	05G	.0301
Adopt/*				
<u>Approximation Based Upon Known Sales</u>	17	NCAC	05G	.0302
Adopt/*				
<u>Related Entity Transactions</u>	17	NCAC	05G	.0303
Adopt/*				
<u>Allocated Gross Receipts</u>	17	NCAC	05G	.0401
Adopt/*				
<u>Unassignable Gross Receipts</u>	17	NCAC	05G	.0402
Adopt/*				
<u>Alternative Apportionment</u>	17	NCAC	05G	.0501
Adopt/*				
<u>Original Returns</u>	17	NCAC	05G	.0502
Adopt/*				
<u>Secretary's Authority to Adjust a Taxpayer's Return</u>	17	NCAC	05G	.0503
Adopt/*				
<u>Taxpayer Authority to Change a Method of Assignment on a ...</u>	17	NCAC	05G	.0504
Adopt/*				
<u>Secretary Authority to Change a Method of Assignment on a...</u>	17	NCAC	05G	.0505
Adopt/*				
<u>Examples</u>	17	NCAC	05G	.0601
Adopt/*				
<u>In General</u>	17	NCAC	05G	.0701
Adopt/*				
<u>In General</u>	17	NCAC	05G	.0801
Adopt/*				
<u>Assignment of Receipts from Sale of In-Person Services</u>	17	NCAC	05G	.0802
Adopt/*				
<u>Reasonable Approximation</u>	17	NCAC	05G	.0803
Adopt/*				
<u>In General</u>	17	NCAC	05G	.0901
Adopt/*				
<u>Assignment of Receipts from Sales of Services Delivered t...</u>	17	NCAC	05G	.0902
Adopt/*				
<u>Delivery to or on Behalf of a Customer by Physical Means,...</u>	17	NCAC	05G	.0903
Adopt/*				
<u>Delivery to a Customer by Electronic Transmission</u>	17	NCAC	05G	.0904
Adopt/*				

<u>Services Delivered Electronically Through or on Behalf of...</u> Adopt/*	17	NCAC	05G	.0905
<u>In General</u> Adopt/*	17	NCAC	05G	.1001
<u>Overlap with Other Categories of Services</u> Adopt/*	17	NCAC	05G	.1002
<u>Assignment of Receipts</u> Adopt/*	17	NCAC	05G	.1003
<u>Professional Services Other than Architectural or Enginee...</u> Adopt/*	17	NCAC	05G	.1004
<u>Architectural or Engineering Services with Respect to Rea...</u> Adopt/*	17	NCAC	05G	.1005
<u>Related Entity Transactions</u> Adopt/*	17	NCAC	05G	.1006
<u>In General</u> Adopt/*	17	NCAC	05G	.1101
<u>License of a Marketing Intangible</u> Adopt/*	17	NCAC	05G	.1102
<u>License of a Production Intangible</u> Adopt/*	17	NCAC	05G	.1103
<u>License of a Mixed Intangible</u> Adopt/*	17	NCAC	05G	.1104
<u>License of Intangible Property When Substance of the Tran...</u> Adopt/*	17	NCAC	05G	.1105
<u>Assignment of Receipts</u> Adopt/*	17	NCAC	05G	.1201
<u>Software Transactions</u> Adopt/*	17	NCAC	05G	.1301
<u>Sales of Licenses of Digital Goods and Services</u> Adopt/*	17	NCAC	05G	.1302
<u>Telecommunications Companies</u> Adopt/*	17	NCAC	05G	.1303

## **MEDICAL BOARD**

The rules in Subchapter 32M regulate the approval, registration and practice of nurse practitioners (.0100).

<u>Annual Renewal</u> Amend/*	21	NCAC	32M	.0106
<u>Continuing Education (CE)</u> Amend/*	21	NCAC	32M	.0107
<u>Prescribing Authority</u> Amend/*	21	NCAC	32M	.0109

## **MIDWIFERY JOINT COMMITTEE**

The rules in Chapter 33 are from the Midwifery Joint Committee.

<u>Application</u> Amend/*	21	NCAC	33	.0103
<u>Nurse Midwife Applicant Status</u> Repeal/*	21	NCAC	33	.0107

<u>Continuing</u>	21	NCAC	33	.0111
Adopt/*				

**NURSING, BOARD OF**

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Annual Renewal</u>	21	NCAC	36	.0806
Amend/*				

<u>Continuing Education (CE)</u>	21	NCAC	36	.0807
Amend/*				

<u>Prescribing Authority</u>	21	NCAC	36	.0809
Amend/*				

**PHARMACY, BOARD OF**

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

<u>Hours: Records: Providers: Correspondence: Reciprocity</u>	21	NCAC	46	.2201
Amend/*				

**VETERINARY MEDICAL BOARD**

The rules in Chapter 66 are from the Veterinary Medical Board including statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); rules petitions hearings (.0400); declaratory rulings (.0500); administrative hearings procedures (.0600); administrative hearings decisions related rights (.0700) and judicial review (.0800).

<u>Current Information Required by the Board</u>	21	NCAC	66	.0106
Amend/*				

**BUILDING CODE COUNCIL**

<u>2012 NC Building Code/Horizontal Building Separation Allo...</u>	509.2
Amend/*	
<u>2012 NC Building Code/Locking Arrangements in Educational...</u>	1008.1.4.6
Adopt/*	
<u>2012 NC Building Code/Remote Operation of Locks</u>	1008.1.4.6.1
Adopt/*	
<u>2012 NC Fire Code/Locking Arrangements in Educational Occ...</u>	1008.1.4.6
Adopt/*	
<u>2015 NC Existing Building Code/Locking Arrangements in Ed...</u>	403.7
Adopt/*	

<u>2015 NC Existing Building Code/Locking Arrangements in Ed...</u> Adopt/*	704.2
<u>2012 NC Mechanical Code/General Definitions</u> Amend/*	202
<u>2012 NC Mechanical Code/High Volume Low Speed Fans</u> Adopt/*	931.1
<u>2012 NC Mechanical Code/Referenced Standards</u> Amend/*	Chapter 15
<u>2012 NC Plumbing Code/Tracer Wire</u> Adopt/*	Chapter 306.2.4
<u>2012 NC Energy Conservation Code/Fireplaces</u> Amend/*	402.4.3
<u>2012 NC Residential Code/Fireplaces</u> Amend/*	N1102.4.3
<u>2012 NC Residential Code/Outdoor Swimming Pool</u> Amend/*	AG105.2
<u>2014 NC Electrical Code/Feeders</u> Amend/*	680.25

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## CONTESTED CASE DECISIONS

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*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
Stacey Bawtinheimer	

<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. Brewsters LLC T/A Two Doors Down	16 ABC 0290	06/01/16	
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
NC Alcoholic Beverage Control Commission v. Awrap Inc. T/A Jacks Tap	16 ABC 02702	06/01/16	
NC Alcoholic Beverage Control Commission v. B2 Inc. T/A Cadillac Ranch the Other Side	16 ABC 02703	06/02/16	
Club Hush Management Company LLC v. Alcoholic Beverage Control Commission	16 ABC 03310	11/14/16	31:15 NCR 1625
NC Alcoholic Beverage Control Commission v. Los Amigos of Shelby Inc. T/A Los Amigos of Shelby	16 ABC 03354	06/21/16	
NC Alcoholic Beverage Control Commission v. Susan Michelle Cloninger T/A Dallas Pub	16 ABC 07133	10/11/16	
<b><u>BOARD OF SOCIAL WORK</u></b>			
William B. Shannon v. NC Social Work Certification and Licensure Board	16 BSW 09247	10/17/16	
<b><u>DEPARTMENT OF PUBLIC SAFETY</u></b>			
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<b><u>DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES</u></b>			
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<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
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Harrold Associates II DDS Nickie Rogerson v. DHHS, DMA	15 DHR 01234	04/29/16	

# **CONTESTED CASE DECISIONS**

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Joan Rennea Thomas v. DHHS, Division of Health Service Regulation	16 DHR 03502	06/10/16	
Nathasia Yvonne Lofton v. DHHS, Division of Health Service Regulation	16 DHR 03503	06/10/16	
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FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
11/28/2016 10:54 AM

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 07703

John Gordon Kaiser Petitioner,  v.  NC Criminal Justice Education and Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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This contested case came on for hearing on July 19, 2016, before Administrative Law Judge Selina Malherbe Brooks in Charlotte, North Carolina. The matter was heard after Respondent requested, pursuant to N.C. Gen. Stat. § 150B-40(e), for 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**

For Petitioner: Kirk L. Bowling  
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For Respondent: Whitney Hendrix Belich  
Assistant Attorney General  
NC Department of Justice  
P.O. Box 629  
Raleigh, NC 27602

**ISSUES**

Whether Respondent's finding of probable cause to suspend Petitioner's law enforcement certification on the ground that Petitioner committed the Class B misdemeanor of forgery is supported by substantial evidence?

**BURDEN OF PROOF**

After discussion on the record, the Undersigned determined that Respondent bears the burden of proof because the Respondent's decision is based upon an allegation of the commission of a crime rather than the conviction of a crime. (Transcript ("Tr.") pp. 8-11)

**EXHIBITS**

Petitioner's Exhibits ("P. Ex.") 1, 2, and 3 were admitted into evidence.

Respondent introduced three exhibits, but did not move for their admission. (Tr. pp. 21, 46, 48, & 77)

Prehearing Statements compose a part of the pleadings in a contested case and, therefore, the Undersigned considered both Parties' Prehearing Statement and the letter, dated September 24, 2015, sent to Petitioner that was attached to Respondent's Prehearing Statement as the document constituting agency action from which this appeal rose.

**WITNESSES**

For Petitioner:        Tony Underwood, former SBI Special Agent in Charge  
                                 George Osborne, Assistant Chief, Gastonia Police Department

For Respondent:       John Gordon Kaiser, Petitioner  
                                 Richard Nelson Squires, Deputy Director of Certifications and  
                                 Field Services for Respondent

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following FINDINGS OF FACTS. In making the FINDINGS OF FACTS, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. After hearing testimony, reviewing the evidence and case law presented, and hearing argument of counsel, the Undersigned makes the following:

**FINDINGS OF FACT**

1.        Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed suspension letter, mailed by Respondent, the North Carolina Criminal

Justice Education and Training Standards Commission (hereinafter "Commission"), on September 24, 2015. (Attachment to Respondent's Prehearing Statement)

2. The Commission has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. In 1995, Petitioner completed his undergraduate degree at the University of North Carolina Chapel Hill.

4. Petitioner was certified as a law enforcement officer in 1997 and has worked continually as a law enforcement officer in either patrol or investigations. He began his career in law enforcement in the Cleveland County Sheriff's Office where he worked for almost twenty years. He then worked for the Gastonia Police Department for four and a half years before joining the North Carolina State Bureau of Investigation ("SBI"). (Tr. pp. 12-13, 80-81, & 94-99)

5. During his law enforcement career, Petitioner consistently met or exceeded the expectations of his supervisors based on his personnel evaluations. (P. Exs. 1 & 3)

6. In addition, Officer Kaiser has received numerous certifications and awards throughout his career including the following:

- a. Master of Business Administration from Gardner-Webb
- b. John Vanderford Award
- b. Two FBI Director's Awards – 2010 and 2014
- c. Gastonia Police Department award for assistance in homicide investigation
- d. Distinguished Services Award from the Jaycees – 2016
- e. Medal of Valor from the Gaston County Police Department – May 18, 2016 for rescuing an elderly woman from a fire
- f. Cleveland County Sheriff's Office 2014 – Appreciation Plaque
- g. Gaston County Police Department Chief's Accommodation – 2014 and 2015
- h. Special Response Team for the SBI
- i. Crime Scene Search Specialist
- j. Certified Clandestine Lab Specialist
- k. Basic sniper and advanced sniper training
- l. Basic SWAT tactics
- m. FEMA training
- n. Practical homicide training and child death investigations
- o. DEA Narcotics Investigation School
- n. Numerous letters of commendation/appreciation while at the SBI
- o. Numerous compliment forms from Gaston County Police Department

(P. Ex. 2; Tr. pp. 111-117)

7. During 2012 and 2013, Petitioner was employed as an agent in the Southern Piedmont District of the SBI as a resident agent in Cleveland County. (Tr. pp. 13-14)

8. At that time, the SBI was undergoing procedural changes with how agents were to submit discovery documents. A new program, called Infoshare, was being implemented and there was confusion among the agents and even supervisors as to how that program was to work. Memorandums were coming out frequently on changes to the program and what kinds of things could be uploaded into Infoshare. Additional problems with Infoshare were that certain parts of it were not working. Agents were supposed to be able to submit pictures and audio files, but during the time period in question, agents were unable to submit audio files and pictures and could only submit text. (Tr. pp. 16-18, 88-98)

9. Agents were expected to type their unofficial discovery reports into the Infoshare system and those reports were on white paper. If an agent printed those documents, there was a watermark printed on the paper that identified it as an unofficial document. (Tr. pp. 16-17, 89-90)

10. After a review from the Records division, agents were required to request the official discovery documents through a supervisor and then they would receive the official discovery documents printed on blue paper without the watermark. (Tr. p. 17)

11. An official SBI form 135 was used to certify that the SBI agent had delivered discovery to the local district attorneys but the form did not have a designated place for anyone to sign and acknowledge receipt of the discovery. (Tr. pp. 18, 84-86)

12. Special Agent in Charge ("SAC") Tony Underwood together with another SAC developed the Southern Piedmont District Discovery Dissemination form ("local form"). This local form had a signature line so that SBI agents would have a record of who had received the discovery in the local district attorney's office and spaces for the page numbers of the discovery documents delivered. This local form was never used throughout the entire SBI and never became an official form. (Tr. pp. 18-19, 84-86, & 101-104)

13. The local form was not required to be filed in the official file in Raleigh. In fact, the Records Division discouraged the use of the local form as it was not used statewide. (Tr. pp. 104-105, 109)

14. In August of 2012, Petitioner investigated a clandestine meth lab case in Cleveland County. (Tr. p. 20)

15. Sometime in September of 2012, while discussing various cases with Cleveland County District Attorney Bill Bozin, Petitioner learned that the Defendant in the meth lab case had pled guilty to one charge arising from Petitioner's investigation on September 11, 2012, before Petitioner had typed the discovery from his investigation into the Infoshare system. (Tr. p. 21)

16. Sometime after talking to the District Attorney, Petitioner typed the discovery from the clandestine meth lab case in Cleveland County into the Infoshare system and submitted it to the Records division.

17. Over a year later and after the defendant pled guilty, Petitioner submitted form 135 indicating the date the defendant pled guilty and his sentence.

18. SAC Amy Schnurr requested additional forms.
19. Petitioner submitted the local form in December of 2013. Petitioner had signed Sharon Jones's name to the local form, indicating that he had delivered the official discovery to Sharon Jones in December of 2012. Ms. Jones was an administrative assistant in the Cleveland County District Attorney's Office. (Tr. pp. 20, 26-28, & 36-37)
20. Petitioner never actually delivered the official discovery to the Cleveland County District Attorney's Office. The official discovery was still available through the Infoshare system and could have been retrieved at any point if it was needed.
21. Around February of 2014, SAC Underwood informed Petitioner that he had received correspondence from the Records division requesting that he review the district office case files. (Tr. p. 82)
22. After Petitioner reviewed the case files, he discovered that case file 1723 was a case where he had signed Sharon Jones's name to the local form. Petitioner called SAC Schnurr and self-reported what he had done and also self-reported the events to SAC Underwood. (Tr. pp. 29, 36-37, & 90-91)
23. The SBI conducted an internal investigation and Petitioner was interviewed by internal affairs investigator David Whitley in approximately March of 2014. (Tr. pp. 31-32)
24. The SBI never charged Petitioner with any crime. (Tr. pp. 87, 92)
25. In May of 2014, Petitioner began looking for other jobs in order to be home more often with his son and family. Upon being interviewed by Gaston County Police Department, he disclosed the SBI's internal investigation and he was hired in June 2014. (Tr. p. 33)
26. Sometime after that, Deputy Director of Certifications and Field Services Richard Squires investigated Petitioner. His investigation consisted of reviewing the SBI's internal investigative file, typing his findings in a Probable Cause Memorandum and submitting it to the Commission's Probable Cause Committee. Deputy Director Squires did not independently interview any witnesses.
27. Petitioner appeared before the Probable Cause Committee which determined that there was probable cause to suspend Petitioner's law enforcement certification for not less than five years on the ground that he had committed the class B misdemeanor of forgery. (Tr. p. 34)
28. Petitioner Kaiser timely requested this administrative hearing.
29. Two of Petitioner's former supervisors, SAC Underwood and Gastonia Police Chief George Osborne testified that they found Petitioner honest and forthcoming in his disclosure of his actions to them. (Tr. pp. 99, 111-117)

30. Respondent initially proposed that Petitioner's law enforcement certification be suspended on the basis of lack of good moral character, but abandoned that issue.

**BASED UPON** the foregoing, Findings of Fact, the Undersigned makes the following:

**CONCLUSIONS OF LAW**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed suspension letter, mailed by Respondent on September 24, 2015. (Respondent's Prehearing Statement) To the extent that the Findings of Facts 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. Respondent, North Carolina Criminal Justice Education and Training Standards Commission, has the authority granted under Chapter 17C of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 09A, to certify law enforcement officers and to revoke, suspend, or deny such certification.

3. 12 NCAC 09A .0204(b)(6) states that the Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer has knowingly made a material misrepresentation of any information required for certification or accreditation.

4. 12 NCAC 09A .0205(b)(4) states that when the North Carolina Criminal Justice Education and Training Standards Commission may, suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer: (6) has knowingly made a material misrepresentation of any information required for certification or accreditation.

5. The party with the burden of proof in a contested case must establish the facts required by N.C. Gen. Stat. § 150B-23(a) by a preponderance of the evidence. N.C. Gen. Stat. § 150B-29(a). The Administrative Law Judge shall decide the case based upon the preponderance of the evidence. N.C. Gen. Stat. § 150B-34(a).

6. In a contested case involving the employment of a state employee, the North Carolina Supreme Court has stated that "the burden of proof in any dispute is on the party attempting to show the existence of a claim or cause of action." *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 328 (1998).

7. Respondent has proposed to suspend Petitioner's law enforcement certification on the ground that Petitioner has committed forgery even though Petitioner has not been convicted of (or even charged with) forgery. The burden of proof rightly rests on Respondent to prove that Petitioner has committed the act of forgery.

8. The essential elements of forgery are (1) a false making or other alteration of some instrument in writing, (2) fraudulent intent, and (3) the instrument must be apparently capable of effecting fraud or capable of legal effect. See *State v. Gherkin*, 7 Ired. 206, 29 N.C. 206 (1847), et al. In addition, the possibility that the instrument be capable of legal effect is not just any speculative possibility, but a "reasonable possibility". See *State v. Brown*, 9 N.C. App. 498, 176 S.E. 2d 88 (Ct. App. 1970).

9. Respondent has not shown by a preponderance of the evidence that Petitioner committed the offense of forgery, a class B misdemeanor, because although Petitioner did sign someone else's name to a document without authority, there was no reasonable possibility that the document would have any legal effect as the form was not an official form as part of the discovery process, the defendant had pled guilty on September 11, 2012, and the form was not submitted until December of 2013, more than a year after the defendant's plea of guilty.

10. The findings of the Probable Cause Committee of the Respondent are not supported by substantial evidence.

**PROPOSAL FOR DECISION**

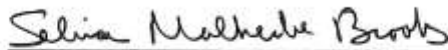
Based on the foregoing Findings Of Fact and Conclusions Of Law, it is hereby proposed that Petitioner's law enforcement certification not be suspended pursuant to 12 NCAC 09A.0204 (b)(3)(A).

**NOTICE**

The North Carolina 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.

This the 28th day of November, 2016.



Selina Malherbe Brooks  
Administrative Law Judge



FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
11/29/2016 11:57 AM

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15 DOJ 07703

John Gordon Kaiser Petitioner,  v.  NC Criminal Justice Education and Training Standards Commission Respondent.	<b>ORDER AMENDING PROPOSAL FOR DECISION</b>
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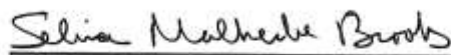
Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Proposal for Decision, issued from this Office on November 28, 2016, is amended as follows:

**NOTICE**

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

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

This the 29th day of November, 2016.



Selina Malherbe Brooks  
Administrative Law Judge

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
11/14/2016 2:56 PM

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 ABC 03310

Club Hush Management Company LLC Petitioner,  v.  North Carolina Alcoholic Beverage Control Commission Respondent.	<b>FINAL DECISION</b>
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THIS MATTER came on for hearing before the Hon. J. Randolph Ward, Administrative Law Judge, on June 14, 2016 in Charlotte, North Carolina on the Petitioner's appeal of the rejection of its application for alcoholic beverage permits to operate a private club. Following the deposition of Angel M. Melendez on June 29, 2016, the submission of additional exhibits and stipulations concerning the evidence, and the opportunity for the parties to submit additional written arguments and proposed decisions, this Final Decision was prepared.

#### **APPEARANCES**

For Petitioner: Ty McTier, Esq.  
David Redding, Esq.  
Redding, Tison & Jones, PLLC  
Charlotte, North Carolina

For Respondent: LoRita K. Pinnix, Assistant Counsel  
Missy P. Welch, Assistant Counsel  
N.C. Alcoholic Beverage Control Commission  
Raleigh, North Carolina

#### **ISSUES**

Whether Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and/or failed to act as required by rule or law, to the substantial prejudice of Petitioner's rights, by rejecting Petitioner's application for Alcoholic Beverage Control Permits for Malt Beverage On Premise, Unfortified Wine On Premise, and Mixed Beverages Private Club?

#### **STATUTES OR RULES AT ISSUE**

N.C. Gen. Stat. §§ 14-72(a), 14-100, 18B-101(12), 18B-104(a)(2), 18B-900(a)(3) & (c)(2b), 18B-901(b), 18B-901(c)(1) & (8), 18B-901(d), 18B-903(a)(4), 18B-903(c)(1), 18B-903(f), 18B-905, 18B-906(a), 18B-1001(1) f., 18B-1003(c)(1), 150B-23(a), and 150B-25.1(a);

South Carolina Code of Laws §16-13-0230(b)(3); and, 14B NCAC 15B .0101(1), 14B NCAC 15B. 0107(a), (c)(3), (4) & (6), and 14B NCAC 15B .0211(1).

**WITNESSES**

Petitioner's Witnesses:	Mr. Joshua Alan Smith Mr. Kaseem Z. Pennington Mr. Mitchell Jean Mr. Dorean White Mr. Marc Hubbard
Respondent's Witnesses:	Sergeant Michael Ford Detective Matthew Lewis Detective Travis Cook Detective Juan Varela ALE Agent Robert W. Huneycutt Dep. Administrator Angel M. Melendez ( <i>by deposition</i> )

**EXHIBITS**

Petitioner's Exhibits	A. Temporary Permit B. Notice of Suspension D. Notice of Rejection E. White's E-mail & Ariel's Affidavit F. Corporate Resolution G. Receipts 76/78 K. Application for Certificate of Authority
<i>(Deposition Exhibit)</i>	H. Mr. Hubbard's driver license
Respondent's Exhibits	1. Lease Agreement of Dec. 10, 2014 2. Lease Addendum of October 25, 2015 3. S.C. "Sentence Sheet" of June 25, 2015 4. Dec. 31, 2015 Empire Distributors invoice 5. Dec. 31, 2015 Adams Beverages credit card receipt 6. Jan. 16, 2016 Mecklenburg ABC Board invoice
<i>(Deposition Exhibit)</i>	7. Affidavit of Mr. Najid Ariel
<i>(Deposition Exhibit)</i>	8. Federal Probation Officer's letter of January 15, 2016

N.B.: The parties' objections to each the three exhibits introduced during the Deposition of Angel Menendez on June 29, 2016 were subsequently withdrawn.

**UPON DUE CONSIDERATION** of the arguments and stipulations of counsel; the exhibits admitted; and, the sworn testimony of each of the witnesses, viewed in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and,

upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

**FINDINGS OF FACT**

1. At all times pertinent to this controversy, the Petitioner, Club Hush Management Company, LLC (hereinafter, "Petitioner"), a limited liability company, had its principal place of business at 421 E. Sugar Creek Road in Charlotte, N.C., the site of the private club operated by the firm under the name "Club Hush." The owner of the real estate where Club Hush was situated is American Ventures Group, LLC ("American Ventures"). Mr. Marc Hubbard is the sole owner and managing member of American Ventures, which also owns the trademark "Club Hush." (Tr 69:2-9 & 71:5-11)
2. Mr. Hubbard testified that he had owned and operated around 20 clubs in the Charlotte area since 1996, but had changed his business strategy from personally managing such establishments to building a "Club Hush chain." His business plan involved acquiring a suitable building, up-fitting it to house a club, and leasing the premises to an operator, who would also be licensed to use the Club Hush name and marks. On the date of the hearing, there were ten locations operating under the name Club Hush. (Tr 70:4-10 & 71:5-11.) Mr. Hubbard referred to having had a location in Bennettsville, S.C., and "working on" deals to open clubs in Tampa and near Atlanta. (Tr 82:14-18.)
3. On December 1, 2014, Mr. Hubbard transferred all his interest in the Petitioner limited liability company ("LLC") to Najid Ariel, who thus became the sole owner and managing member of the LLC. (P Ex F & G.) Mr. Ariel subsequently transferred a 20% interest in the business to Dorian White, and became a "silent partner." Mr. White became the managing member, and was solely responsible for the day-to-day operation of the Petitioner firm and its Charlotte "Club Hush" location. (Tr 43:22-44:18; 54:4-16; P Ex B, p 1.)
4. In his testimony at the hearing, Mr. Hubbard was -- as he described himself -- "unapologetic" about frequently being in Club Hush's location on Sugar Creek Road to see that the stipulations of the lease and the licensing agreement were carried out. He described these as encompassing security, including weapons searches; fire safety preparations like unchained doors, and a fire alarm system monitored by the fire department; and other precautions to protect guests. He monitored the use of the trademarked name, e.g., assuring that lascivious images were not associated with the name. He was interested in "what they're promoting," because "I'm trying to create a brand here." He would personally collect lease payments. He considered the new owners of the club "my two best friends in the world," and was himself an enrolled member of the club. The original lease of Dec. 10, 2014 (R Ex 1, p 13) was altered by the Lease Addendum of October 25, 2015 (R Ex 2, p 13) to change the hours when the landlord could inspect the premises from "9 a.m. to 5 p.m." to "unlimited." Mr. Hubbard testified that he had a "vested interest" in the Petitioner firm obtaining ABC permits, so that it would be capable of paying rent. (Tr 71:2-73:1, 75:9-76:12, 78:12-80:2, 80:9-82:18, 86:9-17 and 90-91.) Mr. White testified that this venture was his first experience managing a club, but that he had been a close friend of Mr. Hubbard's for 20 years, and had observed how Mr. Hubbard had managed his clubs, which he described as, "successful - not a hard model to copy." (Tr 54:24-56:5.)

5. The ABC permits for an establishment automatically expire if its ownership changes, and as early as December 2014, the new owner(s) of the Petitioner firm were working on obtaining permits to open Club Hush. (N.C. Gen. Stat. § 18-B-903(c)(1); Tr 101:8-12.)

6. A city or county government may make recommendations to Respondent concerning the suitability of a person or a location to receive ABC permits, although the Respondent retains the sole final authority to make that decision. N.C. Gen. Stat. §18B-901(b) & (d). When permits are sought to open an establishment selling alcohol, Respondent requires the applicant to send the local government an ABC form soliciting its opinion. The Charlotte Mecklenburg Police Department was designated to investigate and prepare the Respondent's "001 Form" for that purpose in the locality where Petitioner's business was to operate.

7. A primary focus of the ABC permitting process is the suitability of the persons proposing to own and operate the business, and Respondent can consider any evidence bearing on whether an applicant would be likely to comply with the ABC laws. The ABC statutes specifically prohibit issuing a permit for an LLC that has either a managing member, or an owner with a 25% or greater interest in the LLC, who has been convicted of a felony within the past three years. A permittee is also prohibited from employing a person who has been convicted of a felony within the previous three years.

8. On June 25, 2015, Mr. Hubbard was convicted in Spartanburg County, South Carolina, on his plea of "guilty" as indicted, of "Breach of Trust with Fraudulent Intent, value of \$10,000 or more," and sentenced to ten years imprisonment, suspended with probation for five years. (R Ex 3; Tr. 191:9-193:6.)

9. The Charlotte Mecklenburg Police Department ("CMPD") received Petitioner's "001 Form" or "local government opinion form" from Mr. Ariel on December 23, 2014 and again on September 21, 2015. (Tr 98:11-12, 100:18-19, 101:11, 102:6 & 104:14.) Sgt. Ford testified that CMPD did not process these requests because they were not accompanied with "a zoning compliance form" and other documents his office routinely sought before submitting their opinion on a request for ABC permits. (Tr 98:11-19.) Mr. Hubbard believed that a locality had 15 days to respond to the request for an opinion, and that the Respondent should not await CMPD's response any longer than that before considering Petitioner's application. He testified that Petitioner's ability to fulfill the financial obligations of their lease depended on opening the club, and he personally contacted CMPD and Respondent about Petitioner's application, and sought help from legislators. (Tr 85:4-88:10.)

10. In September 2015, Mr. White and Mr. Hubbard met with Respondent's Deputy Administrator, Angel M. Menendez, to discuss the application process, identifying themselves as the manager and landlord, respectively, of Club Hush. Later that month, Petitioner submitted an application, signed by Messrs. White and Ariel, seeking permits for Club Hush for "Malt Beverage On Premise, Unfortified Wine On Premise, and Mixed Beverage Private Club" ABC permits. *See*, Angel M. Menendez Depo. 17:21-19:16.

11. In its "001 Form", CMPD requested that the Respondent deny the ABC permits Petitioner sought. Mr. Menendez testified that the local government objected for three "primary reasons," i.e., "the level of involvement by Mr. Hubbard and [his] prior history tied to private clubs;" the proposed location, due to its history of "assaults and fights and [af]frays;" and, the objections of "a number of local businesses ... to that type of establishment in their neighborhood." (Tr 20:10-19.)

12. In October 2015, Mr. White was concerned about the delay in considering Petitioner's application and was preparing for legal action. A member of Respondent's staff suggested to him that Respondent would be willing to promptly issue a temporary permit, if Petitioner would accept a 270-day term for the temporary permit, rather than the statutory 90 days. (Tr 50:2-9; 62:9-17.) On October 20, 2015, Mr. White sent an email to Respondent's counsel, stating that he believed Petitioner could prove that Mr. Menendez had held up their application for CMPD Form 001 beyond the statutory 15 days, but was willing to forgo legal action if a temporary permit was issued, and to "stipulate to a 270-day temporary permit to ensure compliance with all ABC rules and regulations." (P Ex E.) Mr. Ariel, as majority owner of the Petitioner, also sent Respondent an affidavit, executed on October 22, 2015, showing that he was aware that any violation could result in an immediate suspension of the proposed temporary permit. (P Ex E, p 2 and R Ex 7.) Respondent issued the Petitioner's Temporary Permit for Malt Beverage On Premise, Unfortified Wine On Premise, and Mixed Beverages Private Club on October 23, 2015, with an expiration date of May 10, 2016 -- a period of 200 days from issuance. (P Ex A; Depo. 19:20-21.) Mr. Menendez testified that applications "all take longer than the 90-day period simply because of the extensive work" involved, and estimated that "typically all in all, between three and six months" under temporary permits was normal. (Tr 48:7-8)

13. Based on an "ABC inspection" on November 1, 2015 by two members of the CMPD's ABC Enforcement Section, the Respondent suspended Petitioner's temporary permit on January 15, 2016 for 12 days, and required Mr. White to attend a "responsible alcohol seller program." The citations supporting the suspension included the charge that Petitioner was employing an "unsuitable person," referencing Mr. Hubbard and his felony conviction. The officers observed him walking up and down beside a long line of patrons waiting to get into the club, while security was wandering and searching people before they entered. When one of the security personnel was asked who was in charge, he responded, "Mark Hubbard." (P Ex B, p 2; Tr 121:12-122:13; 139:7-9.)

14. Petitioner's temporary permit was again suspended on February 5, 2016, for a period of seven days, based on the findings of an ABC inspection on December 6, 2015. Three of the four citations listed in the Official Notice of Suspension again involved Mr. Hubbard's activities at the club, which Respondent considered the actions of a manager. Mr. Hubbard was again identified as "in charge" by a security guard and another employee, and was observed talking with a fire department official who was there for a safety inspection. This second suspension letter concluded with the statement that, "Further violations of the ABC laws will result in additional suspensions or rejection of your application for permanent permits." (P Ex C, p 2.)

15. On February 5, 2016, ALE Agent Robert W. Huneycutt and CMPD officers served the "Official Notice of Suspension" resulting from the December 6, 2015 inspection of Petitioner's premises. When they arrived, they encountered Mr. Hubbard in front of the club, and he telephoned Mr. White to come accept service of the suspension document. The officers carried out another ABC inspection while there, and took an envelope from a radio station, addressed to Club Hush, attention Mark Hubbard. (Tr 185:24-186:7.) While ALE Agent Huneycutt was with Mr. White, Mr. Hubbard approached the officer and began talking about the ABC permits. ALE Agent Huneycutt refused to discuss ABC business with Mr. Hubbard, and told Mr. White that Mr. Hubbard "could not have anything to do with a ABC licensed business because he was basically an unsuitable employee [as] determined by ABC law." (Tr 184:18-185:2.)

16. On February 13, 2016, ALE Agent Huneycutt revisited Club Hush to return its ABC permits, and to conduct an inspection. Upon requesting and inspecting the club's invoices, he found three for purchases of alcoholic beverages, and one for radio advertising, that bore Mr. Hubbard's name and/or signature. (T. p. 197-205; R Ex 4, 5 & 6.) These were a contract for spots on WQNC-FM in Charlotte, dated December 7, 2015; an Empire Distributors invoice for two cases of Rosé, dated December 31, 2016; a credit card receipt from Adams Beverages for the purchase of beer on December 31, 2015; and, a Mecklenburg ABC Board warehouse "transportation permit/invoice" for 17 bottles of alcoholic beverages, dated January 16, 2016.

17. Prior to the rejection of the Petitioner's permit application, Mr. Menendez became aware that Mr. Hubbard was under the supervision of a federal probation officer. On December 12, 2012, Mr. Hubbard became a Federal "pretrial supervisee" due to investigations in Hawaii and Pennsylvania -- which were "ongoing" as of January 15, 2016 -- in which he was named as a defendant. U.S. Probation Officer Richard Bogan, Jr. had supervised Mr. Hubbard since October 2015. Prior to January 15, 2016, each of Officer Bogan's face-to-face meetings with Mr. Hubbard had been at Club Hush, before the club's business hours. The "profit / loss sheets" Mr. Hubbard provided monthly to the Probation Office showed "Club Hush as his primary source of income." Ofc. Bogan had inquired and learned about the "day-to-day operations" of the club, including maintenance and renovation of the building that housed it, and was under the impression that Mr. Hubbard "acts as the primary manager and operator of Club Hush." (R Ex 8; P Ex D, p 3; Depo. 34:12-37:23.)

18. On March 4, 2016, Respondent served the "Official Notice of Rejection" of Petitioner's application for ABC permits, citing primarily the involvement of Mr. Hubbard in the operations of the club, and the multiple instances in which he was perceived to be acting as an employee of Petitioner, denoted with references to the statute prohibiting an ABC permittee to employ a person convicted of a felony within three years of the conviction.

19. The Petitioner timely filed a request for a contested case hearing in the Office of Administrative Hearings on March 30, 2016.

20. The Office of Administrative Hearings gave the parties due notice of the hearing in this matter on May 9, 2016 and June 9, 2016.



Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause. N.C. Gen. Stat. §§ 18B-906(a) and 150B-23.

2. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011); *Warren v. Dep't of Crime Control*, 221 N.C.App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. den.*, 366 N.C. 408, 735 S.E.2d 175 (2012).

3. The Petitioner has the burden of proving that the Respondent exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by rule or law, as alleged in the Petition, by a preponderance of the evidence. N.C. Gen. Stat. §§ 150B-23(a); 150B-25.1(a).

4. The Respondent North Carolina Alcoholic Beverage Control Commission has the sole power, in its discretion, to determine the suitability and qualifications of an applicant for an ABC permit. N.C. Gen. Stat. § 18B-901(d).

5. The issuance of permits to vend alcoholic beverages on premises in North Carolina is governed by Chapter 18B, Article 9 of the General Statutes, § 18B-900, *et seq.*

6. "Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit ...," and "shall consider ... "[a]ny ... evidence that would tend to show whether the applicant would comply with the ABC laws," specifically including the "reputation, character, and criminal record of the applicant." N.C. Gen. Stat. § 18B-901(c)(1) & (8). Article 9 specifically prohibits granting a permit to a limited liability company with a manager, or an owner of a twenty-five percent or greater interest in the firm, who has been convicted of a felony within the preceding three years. N.C. Gen. Stat. § 18B-900(a)(3) & (c)(2b).

7. A permittee may not knowingly employ a person convicted of a felony within the preceding three years. N.C. Gen. Stat. § 18B-1003(c)(1); 14B NCAC 15B .0211(1). A permittee's "employee" is "any person who performs a service for any person holding an ABC permit, regardless of whether that person is compensated for the performance of those services." 14B NCAC 15B .0101(1). The Respondent may revoke the ABC permits of "persons" (including corporations) violating these provisions. N.C. Gen. Stat. §§ 18B-101(12); 18B-104(a)(2).



8. The preponderance of the credible evidence shows that Marc Hubbard, a person convicted in 2015 of “Breach of Trust with Fraudulent Intent, value of \$10,000 or more” in South Carolina, was an “employee” of the Petitioner, within the meaning of N.C. Gen. Stat. § 18B-1003(c)(1) and 14B NCAC 15B .0101(1), on November 1, 2015, December 6, 2015, December 7, 2015, December 23, 2015, December 31, 2015, January 16, 2016, and February 5, 2016.

9. Conviction of a felony in another jurisdiction is disqualifying under Article 9 if the criminal conduct would also constitute a felony in North Carolina. N.C. Gen. Stat. § 18B-900(b). South Carolina Code of Laws §16-13-0230(b)(3) (2015), “Breach of trust with fraudulent intent,” provides, in pertinent part, that:

- (A) A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny.
- (B) A person who violates the provisions of this section is guilty of a: ...
- (3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more.

This crime is analogous to N.C. Gen. Stat. § 14-100 (2015), “Obtaining property by false pretenses,” which is a felony without regard to the value of the money or thing(s) of value fraudulently sought or obtained. This statute requires proof that the perpetrator has made:

- (1) a false representation of a subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which one person obtains or attempts to obtain value from another.

*State v. Cronin*, 299 N.C. 229, 242, 262 S.E.2d 277, 286 (1980). In North Carolina, larceny of goods valued at more than one thousand dollars (\$1,000) is a felony. N.C. Gen. Stat. § 14-72(a) (2015).

10. In light of the clear mandate of the applicable statutes that a person convicted of a felony within the previous three years should not participate in the operation of a permitted business, and the repeated violation of the specific prohibition against a permittee having an “employee” in that status, within the meaning of N.C. Gen. Stat. § 18B-1003(c)(1), 14B NCAC 15B .0101(1), and 14B NCAC 15B .0211(1), the Respondent did not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by rule or law, within the meaning of N.C. Gen. Stat. § 150B-23(a), in denying the Petitioner’s application for ABC permits on March 4, 2016.

11. A temporary on-premises malt beverage permit for a private club, such as that issued to Petitioner, should be issued specifying that it is valid for a period of 90 days, although there appears to be no bar to issuing second or consecutive temporary permits. N.C. Gen. Stat. §§

18B-903(a)(4); 18B-905; 18B-1001(1)f. Respondent failed to act as required by law when it issued Petitioner's Temporary Permit on October 23, 2015 with an expiration date of May 10, 2016. However, this error did not result in the denial of Petitioner's application for ABC permits, or substantially prejudice the Petitioner's rights. N.C. Gen. Stat. § 150B-23(a).

12. Respondent should have awaited the local government's response to its notice of the Petitioner's application for only "15 days from the time the [Respondent's] notice was mailed or delivered" to CMPD before proceeding with its process of determining, based on all the pertinent circumstances, whether to issue the Temporary Permit. N.C. Gen. Stat. §§ 18B-901(b). However, Respondent was entitled and obligated to consider CMPD's concerns about "evidence that would tend to show whether the applicant would comply with the ABC laws," whenever it was received. N.C. Gen. Stat. § 18B-901(c)(8). In addition, it is not clear from the evidence whether or how much awaiting the Charlotte Mecklenburg Police Department's "001 Form" actually delayed the Respondent's decision. The Petitioner, who had the use and benefit of the temporary permit for 114 days, has failed to show that this error substantially prejudiced its rights. N.C. Gen. Stat. § 150B-23(a).

13. The Office of Administrative Hearings does not have jurisdiction to review the suspension of temporary ABC permits. N.C. Gen. Stat. § 18B-906(a).

14. A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision. *Green v. Green*, 284 S.E.2d 171, 174, 54 N.C.App. 571, 575 (1981); *In re Custody of Stancil*, 179 S.E.2d 844, 847, 10 N.C.App. 545, 549 (1971).

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

**DECISION**

The Respondent's decision to deny the Petitioner's application for ABC permits is **UPHELD**.

**NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of N.C. General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46

describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 14th day of November, 2016.

A handwritten signature in black ink, appearing to read 'J Randolph Ward', is written over a horizontal line.

J Randolph Ward  
Administrative Law Judge

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
11/04/2016 10:07 AM

STATE OF NORTH CAROLINA  
  
COUNTY OF GASTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 DOJ 04757

William Douglas Hyleman Jr Petitioner,  v.  NC Sheriffs' Education And Training Standards Commission Respondent.	<b>PROPOSAL FOR DECISION</b>
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On October 4, 2016, Administrative Law Judge Selina M. Brooks heard this case in Charlotte, North Carolina. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), the designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

**APPEARANCES**

Petitioner: Thomas B. Kakassy  
Attorney at Law  
PO Box 2436  
Gastonia, North Carolina 28053

Respondent: Matthew L. Boyatt, Assistant Attorney General  
N.C. Department of Justice  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

**ISSUE**

Is the proposed revocation of Petitioner's detention officer certification supported by substantial evidence?

**FINDINGS OF FACT**

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by mail the proposed Revocation of Justice Officer's Certification letter, mailed by Respondent Sheriffs' Commission on April 7, 2016. (Respondent's Exhibit 1.)

2. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter referred to as the "Commission" or "Sheriffs' Commission") has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to deny, revoke, or suspend such certification.

3. The two (2) witnesses that testified at the administrative hearing were Petitioner and Captain Charles McGee of the Mecklenburg County Sheriff's Office. Captain McGee conducted the internal affairs investigation which led to Petitioner's termination from the Mecklenburg County Sheriff's Office on November 25, 2015. The testimony of Captain McGee was credible.

4. Petitioner obtained employment as a detention officer with the Mecklenburg County Sheriff's Office on July 12, 2000. (Respondent's Exhibit 2.) Petitioner received his certification from the Respondent Commission on July 17, 2001, and, therefore, is subject to the rules and regulations established by Respondent governing justice officers. (Respondent's Exhibit 3.)

5. 12 NCAC 10B .0204(d)(1) provides the Sheriffs' Commission may revoke the certification of a justice officer when the Commission finds that the officer has committed or been convicted of a crime defined as a Class B misdemeanor, which occurred after the officer's date of appointment through the Respondent Commission. Willful failure to discharge duties in violation of N.C.G.S. § 14-230 is classified as a Class B misdemeanor pursuant to the rules established by the Respondent Commission and the Class B Misdemeanor Manual.

6. Further, 12 NCAC 10B .0301(a)(8) provides that all justice officers employed or certified in the State of North Carolina shall be of good moral character. 12 NCAC 10B.0204(b)(2) further provides the Sheriffs' 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.

7. Petitioner testified at the administrative hearing and does not dispute that he intentionally falsified records while on duty as a detention officer at the Mecklenburg County Jail.

8. On August 3, 2015, Petitioner was assigned to Pod NHI-8 at the Mecklenburg County North Jail. By this time, Petitioner had been a detention officer for over 10 years. Petitioner admitted under oath that he received training to become a detention officer and that he was instructed on the importance of truthfulness and that he understood that sworn justice officers were required to be completely honest in their paperwork and reports. Petitioner admitted under oath that prior to his termination, Petitioner understood that falsification of agency records was strictly forbidden. Indeed, as an employee of the Mecklenburg County Sheriff's Office, Petitioner received a general memorandum that was issued to all employees. (Respondent's Exhibit 13.) This memorandum outlined the requirement of complete truthfulness in carrying out the duties of a Sheriff's employee. The memorandum further cautioned that untruthfulness could "totally obliterate" the effectiveness of the employee.

9. Petitioner also received regulations relating to the management of Pods at the Mecklenburg County jail as part of his training. (Respondent's Exhibit 5 and 6.) These regulations were available to Petitioner at all times in the event he had a question regarding his duties as a detention officer. Most notably, the rules provided to Petitioner mandated that all records must be accurate and "never falsified." (Respondent's Exhibit 5, section IX.) Furthermore, Petitioner was required to conduct security checks twice an hour on an irregular basis. The rules further require that these security checks shall be documented in the OMS log book. (Respondent's Exhibit 5, section VII.)

10. Petitioner worked the night shift on August 3, 2015, and was assigned to Pod NHI-8. (Respondent's Exhibit 7.) Petitioner's shift ran from approximately 1840 to 0700. During Petitioner's shift, Sergeant Joey Street of the Mecklenburg County Sheriff's Office heard disturbances coming from Petitioner's POD. Sergeant Street had been working in an adjacent POD at the time and was required to leave his post in order to determine the cause of the disturbance. Sergeant Street entered Pod NHI-8 at approximately 2100 and observed several youthful offenders out of their cells. These offenders should have been in lock down pursuant to policy.

11. Sergeant Street was required to report the disturbance as it was apparent that Petitioner was not conducting his duties pursuant to the above-referenced rules. Captain McGee was ultimately assigned to investigate the matter which resulted in a review of video surveillance in Pod NHI-8 during Petitioner's shift, in addition to, a review of Petitioner's paperwork and OMS logbook entries.

12. A review of the video and documentation completed by Petitioner revealed that Petitioner falsified jail records in numerous entries. For example, Petitioner entered into the OMS log book that he conducted Pod tours and completed the same at the following times: 1918; 1934; 1952; 2009; 2032; 2039; 2047; and 2054. However, a review of the video surveillance by Captain McGee revealed that Petitioner had not conducted any of the Pod tours indicated. Petitioner remained seated at his station during his shift. Thus, Petitioner entered at least 8 false entries into the OMS log book on August 3, 2015, in order to falsely indicate that these safety tasks were completed.

13. Furthermore, Petitioner falsified the OMS log book on August 3, 2015, by recording that he had completed shakedowns at 1918 and 1952. A review of the video surveillance by Captain McGee revealed that Petitioner had not conducted these shakedowns.

14. Petitioner also completed a Cell Search / Shakedown Log during his shift on August 3, 2015. (Respondent's Exhibit 10.) This form is to be completed when an inmate's body is physically searched, in addition to his cell. Both tasks must be completed and recorded on the form pursuant to Petitioner's training and the rules governing the Mecklenburg County Jail. Petitioner testified under oath and admitted that he falsified Respondent's Exhibit 10. Petitioner searched the cells of various inmates, but failed to conduct the body searches required by the rules. Petitioner's falsification gave the false impression that the inmates listed on the shakedown log had been physically searched when in fact they had not.

15. Captain McGee interviewed Petitioner on September 15, 2015, following his review of the evidence. During this interview Petitioner admitted to falsifying the OMS log book during his shift on August 3, 2015, and also admitted to falsifying the shakedown log. Given these actions in a sworn capacity, Petitioner was terminated from the Mecklenburg County Sheriff's Office on November 25, 2015.

16. Captain McGee opined that the Sheriff's records relating to Petitioner's shifts are tainted because of Petitioner's intentional falsification. Records of Petitioner's prior shifts are no longer deemed reliable given Petitioner's unethical conduct.

17. Petitioner admitted under oath that he falsified agency records on August 3, 2015. Petitioner admitted under oath that he understood the duty to remain honest at all times while conducting his duties as a sworn detention officer, to include the duty to submit accurate paperwork. Petitioner testified that he knew falsification of agency records was strictly forbidden.

18. Petitioner admitted under oath that he had falsified OMS log book entries prior to August 3, 2015, but Petitioner does not recall exactly how many times he engaged in similar conduct.

19. Petitioner is not currently working for a Sheriff's Office.

#### **CONCLUSIONS OF LAW**

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. Pursuant to 12 NCAC 10B .0204(d)(1), the Commission may revoke, suspend, or deny the certification of a justice officer when the Commission finds that the applicant for certification or certified officer has committed:

(1) a crime or unlawful act defined in 12 NCAC 10B .0103(10)(b) as a Class B misdemeanor which occurred after the date of appointment.

3. Willful failure to discharge duties in violation of N.C.G.S. § 14-230 is classified as a Class B misdemeanor pursuant to 12 NCAC 10B .0103(10)(b) and the Class B Misdemeanor Manual adopted by Respondent.

4. The elements of a violation of N.C.G.S. § 14-230 are: "(1) that the defendant be an official of a state institution and (2) that he willfully fail[ed] to discharge the duties of his office." *State v. Birdsong*, 325 N.C. 418, 422-384 (1989). Harm to the public is a judicially recognized element of this offense. *Id.* A sworn justice officer is considered an "official" under N.C.G.S. § 14-230. *State v. Fesperman*, 264 N.C. 160, 161 (1965).

5. The evidence presented at the administrative hearing establishes that Petitioner willfully failed to discharge his duties on August 3, 2015, within the meaning of N.C.G.S. § 14-230. Petitioner was fully aware of his duty to document all Pod tours accurately and was aware

that falsification of agency records was strictly forbidden. During his Pod tour on August 3, 2015, Petitioner intentionally made numerous false entries into the OMS log book and the Shakedown log in order to give the false impression that Petitioner had conducted safety checks when in fact he had not. Petitioner admitted under oath that his falsification of agency records in this manner was not limited to August 3, 2015. Petitioner's intentional falsification resulted in the tainting of all agency records relating to Petitioner's prior shifts, which constitutes harm to the public within the meaning of N.C.G.S. § 14-230. Petitioner committed these unlawful acts after having received justice officer certification from the Respondent Commission. Petitioner is not in compliance with 12 NCAC 10B .0204(d)(1), and his certification, therefore, is subject to revocation for willful failure to discharge duties.

6. Finally, 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.

7. 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).

8. Given the totality of the evidence presented at the administrative hearing, Petitioner no longer possess the good moral character that is required of a sworn justice officer in this state. Petitioner's actions exhibited a tremendous lack of honesty and integrity, and his falsification of agency records was not limited to August 3, 2015. Petitioner also exhibited a lack of respect for the rights of others insofar as Petitioner intentionally omitted safety checks that were designed to ensure the safety of inmates under Petitioner's care and supervision.

9. Petitioner has the burden of proof in this contested case. *Overcash v. N.C. Dep't of Env't and Natural Res.*, 179 N.C. App. 697 (2006); *Raeform Farms v. D.E.N.R.*, 774 S.E. 2d 911 (2015). Petitioner has failed to show that the proposed revocation of his certification is not supported by substantial evidence.

10. Substantial evidence exists to support the revocation of Petitioner's detention officer certification based upon Petitioner no longer possessing the good moral character required of a sworn justice officer, and for willfully failing to discharge his duties. Petitioner has failed to demonstrate that the revocation of his certification is not justified pursuant to the Commission's Rules.

#### **PROPOSAL FOR DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned recommends Respondent revoke the Petitioner's Justice Officer Certification indefinitely. Petitioner no longer possesses the good moral character required of a sworn justice officer in this State. Petitioner's certification is also subject to revocation for willful failure to discharge duties in violation of N.C.G.S. § 14-230.

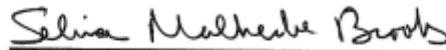


**NOTICE AND ORDER**

The North Carolina 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.

This the 4th day of November, 2016.



Selina Malherbe Brooks  
Administrative Law Judge

FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
11/09/2016 9:18 AM

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 DSC 04634

Barrington Boyd Petitioner,  v.  Travis Morgan, Aaron Parks, & Town of Pineville Respondent.	<b>FINAL DECISION</b>
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THIS MATTER came on for hearing before the Undersigned, Selina M. Brooks, Administrative Law Judge, on October 5, 2016, in Charlotte, North Carolina. Respondent submitted a Proposed Decision, which the Undersigned has reviewed and where she is in agreement she has incorporated it into this Final Decision.

**APPEARANCES**

For Petitioner: Barrington Boyd  
Pro Se  
628 Maple Valley Court  
Weddington, NC 28104

For Respondent: M. Janelle Lyons  
Cranfill Sumner & Hartzog, LLP  
Post Office Box 30787  
Charlotte, North Carolina 28230

**ISSUES**

The Petitioner alleges issues concerning violations of free speech, harassment, and emotional distress, and both Parties allege issues concerning racial discrimination. These issues are outside the jurisdiction of the Office of Administrative Hearings pursuant to N.C.G.S. § 150B-23(a) and were not considered.

The remaining issues, as stated in the Pre-Trial Order, were:

1. Whether Barrington Boyd can challenge any decision made by a Pineville Zoning Administrator since the ten (10) days have passed within which Petitioner can file an appeal to the Board of Adjustments pursuant to section 2.4.1 of the Pineville Zoning Ordinances?

2. Whether the Town of Pineville can seek enforcement and/or collection/debt setoff from Barrington Boyd and/or Bridgette Hare, if only they have cited Haute Exclusive which is owned by Live Naturally, LLC whose members are Barrington Boyd and his wife Bridgette Hare, who is also manager?

**APPLICABLE STATUTES AND RULES**

N.C.G.S. § 160A-175  
N.C.G.S. § 150B-23  
N.C.G.S. § 105A  
The Town of Pineville Zoning Ordinances

**EXHIBITS**

Respondent's Exhibits ("R. Ex.") 1, 2, and 4 were admitted into evidence.

**WITNESSES**

Barrington Boyd  
Travis Morgan

**BASED UPON** careful consideration of the sworn testimony of the witnesses presented at the hearing, Barrington Boyd and Travis Morgan, the Town of Pineville Zoning Administrator, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all of the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

**FINDINGS OF FACT**

1. On February 10, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and 5.3(R). The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until February 21, 2015, to appeal; Petitioner did not appeal said citation.

2. On July 8, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1. The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until July 19, 2016, to appeal; Petitioner did not appeal said citation.

3. On July 20, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and fined \$500.00 per sign for two signs in violation for a total fine of \$1,000.00. The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until July 31, 2015, to appeal; Petitioner did not appeal said citation or fine.

4. On August 6, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and fined \$200.00 per sign for two signs in violation for a total fine of \$400.00. The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until August 17, 2015, to appeal; Petitioner did not appeal said citation or fine.

5. On August 18, 2015, a Zoning Citation was issued to Carolina Parkway LLC for violations at Haute Exclusive for improper signage pursuant to Pineville Zoning Ordinance sections 5.1.1 and fined \$500.00 per sign for two signs in violation for a total fine of \$1,000.00. The Zoning Citation informed the Petitioner that "[a]ppeals must be filed within 10 days of the date of this citation." (R. Ex. 2). The Petitioner had until August 29, 2015, to appeal; Petitioner did not appeal said citation or fine.

6. On March 8, 2016, Respondent mailed a "Notice of Debt to: Town of Pineville. Intent to set off debt against N.C. STATE TAX REFUND for: Barrington Boyd" to Petitioner. (R. Ex. 4).

7. The Notice of Debt included the following statements:

You have the right to contest this action by filing a written request for a hearing with Town of Pineville. Your request must be filed at the following address no later than 30 days from the postmarked date of this letter. ... Failure to request a hearing within the 30 day time limit will result in the setoff of the above debt(s), and the addition of the applicable local collection assistance fee. (R. Ex. 4).

8. On May 5, 2016, Petitioner filed a Petition for a Contested Case Hearing with the Office of Administrative Hearings. A copy of the March 8, 2016, Notice of Debt was filed with the Petition.

9. On October 5, 2016, this contested case hearing was held in Charlotte, North Carolina.

10. Petitioner testified that he received the Zoning Citations (R. Ex. 2); that the signs referenced in the Zoning Citations were signs for Haute Exclusive; that Haute Exclusive's landlord, Carolina Parkway LLC, gave Petitioner permission to set up the signs; that the Zoning Citations were issued for his business and not for him; that the Zoning Citations should have been issued to Haute Exclusive's landlord, Carolina Parkway LLC, rather than to the tenant, Haute

Exclusive; and that Haute Exclusive is owned by Live Naturally, LLC, whose members are Petitioner and his wife, Bridgette Hare, and is operated by Petitioner.

11. Travis Morgan, employed by Respondent in the area of zoning enforcement, testified that he had personally explained the zoning ordinances to Petitioner in February 2015 before enforcement action was taken; that it is practice to send Zoning Citations to both landlord and tenants; and that Respondent is not seeking collection from the landlord, Carolina Parkway LLC, because the tenant, Haute Exclusive, is at fault.

12. To date, Petitioner has not paid the fine owed in the amount of \$1,500.00 to Respondent.

#### **CONCLUSIONS OF LAW**

BASED UPON the foregoing Findings of Fact, the Undersigned Administrative Law Judge makes the following Conclusions of Law:

1. The Office of Administrative Hearings does not have jurisdiction to determine the propriety of Respondent's administration or enforcement of the Pineville Zoning Ordinance. Petitioner failed to file an appeal of the Zoning Citations within ten (10) days to the Board of Adjustments pursuant to section 2.4.1 of the Pineville Zoning Ordinance.

2. The Office of Administrative Hearings has jurisdiction to determine whether the Town of Pineville can seek enforcement and/or collection/debt setoff from Barrington Boyd for the citations issued by the Town of Pineville to Haute Exclusive pursuant to N.C.G.S. § 105A.

3. Pursuant to N.C.G.S. § 160A-175, the Town of Pineville has "the power to impose fines and penalties for violation of its ordinances."

4. The Setoff Debt Collection Act allows a local agency to submit a debt owed by a debtor for collection by setoff after notice to the debtor pursuant to N.C.G.S. § 105A-5.

5. In a contested case involving the imposition of civil fines or penalties by a State agency for violation of the law, the burden of showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed rests with the Respondent pursuant to N.C.G.S. § 150B-25.1(b).

6. Respondent has met its burden of proof and established by clear and convincing evidence that Petitioner committed the act for which the fine or penalty was imposed in accordance with N.C.G.S. § 150B-25.1(b).

**FINAL DECISION**

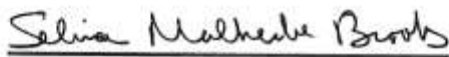
NOW THEREFORE, based on the foregoing, the Undersigned determines that the Petitioner committed the violations of the Pineville Zoning Ordinance for which the fine or penalty was imposed and that the Respondent can seek collection of said debt owed by Petitioner pursuant to N.C.G.S. § 105A.

**NOTICE**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under North Carolina General Statute § 150B-45, any party wishing to appeal this Final Decision 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 a Petition for Judicial Review within 30 days after being served with a written copy of this 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.** 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. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 9th day of November, 2016.



Selina Malherbe Brooks  
Administrative Law Judge

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STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

16 INS 04230

<p>N.C. Department of Insurance, Agent Services Division, Petitioner,</p> <p>v.</p> <p>Harold T. Little, Respondent.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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This matter coming on to be heard and being heard August 18, 2016 in the Office of Administrative Hearings, and it appearing to the undersigned that the Petitioner is represented by Assistant Attorney General Robert D. Croom, and the Respondent is represented by Timothy A. Gunther of the Wake County Bar.

Prior to a hearing on the merits, Petitioner's oral motion to amend the Request for Administrative Hearing pursuant to N.C.G.S. § 1A-1, Rule 15(a) was granted without objection. Prior to a hearing on the merits, the parties agreed to the following stipulations: With regard to the allegations set forth in the Pleading (Request for Administrative Hearing), Paragraph 1, Paragraphs 3 through 12, and Paragraphs 27 through 39, the Parties have agreed that the facts contained therein are accurate, but do not agree to any legal conclusions that those facts may lead to.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned has weighed all the evidence, or lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including but not limited to the demeanor of the witness; any interests, biases, and/or prejudices that any witness may have; the opportunity of the witness to see, hear, know, and remember the facts or occurrences about which the witness has testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. From the sworn testimony and admitted evidence, or the lack thereof, the undersigned makes the following findings of fact by a preponderance of the evidence:

1. Harold T. Little ("Respondent") is a citizen and resident of Alexander County, North Carolina.
2. N.C. Department of Insurance, Agent Services Division ("Petitioner" or "Department") is a state agency responsible for licensing and regulating the bail bonding industry in North Carolina.

3. Respondent holds an active surety bail bondsman license and an active professional bail bondsman license issued by the Petitioner. (Ex. P1)

Violation of N.C.G.S. § 58-71-95(5) (Excess Premium)

4. At all times relevant to the allegations herein, Respondent was President of Little's Bail Bonding, Incorporated.

5. At all times relevant to the allegations herein, Nancy Kerley held a surety bail bondsman license and a bail bond runner license issued by the Department and was an employee of Little's Bail Bonding, Incorporated.

6. At all times relevant to the allegations herein, Rick E. Smith held a bail bond runner license issued by the Department and was an employee of Little's Bail Bonding, Incorporated. (Ex. P9)

7. At all times relevant to the allegations herein, Ricky D. Smith held a surety bail bondsman license and a bail bond runner license issued by the Department and was an employee of Little's Bail Bonding, Incorporated. (Ex. P9)

8. At all times relevant to the allegations herein, Nancy Kerley, Rick E. Smith and Ricky D. Smith all were employees of Little's Bail Bonding, Incorporated. (Ex. P9)

9. On December 3, 2011, Respondent, Nancy Kerley, Rick E. Smith and Ricky D. Smith posted the following bonds for Douglas Curlee to secure his release from custody:

- In Alexander County file number 08 CRS 050364, Respondent, through his runner Nancy Kerley, executed a surety appearance bond for Douglas Curlee in the amount of \$17,500.00 using Respondent's professional licensee (seal 1219483) and charged Curlee a premium of \$920.00. (Ex. P4)
- In Alexander County file number 08 CRS 050364, Respondent executed a surety appearance bond for Douglas Curlee in the amount of \$2,500.00 as an accommodation bondsman. (Ex. P4)
- In Alexander County file number 08 CRS 050364, Respondent, through his runner Nancy Kerley, executed a surety appearance bond for Douglas Curlee in the amount of \$20,000.00 using Respondent's professional licensee (seal 1219484) and charged Curlee a premium of \$920.00. (Ex. P4)
- In Caldwell County file number 09 CR 004048, Respondent, through his subagent Ricky D. Smith, executed a surety appearance bond for Douglas Curlee in the amount of \$6,000.00 using an Accredited Surety and Casualty Company, Inc. power of attorney issued to Respondent (power BB02553857) and charged Curlee a premium of \$900.00. (Ex. P5)



- In Iredell County file number 11 CR 004070, Respondent, through his subagent Ricky D. Smith, executed a surety appearance bond for Douglas Curlee in the amount of \$500.00 using an Accredited Surety and Casualty Company, Inc. power of attorney issued to Respondent (power BB02553856) and charged Curlee a premium of \$75.00. (Ex. P6)
- In Alexander County file numbers 11 CR 700761 and 11 CR 700762, Respondent executed a surety appearance bond for Douglas Curlee in the amount of \$500.00 as an accommodation bondsman. (Ex. P7)

10. The total amount of the above bonds was \$47,000.00.
11. The total amount of the bonds above, excluding the bonds where Respondent executed the bond as an accommodation bondsman, was \$44,000.00.
12. The total premium charged for the above bonds was \$7,050.00. (Ex. P8)
13. \$1,800 of the premium was paid on December 3, 2011, and the remaining \$5,210.00 was deferred pursuant to a memorandum of agreement signed by Douglas Curlee and Rick E. Smith. (Ex. P8)
14. For purposes more fully set forth below, \$7,050.00 is more than 15% of \$44,000.00.

Violations of N.C.G.S. § 58-71-165 (Inaccurate Monthly Reports)

15. The Petitioner found mistakes in the monthly reports submitted by Respondent from September, 2011 to August, 2014 with the exception of June, 2014 (Pet. Ex. 3.1 through 3.33)
16. These mistakes included leaving blank spaces where the amount charged was required, leaving dates off or printing numbers instead of figures, confusing names, duplicating the same seal on numerous bonds, putting incorrect amounts on the premiums, and other mistakes.
17. However, when initially reviewed by the Petitioner, the following monthly reports were determined to be "In compliance" as noted in the "File Status" portion of the reports:
  - September, 2011
  - October, 2011
  - November, 2011
  - December, 2011 (through an amended report)
  - January, 2012
  - March, 2012 (there was no February, 2012 report in Pet. Ex. 3.1-3.33)
  - April, 2012 (through an amended report)
  - May, 2012 (through an amended report)
  - June, 2012 (through an amended report)
  - July, 2012 (through an amended report)
  - August, 2012 (through an amended report)
  - September, 2012

- December, 2012 (October and November, 2012 reports were noted as incomplete)
- January, 2013
- February, 2013 (through an amended report)
- March, 2013 (through an amended report)
- April, 2013 (through an amended report)
- May, 2013 (through an amended report)
- June, 2013 (through an amended report)
- August, 2013 (through an amended report) (July, 2013 report was incomplete)
- September, 2013 (through an amended report)
- October, 2013
- November, 2013 (through an amended report)
- December, 2013 (through an amended report)
- January, 2014 (through an amended report)
- March, 2014 (through an amended report) (there was no February, 2014 report in Pet. Ex. 3.1-3.33)
- April, 2014 (through an amended report)
- May, 2014 (through an amended report)
- July, 2014 (there was no June, 2014 report in Pet. Ex. 3.1-3.33)
- August, 2014

(Pet. Ex. 3.1 through 3.33)

18. The alleged mistakes were careless at best and were not done for monetary benefit, nor were they part of a design to conceal any transactions from the Petitioner.

19. Some of these mistakes were due to computer malfunctions and the relatively recent implementation of a computer reporting system. (T, 150-152)

20. From September, 2011 to September, 2013 the reports submitted by Respondent included numerous blank or empty spaces where the amount of the premium should have been. This is how Respondent showed an absence of payment.

21. Respondent wrote several bonds for Jerry Binfield, who is his nephew. Respondent did not charge Jerry Binfield any premium and repeatedly left the space to report the premium blank. (T, 147-148)

22. On or about August 15, 2013 the Petitioner sent Respondent a letter outlining incorrect monthly reports, and specifically informed him of the missing bond fees. (Pet. Ex. 17)

23. This was the only letter sent to Respondent by the Petitioner regarding the problems with the monthly reports.

24. After receipt of the letter, Respondent started using zeros instead of empty spaces for bond fees.

Violations of N.C.G.S. §§ 58-71-145 and 58-71-175 (Quarter Limit Violations)

25. Respondent, as a professional bail bondsman, is required to maintain a deposit of securities with the Commissioner of a fair market value of at least one-eighth the amount of all bonds written in the State on which he is liable as of the first day of the month. *See* N.C.G.S. § 58-71-145
26. Pursuant to N.C.G.S. § 58-71-175, “[n]o professional bondsman shall become liable on any bond or multiple of bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds.”
27. From September 2011 through and including March 4, 2012, Respondent’s securities on deposit with the Petitioner was \$150,326.44. (Ex. P2)
28. On or about December 8, 2011, Respondent became liable for a \$500.00 bond for Jennifer Cole in Alexander County, 11CR 000083, professional seal number 1219496. (Ex. P20)
29. On or about February 6, 2012, Respondent became liable for a \$37,500.00 bond for Jennifer Cole in Alexander County, 12CR 050170, professional seal number 1231980. An additional \$12,500.00 was posted for this same bond by Nancy Kerley using a power of attorney from Accredited Surety and Casualty Company, Inc. (Ex. P21)
30. The \$500.00 bond combined with the \$37,500.00 bond, both written by Respondent as a professional bondsman, were more than one fourth of the amount of the securities on deposit at the time the latter bond was posted.
31. The Petitioner notified Respondent of this deficiency via a letter posted with the United States Postal Service. (T, 160)
32. On March 5, 2012 Respondent deposited an additional \$11,000.00 into his securities account, which adequately addressed the quarter limit issue and brought his account into compliance. (Ex. P2)
33. From March 5, 2012 through and including May 16, 2012, Respondent’s securities on deposit with the Petitioner was \$161,326.44. (Ex. P2)
34. On or about April 4, 2012, Respondent became liable for a \$40,000.00 bond for Anthony Hill in Iredell County, 12CR 050654, professional seal number 1231099. An additional \$30,000.00 was posted for this same bond by Nancy Kerley using a power of attorney from Accredited Surety and Casualty Company, Inc. (Ex. P22)
35. On or about April 26, 2012, Respondent became liable for a \$800.00 bond for Anthony Hill in Iredell County, 12CR 052285 and 12CR 052345, Professional seal number 1251043. (Ex. P23)

36. The \$800.00 bond, combined with the \$40,000.00 bond, both written by Respondent as a professional bail bondsman, were more than one fourth of the amount of the securities on deposit at the time the latter bond was posted.
37. The Petitioner notified Respondent of this deficiency via a letter posted with the United States Postal Service. (T, 160)
38. On May 16, 2012 Respondent deposited an additional \$2,000.00 into his securities account which adequately addressed the quarter limit issue and brought his account into compliance. (Ex. P2)
39. Each deficiency was promptly corrected by Respondent upon notice from the Petitioner.
40. Since becoming aware of these allegations and charges, Respondent has voluntarily ceased writing bonds as a professional bail bondsman and currently has three (3) outstanding bonds written in this manner.
41. This matter is the only time in Respondent's seventeen-year history as a licensed professional bail bondsman that he has had to appear or defend his conduct or practice against allegations or charges from the Petitioner.
42. There is no evidence of fraud, coercion, dishonesty, or untrustworthiness in any report or transaction conducted by Respondent.
43. There is no evidence that Respondent has not demonstrated good faith in his conduct herein.

Based on the forgoing 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. Pursuant to N.C.G.S. § 58-71-5, the Commissioner of Insurance has full power and authority to administer the provisions of Chapter 58, Article 71 of the General Statutes, which regulate bail bondsmen and runners in North Carolina.
3. The parties were properly served with the Request for Administrative Hearing in this matter.
4. Any findings of fact that also contain a conclusion of law is hereby adopted as a conclusion of law, and any conclusion of law that also contains a finding of fact is hereby adopted as a finding of fact.
5. N.C.G.S. § 58-71-82 provides that "[i]f an individual holds a professional bondsman's license or a runner's license and a surety bondsman's license simultaneously, they are considered

one license for the purpose of disciplinary actions involving suspension, revocation, or nonrenewal under [Chapter 58, Article 71 of the General Statutes].”

6. Pursuant to N.C.G.S. § 58-71-80(a), “[t]he Commissioner may . . . place on probation, suspend, revoke, or refuse to renew any license issued under [Chapter 58, Article 71 of the General Statutes], in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes . . . .”

7. Pursuant to N.C.G.S. § 58-71-80(a)(5), the Commissioner may place on probation, suspend, revoke or refuse to renew any license issued under Chapter 58, Article 71 of the General Statutes for “[f]raudulent, coercive, or dishonest practices in the conduct of business or demonstrating incompetence, untrustworthiness, or financial irresponsibility . . . in this State or any other jurisdiction.”

8. Pursuant to N.C.G.S. § 58-71-80(a)(7), the Commissioner may place on probation, suspend, revoke or refuse to renew any license issued under Chapter 58, Article 71 of the General Statutes for failing to comply with or violating the provisions of Chapter 58, Article 71 of the General Statutes or of any order, rule, or regulation of the Commissioner.

9. Pursuant to N.C.G.S. § 58-71-80(a)(8), the Commissioner may place on probation, suspend, revoke or refuse to renew any license issued under Chapter 58, Article 71 of the General Statutes “[w]hen in the judgment of the Commissioner, the licensee has in the conduct of the licensee’s affairs under the license, demonstrated incompetency, financial irresponsibility, or untrustworthiness; or that the licensee is no longer in good faith carrying on the bail bond business . . . .”

10. Pursuant to N.C.G.S. § 58-71-80(a)(10), the Commissioner may deny, place on probation, suspend, revoke, or refuse to renew any license under this Article “[f]or charging or receiving, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by [Chapter 58, Article 71 of the North Carolina General Statutes].”

Violation of N.C.G.S. § 58-71-95(5) (Excess Premium)

11. Pursuant to N.C.G.S. § 58-71-1(1), an accommodation bondsman is a “person who shall not charge a fee or receive any consideration for action as a surety . . . .”

12. Pursuant to N.C.G.S. § 58-71-95(5), no bail bondsman or runner shall “[a]ccept anything of value from a principal or from anyone on behalf of a principal except the premium, which shall not exceed fifteen percent (15%) of the face amount of the bond.”

13. Respondent charged a premium in excess of fifteen percent (15%) for the bonds that he did not execute as an accommodation bondsman for Douglas Curlee in violation of N.C.G.S. §§ 58-71-95(5), 58-71-80(a)(7) and (a)(10).

14. Respondent demonstrated financial irresponsibility in the conduct of business in this State when he charged in excess of fifteen percent (15%) for the bonds that he did not execute as an accommodation bondsman for Douglas Curlee, in violation of N.C.G.S. § 58-71-80(a)(5).

15. When Respondent charged in excess of fifteen percent (15%) for the bonds that he did not execute as an accommodation bondsman for Douglas Curlee he demonstrated financial irresponsibility in the conduct of the affairs under his license, in violation of N.C.G.S. § 58-71-80(a)(8).

Violations of N.C.G.S. § 58-71-165 (Inaccurate Monthly Reports)

16. Pursuant to N.C.G.S. § 58-71-165(a):

Each professional bail bondsman shall file with the Commissioner a written report in a form prescribed by the Commissioner regarding all bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service in each instance.

17. As set forth above, Petitioner determined that Respondent's monthly reports were in compliance when they were submitted or subsequently amended.

18. Respondent's conduct in amending any erroneous report demonstrates that he is, in fact, a responsible business man attempting to comply with Petitioner's requirements.

19. Further, any issues with the computer reporting system are not evidence of incompetence on the part of the Respondent. In addition, when Respondent was notified that his method of recording certain bonds was not appropriate, he changed his accounting procedure.

20. The actions of Respondent concerning his monthly reports do not rise to the level of fraud, coercive or dishonest practices. Respondent has not attempted to conceal any relevant facts or circumstances from the Petitioner.

21. The actions of Respondent concerning the monthly reports do not rise to incompetence, in that once Respondent was informed, by letter, of the mistakes he was making by the Petitioner, Respondent took affirmative steps to correct, reduce, or eliminate these mistakes.

Violations of N.C.G.S. §§ 58-71-145 and 58-71-175 (Quarter Limit Violations)

22. Pursuant to N.C.G.S. § 58-71-145:

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the Commissioner of a fair market value of at least one-eighth the

amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of this deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than fifteen thousand dollars (\$15,000).

23. Pursuant to N.C.G.S. § 58-71-175: "No professional bondsman shall become liable on any bond or multiple of bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds."
24. There is no dispute that Respondent initiated bonds in excess of his quarter limit on two occasions in 2012. Respondent was financially irresponsible in these matters in that he knew or should have known the bonds were in excess of his quarter limit.
25. However, once advised of the deficiency, Respondent immediately corrected the matter by depositing sufficient funds into his account.
26. Respondent demonstrated financial irresponsibility in the conduct of business in this State when he became liable for Jennifer Cole's bonds in Alexander County in violation of N.C.G.S. § 58-71-80(a)(5).
27. When Respondent became liable for Jennifer Cole's bonds in Alexander County, he demonstrated financial irresponsibility in the conduct of his affairs under his license, in violation of N.C.G.S. § 58-71-80(a)(8).
28. Respondent demonstrated financial irresponsibility in the conduct of business in this State when he became liable for Anthony Hill's bonds in Iredell County in violation of N.C.G.S. § 58-71-80(a)(5).
29. When Respondent became liable for Anthony Hill's bonds in Iredell County, he demonstrated financial irresponsibility in the conduct of his affairs under his license, in violation of N.C.G.S. § 58-71-80(a)(8).
30. The actions of Respondent concerning the quarter limit violations do not rise to the level of fraud, coercive or dishonest practices, in that once the shortfalls were brought to his attention, Respondent took immediate action to correct the shortfalls.
31. N.C.G.S. § 58-2-70 states in relevant part that:

(c) If . . . the Commissioner finds a violation of this Chapter, the Commissioner may, . . . instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section . . .

(d) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00).

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Respondent pay a fine of \$500.00 within 30 days of the date of this proposed decision, and that he be placed on probationary status for a period of one year. During the term of probation, Respondent shall submit accurate monthly reports for his professional bail bondsman license and not commit any further violations or infractions so long as he holds his professional bail bondsman license.

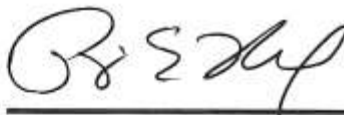
NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Department of Insurance.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a).

This the 22nd day of November, 2016.



Philip E Berger Jr.  
Administrative Law Judge