

1 15A NCAC 10K .0101 is amended with changes as published in 28:12 NCR 1372 as follows:

2  
3 **15A NCAC 10K .0101 COURSE REQUIREMENTS**

4 (a) ~~The hunter safety course shall provide a minimum of 10 hours of instruction except that a self-paced,~~  
5 ~~independent study hunter safety course that~~ [A] The Commission shall provide a hunter education instructor-led  
6 course with a minimum of 6 hours of instruction or a Commission-approved self-paced, independent study option  
7 [shall be provided] that instructs on the topics identified in Paragraph (b). Information on instructor-led courses and  
8 registration for the self-paced study option is at  
9 <http://www.ncwildlife.org/Hunting/BeforetheHunt/HunterEducationCourses.aspx>. Both the instructor-led and self-  
10 paced study option shall meet the standards adopted by the International Hunter Education Association, including all  
11 subsequent amendments, found at <http://ihea-usa.org/hunting-and-shooting/hunter-education/ihea-standards>. ~~meets~~  
12 ~~the standards required by International Hunter Education [Association]. Association and includes instruction on safe~~  
13 ~~management of all terrain vehicles and proper use of hunting dogs may also be administered.~~

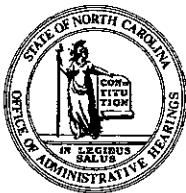
14 (b) ~~Of the 10 hours of instruction required by Paragraph (a) of this Rule, 60 percent of the time shall be devoted to~~  
15 ~~instruction related to the safe handling of firearms. The remaining four hours course time shall include instruction~~  
16 ~~on hunter responsibility (ethics), wildlife~~ conservation, conservation ~~and wildlife management, management; and~~  
17 may include ~~wildlife~~ identification, game care, specialty hunting, survival and first aid, water safety, and special  
18 concerns (alcohol and drugs, turkey hunting, trapping, all terrain vehicles, [vehicles] and hunting dogs).

19 (c) The hunter education course shall be administered by an instructor certified by the North Carolina-Wildlife  
20 Resources Commission.

21 (d) The following requirements must be satisfied by the course participant in order to successfully complete a  
22 hunter education course and be entitled to the issuance of a Certificate of Competency:

- 23 (1) complete all ~~10 hours~~ of the instruction or all the material contained in the independent study
- 24 course;
- 25 (2) score a minimum of 70 percent on the final examination; and
- 26 (3) ~~demonstrate review safe firearm handling skills, skills, except current and former military~~  
27 personnel, current and former law enforcement officers, and National Rifle Association certified  
28 firearms instructors are exempt from this requirement. Exempt individuals must show current  
29 documentation of their exempt status.

30  
31 *History Note:* Authority G.S. 113-134; 113-270.1A;  
32 Eff. October 1, 1991;  
33 Amended Eff. June 1, 2014, April 1, 2003; April 1, 1996.



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

April 17, 2014

Erica Garner  
Rule-making Coordinator  
Wildlife Resources Commission  
1701 Mail Service Center  
Raleigh, North Carolina 27699-1701

Re: 15A NCAC 10K .0101

Dear Ms. Garner:

At the Rules Review Commission's meeting today, the Commission objected to the above-captioned Rule in accordance with G.S. 150B-21.10.

The Commission objected to Rule 15A NCAC 10K .0101 based on the adopted amended language creating unclear or ambiguous course requirements. Specifically, in Paragraph (a) of the amended language, the requirement of "a minimum of 10 hours of instruction" was deleted and as adopted, the Rule merely states "[a] hunter education instructor-led course or self-paced, independent study option." There is no longer a definitive minimum period of instruction time. In Paragraph (b) of the amended language "four hours" is deleted, but as adopted, this Rule maintained the language "60 percent." The percentage of time without a definitive minimum period of instruction time makes the language "60 percent" unclear and ambiguous.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond  
Commission Counsel

cc: Kate Pipkin

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10K .0101

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

It is staff's recommendation that the Commission object to this Rule filed by the Wildlife Resources Commission for ambiguity. The authority for the rulemaking action for this topic is found in G.S. 113-270.1A(b)(5):

The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

The amended Rule is within the Wildlife Resources Commission's rulemaking statutory authority. However, it is staff's opinion that the amendments creates ambiguities and fails to provide notice to the regulated public.

Specifically, in Paragraph (a) of the amended language the requirement of "a minimum of 10 hours of instruction" is deleted and as adopted, this Rule merely states "[a] hunter education instructor-led course or self-paced, independent study option." There is no longer a definitive minimum period of instruction

Abigail M. Hammond  
Commission Counsel

time. In Paragraph (b) of the amended language “four hours” is deleted, but as adopted, this Rule maintained the language “60 percent.” The percentage of time without a definitive minimum period of instruction time makes the language “60 percent” unclear and ambiguous.

The amended Rule fails to provide notice to the regulated public of the requirements for the course of instruction in terms of time and removes existing definitive language.

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

**Summary:**

Staff is concerned that the amendments adopted by the Wildlife Resources Commission has resulted in an unclear and ambiguous Rule. It is staff opinion that this Rule should be objected to for failure to comply with G.S. 150B-21.9(a)(2).

**§ 113-270.1A. Hunter safety course required.**

(a) Except as provided in subsections (a1) and (d) of this section, on or after July 1, 2013, a person, regardless of age, may not procure a hunting license in this State without producing a hunter education certificate of competency or one of the following issued by the Wildlife Resources Commission:

- (1) A North Carolina hunting heritage apprentice permit.
- (2) A hunting license issued prior to July 1, 2013.

(a1) A person who qualifies for a disabled license under G.S. 113-270.1C(b)(5) or (6), G.S. 113-270.1D(b)(7) or (8), or G.S. 113-351(c)(3)f. or g. need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

- (1) The disabled hunter is accompanied by an adult of at least 18 years of age who is licensed to hunt; and
- (2) The licensed adult maintains a proximity to the disabled hunter which enables the adult to monitor the activities of the disabled hunter by remaining within sight and hearing distance at all times without the use of electronic devices.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization. The course of instruction shall be conducted as follows:

- (1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.
- (2) The Wildlife Resources Commission may conduct the course in hunter education, using Commission personnel or Commission-approved persons.
- (3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.
- (4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.
- (5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 2013, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) Notwithstanding the provisions of subsection (a) of this section, the lifetime licenses provided for in G.S. 113-270.1D(b)(1), (2), (3), (4), and (5), and 113-270.2(c)(2), and 113-351(c)(3) may be purchased by or in the name of persons who have not obtained a hunter education certificate of competency, subject to the requirements of this subsection. Pending satisfactory completion of the hunter education course, persons who possess one of the lifetime licenses specified in this subsection may exercise the privileges of the lifetime license only when accompanied by an adult of at least 18 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" means that the licensed adult maintains a proximity that enables the adult

to monitor the activities of the hunter by remaining within sight and hearing distance at all times without use of electronic devices. (1989, c. 324, s. 1; 1991, c. 70, s. 1; 1997-365, s. 1; 1999-456, s. 27; 2005-438, s. 1; 2013-63, s. 1.)

1 15A NCAC 10K .0101 is amended as published in 28:12 NCR 1372 as follows:

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**15A NCAC 10K .0101 COURSE REQUIREMENTS**

(a) ~~The hunter safety course shall provide a minimum of 10 hours of instruction except that a self paced, independent study hunter safety course that~~ A hunter education instructor-led course or a self-paced, independent study option shall be provided that meets the standards required by International Hunter Education Association. ~~Association and includes instruction on safe management of all terrain vehicles and proper use of hunting dogs may also be administered.~~

(b) Of the ~~10 hours of~~ instruction required by Paragraph (a) of this Rule, 60 percent of the time shall be devoted to instruction related to the safe handling of firearms. The remaining ~~four hours~~ course time shall include instruction on hunter responsibility (ethics), wildlife conservation and wildlife ~~management, management; and may include~~ wildlife identification, game care, specialty hunting, survival and first aid, water safety, and special concerns (alcohol and drugs, turkey hunting, trapping, all terrain ~~vehicles, vehicles and~~ hunting dogs).

(c) The hunter education course shall be administered by an instructor certified by the North Carolina Wildlife Resources Commission.

(d) The following requirements must be satisfied by the course participant in order to successfully complete a hunter education course and be entitled to the issuance of a Certificate of Competency:

- (1) complete all ~~10 hours~~ of the instruction or all the material contained in the independent study course;
- (2) score a minimum of 70 percent on the final examination; and
- (3) ~~demonstrate review safe firearm handling skills. skills, except current and former military personnel, current and former law enforcement officers, and National Rifle Association certified firearms instructors are exempt from this requirement. Exempt individuals must show current documentation of their exempt status.~~

*History Note: Authority G.S. 113-134; 113-270.1A;  
Eff. October 1, 1991;  
Amended Eff. April 1, 2003; April 1, 1996.  
Amended Eff. May 1, 2014*