

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 03 • Pages 172 - 389

August 2, 2010

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
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Tammara Chalmers, Editorial Assistant tammara.chalmers@oah.nc.gov (919) 431-3083

Rule Review and Legal Issues

Rules Review Commission
1711 New Hope Church Road (919) 431-3000
Raleigh, North Carolina 27609 (919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919)807-4740

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Erin L. Wynia ewynia@nclm.org

Governor's Review

Edwin M. Speas, Jr. edwin.speas@nc.gov
General Counsel to the Governor (919) 733-5811
116 West Jones Street
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeffrey Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
 Publication Schedule for January 2010 – December 2010

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
24:21	05/03/10	04/12/10	05/18/10	07/02/10	07/20/10	09/01/10	01/26/11	01/28/11
24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
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25:06	09/15/10	08/24/10	09/30/10	11/15/10	11/22/10	01/01/11	01/26/11	06/12/11
25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

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) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) 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;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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



U.S. Department of Justice
Civil Rights Division

TCH:RSB:JR:SMC:cv
DJ 166-012-3
2010-1960

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

June 4, 2010

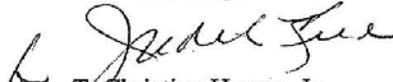
David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to the annexation (Ordinance No. 10-07 (2010)) and its designation to District 5 of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on April 12, 2010.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,


T. Christian Herren, Jr.
Acting Chief, Voting Section

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, 13 NCAC 07F .0201, and 13 NCAC 07F .0501 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910, 1915, and 1926 promulgated as of May 14, 2010, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904-Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions that are effective July 1, 2010 concerning:

- Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards
(75 FR 27188 - 27189, May 14, 2010) and (75 FR 12681 – 12686, March 17, 2010)

The *Federal Registers* (FR), as cited above, contain both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, NC 27699-1101

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: North Carolina Administration and Residential Codes.

Authority for Rule-making: G.S. 143-136; 143-138.

Reason for Proposed Action: To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council

Public Hearing: September 14, 2010, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606

Comment Procedures: Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on October 15, 2010.

Statement of Subject Matter:

1. Request by Curt Willis and Rusty Styons, to amend the 2009 NC Residential Code, Section R703.11. The proposed amendment is as follows:

R703.11.2 Soffit. In One- and Two-Family Dwellings of combustible construction, the soffit material shall be securely attached to framing members and shall be constructed using either non-combustible soffit material, fire retardant treated soffit material, vinyl soffit installed over ¾ inch wood sheathing or 5/8 inch gypsum board, or aluminum soffit installed over ¾ inch wood sheathing or 5/8 inch gypsum board. Venting requirements shall apply to both soffit and underlayment and shall be per section R806 of the NCSRC.

R703.11.3 Flame Spread. Vinyl siding and vinyl soffit materials, when used in One- and Two-Family Dwelling construction, shall have a Flame Spread Index of 25 or less as tested in accordance with ASTM E-84.

2. Request by James Bartl, with Mecklenburg County and Jim Tschupp, with the City of Raleigh, to amend the 2009 NC Building Code; Administrative Code and Policies, Section 106.2.3.1. The proposed amendment is as follows:

106.2.3.1 Building Information Modeling – Integrated Project Delivery Projects

Projects employing a Building Information Modeling – Integrated Project Delivery (BIM-IPD) process will replace the requirements of 106.2.3, with the following permitting and inspection steps:

- a). At the project start, the owner's project team (Architect, Engineer, Contractor, et al) will reach agreement with the Code Enforcement Official (CEO) on the prevailing code compliance strategy for the full scope of the project, to be documented in an electronic Appendix B format or an equivalent format, acceptable to the CEO.
- b). The CEO will issue a single project master permit, based on the initial project description and code compliance strategy agreement.
- c). The CEO will work collaboratively to review building components or details as scheduled by the owner's project team.
- d). Concurrence on compliance with the code, with respect to both the model and built product, will be gained before inspections are approved.
- e). The owner's project team will submit an as built model, at project substantial completion, documenting compliance with the NC State Building Code, for records retention by the AHJ.

3. Request by Alan Perdue and Lon McSwain to amend the 2012 NC Residential Code, Section R501.3. The proposed amendment is as follows:

R501.3 Fire Protection of Floors. Floor assemblies, not required elsewhere in this code to be fire resistance rated, shall be provided with a ½-inch gypsum wallboard membrane, 5/8-inch wood structural panel membrane, or equivalent on the underside of the floor framing member.

Exceptions:

1. Floor assemblies located directly over a space protected by an approved automatic sprinkler system in accordance with NFPA 13D, or other approved equivalent sprinkler system.

2. Floor assemblies located directly over a crawl space not intended for storage or fuel-fired appliances.

3. Portions of floor assemblies can be unprotected when complying with the following:

3.1. The aggregate area of unprotected portions shall not exceed 80 square feet per story.

3.2. Fire blocking in accordance with R302.11.1 shall be installed along the perimeter of the unprotected portions to separate the unprotected portion from the remainder of the floor assembly.

4. Wood floor assemblies using dimension lumber or structural composite lumber equal to or greater than 2-inch by 10 inch nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance.

4. Request by Alan Perdue to amend the 2012 NC Residential Code, Sections R302.2 and R313.1. The proposed amendment is as follows:

R302.2 Townhouses

(No change to the Section.)

Exception: If an automatic residential fire sprinkler is installed, a common 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E119 or UL263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with Section R302.4.

R313.1 Townhouse Automatic Fire Sprinkler Systems. An automatic residential fire sprinkler shall be installed in townhomes.

Exceptions:

1. Townhomes constructed with a common 2-hour fire resistance rated wall in accordance with ASTM E119 or UL 263 provided such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations for electrical outlet boxes shall be in accordance with Section R302.4.

2. An automatic residential fire sprinkler system shall not be required when additions or alternations are made to existing townhomes that do not have an automatic residential fire sprinkler system installed.

WALLACE
& NORDAN LLP
ATTORNEYS AT LAW

3737 GLENWOOD AVENUE, SUITE 260
RALEIGH, NORTH CAROLINA 27612

JOHN R. WALLACE
RICHARD P. NORDAN
JOSEPH A. NEWSOME

February 25, 2010

The Honorable Gary Bartlett, Executive Director
North Carolina State Board of Elections
506 North Harrington Street
Raleigh, North Carolina 27602

VIA HAND DELIVERY

Re: Advisory Request Pursuant to N.C.G.S. § 163-278.23

Dear Mr. Bartlett:

This firm has been retained to represent the interests of American Anesthesiology, Inc., a subsidiary and an affiliate of MEDNAX, Inc. On behalf of American Anesthesiology, Inc. ("American Anesthesiology"), we are requesting an advisory opinion with respect to the application of the provisions of N.C.G.S. § 163-278.19 and certain related provisions of Article 22A to our client and its affiliates and their separate segregated funds.

Over the course of the last eighteen months, American Anesthesiology, a Florida corporation, has entered into comprehensive management agreements with two North Carolina anesthesiology practices, each of which, pursuant to N.C.G.S. § 163-278.19, had previously established and maintained a separate segregated fund for the use of its employees. The two practices were formally known as Critical Health Systems of North Carolina, PC, (now American Anesthesiology of North Carolina, PC) and Wilmington Anesthesiologists, LLP, (now American Anesthesiology of the Carolinas, PC). American Anesthesiology and the practices are in long term management agreements that provide for oversight and management of all business related functions of the practices. Under its management agreements with these two practices, American Anesthesiology provides accounting and legal compliance services to the practices' separate segregated funds.

We note several facts with respect to these two separate segregated funds and their relationship with American Anesthesiology. First, the two practice groups that have the separate segregated funds do not compete with one another in the same market and are geographically separate. Second, the two practice groups and the separate segregated funds have no common physician employees. They do share certain common officers. Those officers do not participate in the funds' contribution decisions. The physician employees of each practice group, and only the physician employees of each practice group, make decisions regarding contributions to be made by the funds. American Anesthesiology will not exercise control over those decisions. However, American Anesthesiology, through its management agreements with both practices, will provide administrative support to both of these separate segregated funds.

MAILING ADDRESS | POST OFFICE BOX 12065 | RALEIGH, NORTH CAROLINA 27605
TELEPHONE 919-782-9322 | FACSIMILE 919-782-8113 | WALLACENORDAN.COM

PRINTED ON RECYCLED FIBER

From a review of the text of N.C.G.S. § 163-278.19(b) and (e), there does not appear to be a prohibition on a corporate entity providing administrative support to more than one separate segregated fund. In this case, American Anesthesiology wishes to assist its affiliated practices (American Anesthesiology of North Carolina, PC and American Anesthesiology of the Carolinas, PC) with maintaining two separate segregated funds for their individual groups of employees and to provide administrative support, pursuant to N.C.G.S. § 163-278.19(e), to those separate segregated funds.

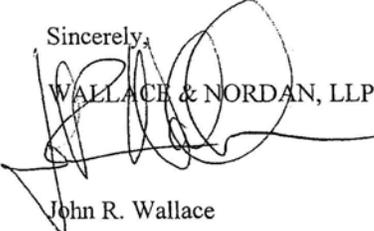
American Anesthesiology is seeking an advisory opinion with respect to three separate questions:

1. May the two now existing committees continue to exist as separate segregated funds?
2. If the two separate segregated funds may be maintained going forward, must the contributions from the two separate segregated funds be aggregated for purposes of determining whether contribution limits have been met?
3. May American Anesthesiology provide administrative support, pursuant to N.C.G.S. § 163-278.19(e), to both separate segregated funds?

We appreciate your assistance in providing an advisory opinion with respect to these issues. Should you have need of further information or facts with respect to the situation faced by our client, please do not hesitate to contact this office.

With best regards, I remain

Sincerely,


WALLACE & NORDAN, LLP

John R. Wallace

JRW/map

cc: Kim Westbrook Strach, Deputy Director



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

July 9, 2010

Mr. John Wallace
3737 Glenwood Avenue, Suite 260
Raleigh, North Carolina 27612

Re: Advisory Request Pursuant to N.C.G.S. § 163-278.23

Dear Mr. Wallace:

I am in receipt of your letter dated February 25, 2010, in which you seek an advisory opinion on behalf of your client American Anesthesiology, Inc. Specifically, you pose three questions for response. Pursuant to N.C.G.S § 163-278.23, I will provide responses to each of your questions.

To summarize the facts as provided, American Anesthesiology, Inc. has entered into comprehensive management agreements with two anesthesiology practices in North Carolina. Prior to the management agreements, the two practices had separately established separate segregated funds pursuant to N.C. G.S § 163-278.19(b). According to our records, Critical Health Systems of North Carolina PAC organized on May 14, 2002, and Wilmington Anesthesiologists PAC organized on September 18, 2001. Both of these separate segregated funds have been filing reports with our office since their organization.

As part of the management agreement, American Anesthesiology, Inc. will provide administrative support to both separate segregated funds. The physician employees of each practice group will be the only decision makers regarding contributions made from the separate segregated funds. Even though the two practice groups share some common officers, those officers do not participate in the contribution decisions of either separate segregated fund.

Based on these facts, the following responses are provided to your questions:

1. **May the two existing committees continue to exist as separate segregated funds?**

Answer: Yes. Both Critical Health Systems of North Carolina PAC and Wilmington Anesthesiologists PAC were established pursuant to N.C. G.S. § 163-278.19(b). N.C.G.S § 163-278.19(b) and (e) provide for corporations establishing a separate segregated fund and receiving reasonable administrative support from the parent entity designated on the committee's organizational report (Statement of Organization CRO 2100D). Currently, both

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

separate segregated funds are eligible to receive reasonable administrative support from the parent entities designated on their Statement of Organizations, which are the practice groups of each separate segregated fund.

2. **If the two separate segregated funds may be maintained going forward, must the contributions from the two separate segregated funds be aggregated for purposes of determining whether contribution limits have been met?**

Answer: No. The separate practice groups are the parent entities of the two political committees. You explain that they have no common physician employees, and only the physician employees of each practice group make decisions regarding contributions to be made by the political committee for that group. Under these facts, contributions to each separate segregated fund will not be aggregated for purposes of determining whether contribution limits have been met.

3. **May American Anesthesiology provide administrative support, pursuant to N.C. G.S. § 163-278.19(e), to both separate segregated funds?**

Answer: Yes. Since American Anesthesiology, Inc. has a management contract with both practices to provide administrative support, those services are services to the parent entities that will then be provided to the separate segregated funds. American Anesthesiology's contracts are with the two parent entities. N.C.G.S. § 163-278.19(e) does not preclude a parent entity from contracting with an outside vendor to provide administrative support or the same vendor from contracting with multiple parent entities.

This opinion is based upon the information provided in your February 25, 2010, letter. If any information in that letter should change, you should consult with our office to ensure that this opinion would still be binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett
Executive Director

cc: Julian Mann, Codifier of Rules

Note from the Codifier

Approved Rules Pending the Legislative Session beginning May 2010

Rules entered into the NC Administrative Code effective July 1, 2010

These approved rules were pending the legislative session beginning in May 2010. A legislative bill was not introduced to disapprove the rule within the first 30 legislative days; therefore, the rule went into effect on the 31st legislative day (July 1, 2010).

		<u>RRC Approved</u>
Wildlife Resources Commission		
15A NCAC 10B .0106	Wildlife Taken for Depredations or Accidentally	04/16/2009
Public Health, Commission for		
15A NCAC 13A .0102	Definitions	09/17/2009
15A NCAC 13A .0103	Petitions – Part 260	09/17/2009
15A NCAC 13A .0106	Identification and Listing of Hazardous Wastes – Part 261	09/17/2009
Appraisal Board		
21 NCAC 57A .0201	Qualifications for Trainee Register and Appraiser Cert..	03/18/2010
21 NCAC 57A .0204	Continuing Education	03/18/2010
21 NCAC 57B .0102	Certified Residential Real Estate Appraiser	03/18/2010
21 NCAC 57B .0103	Certified General Real Estate Appraiser Course Requirements	03/18/2010
21 NCAC 57B .0306	Instructor Requirements	03/18/2010
21 NCAC 57B .0603	Criteria for Course Approval	03/18/2010

Rules entered into the NC Administrative Code effective July 10, 2010

These approved rules were pending the legislative session beginning in May 2010, a bill was introduced to disapprove the rule within the first 30 legislative days, but the legislative bill was not ratified by adjournment on July 10, 2010.

		<u>RRC Approved</u>
Community Colleges, Board of		
23 NCAC 02C .0301	Admission to Colleges	04/15/2010
Environmental Management Commission		
15A NCAC 02D .0540	Particulates from Fugitive Dust Emission Sources	12/17/2009
15A NCAC 02D .1010	Heavy-Duty Vehicle Idling Restrictions	08/20/2009
15A NCAC 02Q .0701	Applicability	06/18/2009
15A NCAC 02Q .0702	Exemptions	06/18/2009
15A NCAC 02Q .0706	Modifications	06/18/2009
15A NCAC 02Q .0709	Demonstrations	06/18/2009
Wildlife Resources Commission		
15A NCAC 10B .0116	Permitted Archery Equipment	04/16/2009
15A NCAC 10B .0201	Prohibited Taking and Manner of Take	04/16/2009
15A NCAC 10B .0203	Deer (White Tailed)	04/16/2009
15A NCAC 10B .0404	Trappers and Hunters	04/16/2009
15A NCAC 10B .0409	Sale of Live Foxes and Coyotes to Controlled Fox Hunting...	04/16/2009

Rule pending entry into the NC Administrative Code effective July 1, 2011*

* See Senate Bill 1259 -- pending action by the Governor

Environmental Management Commission		
15A NCAC 02B .0304	French Broad River Basin	04/16/2009

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

Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Plant Conservation Board intends to adopt the rules cited as 02 NCAC 48F.0410-.0413; amend the rules cited as 02 NCAC 48F .0301, .0305-.0306, .0401-.0402, .0407 and .0409; and repeal the rules cited as 02 NCAC 48F .0302, .0304, .0403-.0404, .0406, .0408 and .0501-.0515.

Proposed Effective Date: December 1, 2010

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 August 17, 2010 to Stephen Schmidt, Plant Pest Administrator, 1060 Mail Service Center, Raleigh, NC 27699-1060.

Reason for Proposed Action: The proposed changes update the lists of protected plants and clarify permit requirements for collection, propagation and sale of protected plants.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to Stephen Schmidt, Plant Pest Administrator, 1060 Mail Service Center, Raleigh, NC 27699-1060.

Comments may be submitted to: Stephen Schmidt, Plant Pest Administrator, 1060 Mail Service Center, Raleigh, NC 27699-1060; phone (919) 733-6930 ext. 231; fax (919) 733-1041; email Stephen.schmidt@ncagr.gov

Comment period ends: October 1, 2010

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:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48F - PLANT CONSERVATION

**SECTION .0300 - ENDANGERED PLANT SPECIES LIST:
THREATENED PLANT SPECIES LIST: LIST OF
SPECIES OF SPECIAL CONCERN**

02 NCAC 48F .0301 PROTECTED PLANT SPECIES LIST

The North Carolina Plant Conservation Board hereby establishes the following list of ~~endangered plant species~~; protected plant species (** indicates federally listed):

- (1) ~~Adiantum capillus-veneris L.~~
~~Venus Hair Fern;~~
- (2) ~~Aeschynomene virginica (L.) B.S.P.~~
~~Sensitive Jointvetch;~~
- (3) ~~Agrostis mertensii Trin.~~
~~Arctic Bentgrass;~~
- (4) ~~Amorpha georgiana var. georgiana Wilbur~~
~~Georgia Indigo bush;~~
- (5) ~~Amphicarpum muehlenbergianum (J.A. Schultes) A.S. Hitchc.~~
~~Florida Goober Grass, Blue Maidencane;~~
- (6) ~~Arethusa bulbosa L.~~
~~Bog Rose;~~
- (7) ~~Asplenium heteroresiliens W.H. Wagner~~
~~Carolina Spleenwort;~~
- (8) ~~Asplenium monanthes L.~~
~~Single-sorus Spleenwort;~~
- (9) ~~Aster parviceps (Burgess) Mackenzie & Bush~~
~~Glade Aster;~~
- (10) ~~Bryocrumia andersonii (Bartr.) Anders.~~
~~Gorge Moss;~~
- (11) ~~Buckleya distichophylla (Nuttall) Torrey~~
~~Piratebush;~~
- (12) ~~Calamagrostis cainii Hitchcock~~
~~Cain's Reed Grass;~~
- (13) ~~Calopogon multiflorus Lindl.~~

PROPOSED RULES

- (14) ~~Many flowered Grass Pink;
Canoparmelia amabilis Heiman & Elix
Worthy Shield Lichen;~~
- (15) ~~Cardamine micranthera Rollins
Small-anthered Bittereress;~~
- (16) ~~Carex aenea Fernald
Fernald's Hay Sedge;~~
- (17) ~~Carex barrattii Schweinitz and Torrey
Barratt's Sedge;~~
- (18) ~~Carex lutea LeBlond
Golden Sedge;~~
- (19) ~~Carex oligosperma Michx.
Few-seeded Sedge;~~
- (20) ~~Carex radfordii Gaddy
Radford's sedge;~~
- (21) ~~Carex schweinitzii Dewey ex Schweinitz
Schweinitz's Sedge;~~
- (22) ~~Carya myristiciformis (Michaux f.) Nuttall
Nutmeg hickory;~~
- (23) ~~Cheilolejeunea evansii (M. Taylor) Schust.
A liverwort;~~
- (24) ~~Chrysoma pauciflorescens (Michx.) Greene
Woody Goldenrod;~~
- (25) ~~Conioselinum chinense (L.) B.S.P.
Hemlock Parsley;~~
- (26) ~~Cystopteris tennesseensis Shaver
Tennessee Bladderfern;~~
- (27) ~~Dalibarda repens L.
Robin Runaway;~~
- (28) ~~Delphinium exaltatum Aiton
Tall Larkspur;~~
- (29) ~~Dichantherium caeruleescens (Hack. ex Hitchc.)
Correll
Blue Witch Grass;~~
- (30) ~~Echinacea laevigata (Boynton and Beadle)
Blake
Smooth Coneflower;~~
- (31) ~~Eriocaulon lineare Small
Linear Pipewort;~~
- (32) ~~Eriocaulon texense Koern.
Texas Hatpins;~~
- (33) ~~Filipendula rubra (Hill) B.L. Robins.
Queen of the Prairie;~~
- (34) ~~Fimbristylis perpusilla Harper ex Small &
Britt.
Harper's Fimbry;~~
- (35) ~~Fimbristylis perpusilla Harper ex Small &
Britton
Harper's Fringe-rush;~~
- (36) ~~Gaylussacia nana (Gray) Small
Confederate Huckleberry;~~
- (37) ~~Gentianopsis crinita (Froelich) Ma
Fringed Gentian;~~
- (38) ~~Geum radiatum Michaux
Spreading Avens;~~
- (39) ~~Grammitis nimbata (Jenm.) Proctor
Dwarf Polypody Fern;~~
- (40) ~~Gymnocarpium appalachianum Pryer &
Haufler
Appalachian Oak Fern;~~
- (41) ~~Helenium brevifolium (Nutt.) Wood
Littleleaf Sneezeweed;~~
- (42) ~~Helenium vernale Walt.
Spring Sneezeweed;~~
- (43) ~~Helianthemum nashii Britt.
Florida Scrub frostweed;~~
- (44) ~~Helianthus floridanus Gray ex Chapman
Florida Sunflower;~~
- (45) ~~Helianthus schweinitzii T. & G.
Schweinitz's Sunflower;~~
- (46) ~~Hexastylis contracta Blomquist
Mountain Heartleaf;~~
- (47) ~~Hierochloa odorata (L.) Beauv.
Holy Grass;~~
- (48) ~~Houstonia purpurea var. montana (Small)
Terrell
Mountain Bluet;~~
- (49) ~~Hudsonia montana Nutt.
Mountain Golden Heather;~~
- (50) ~~Hydrastis canadensis L.
Goldenseal;~~
- (51) ~~Hymenophyllum tayloriae Farrar & Raine
Gorge Filmy fern;~~
- (52) ~~Isoetes microvela D.F. Brunton
A Quillwort;~~
- (53) ~~Isotria medeoloides (Pursh) Raf.
Small Whorled Pogonia;~~
- (54) ~~Juncus caesariensis Coville
Rough Rush;~~
- (55) ~~Juncus trifidus ssp. carolinianus Hamet Ahti
One-flowered Rush;~~
- (56) ~~Lilium pyrophilum M.W. Skinner & Sorrie
Sandhills bog-lily;~~
- (57) ~~Lindera melissaefolia (Walter) Blume
Southern Spicebush;~~
- (58) ~~Lipocarpa micrantha (Vahl) G. Tucker
Small-flowered Hemicarpha;~~
- (59) ~~Lophiola aurea Ker Gawl.
Golden Crest;~~
- (60) ~~Lysimachia asperulaefolia Poiret
Rough leaf Loosestrife;~~
- (61) ~~Lysimachia fraseri Duby
Fraser's Loosestrife;~~
- (62) ~~Minuartia godfreyi (Shinners) McNeill
Godfrey's Sandwort;~~
- (63) ~~Minuartia uniflora (Walter) Mattfield
Single-flowered Sandwort;~~
- (64) ~~Muhlenbergia torreyana (Schultes) Hitchcock
Torrey's Muhly;~~
- (65) ~~Myrica gale L.
Sweet Gale;~~
- (66) ~~Narthecium americanum Ker
Bog Asphodel;~~
- (67) ~~Orbexilum macrophyllum (Rowlee ex Small)
Rydberg~~

PROPOSED RULES

- | | |
|--|---|
| <p>(68) — <i>Bigleaf Scurfpea;</i>
<i>Orthotrichum keeverae</i> Crum & Anders.
<i>Keever's Bristle Moss;</i></p> <p>(69) — <i>Oxypolis canbyi</i> (Coul. & Rose) Fern.
<i>Canby's Cowbane;</i></p> <p>(70) — <i>Panicum hirstii</i> Swallen
<i>Hirst's Panic Grass;</i></p> <p>(71) — <i>Parnassia caroliniana</i> Michaux
<i>Carolina Grass of Parnassus;</i></p> <p>(72) — <i>Paronychia herniarioides</i> (Michx.) Nutt.
<i>Michaux's Whitlow wort;</i></p> <p>(73) — <i>Pellaea wrightiana</i> Hooker
<i>Wright's Cliff brake Fern;</i></p> <p>(74) — <i>Plantago cordata</i> Lam.
<i>Heart-leaf Plantain;</i></p> <p>(75) — <i>Plantago sparsiflora</i> Michaux
<i>Pineland Plantain;</i></p> <p>(76) — <i>Platanthera integrilabia</i> (Correll) Leur
<i>White Fringeless Orchid;</i></p> <p>(77) — <i>Poa paludigena</i> Fernald & Wiegand
<i>Bog Bluegrass;</i></p> <p>(78) — <i>Pteroglossaspis ecristata</i> (Fernald) Rolfe
<i>Eulophia;</i></p> <p>(79) — <i>Ptilimnium nodosum</i> (Rose) Mathias
<i>Harperella;</i></p> <p>(80) — <i>Pyxidantha barbulate</i> var. <i>brevifolia</i> (Wells)
<i>Ahles</i>
<i>Wells' Pyxie moss;</i></p> <p>(81) — <i>Rhus michauxii</i> Sargent
<i>Michaux's Sumac;</i></p> <p>(82) — <i>Rhynchospora erinipes</i> Gale
<i>Mosquito Beak Sedge;</i></p> <p>(83) — <i>Rhynchospora macra</i> (C.B. Clarke) Small
<i>Large Beak Sedge;</i></p> <p>(84) — <i>Rhynchospora odorata</i> C. Wright ex Griseb.
<i>Fragrant Beaksedge;</i></p> <p>(85) — <i>Rhynchospora thornei</i> Kral
<i>Thorne's Beaksedge;</i></p> <p>(86) — <i>Rudbeckia heliopsisidis</i> Torr. & Gray
<i>Sun-facing Coneflower;</i></p> <p>(87) — <i>Sagittaria fasciculata</i> E.O. Beal
<i>Bunched Arrowhead;</i></p> <p>(88) — <i>Sarracenia jonesii</i> Wherry
<i>Mountain Sweet Pitcher Plant;</i></p> <p>(89) — <i>Sarracenia oreophila</i> (Kearney) Wherry
<i>Green Pitcher Plant;</i></p> <p>(90) — <i>Schwalbea americana</i> L.
<i>Chaffseed;</i></p> <p>(91) — <i>Scirpus flaccidifolius</i> (Fern.) Schuyler
<i>Reclining Bulrush;</i></p> <p>(92) — <i>Sedum pusillum</i> Michaux</p> | <p><i>Puck's Orpine;</i></p> <p>(93) — <i>Sedum rosea</i> (L.) Scop.
<i>Roseroot;</i></p> <p>(94) — <i>Senecio schweinitzianus</i> Nuttall
<i>Schweinitz's Groundsel;</i></p> <p>(95) — <i>Shortia galacifolia</i> T. & G.
<i>Oeonee Bells;</i></p> <p>(96) — <i>Sisyrinchium dichotomum</i> Bicknell
<i>Reflexed Blue-eyed Grass;</i></p> <p>(97) — <i>Solidago plumosa</i> Small
<i>Yadkin River Goldenrod;</i></p> <p>(98) — <i>Solidago ptarmicoides</i> (Nees) Boivin
<i>Prairie Goldenrod;</i></p> <p>(99) — <i>Solidago spithamaea</i> M.A. Curtis
<i>Blue Ridge Goldenrod;</i></p> <p>(100) — <i>Solidago villosicarpa</i> LeBlond
<i>Coastal goldenrod;</i></p> <p>(101) — <i>Sphagnum fuscum</i> (Schimp.) Klinggr.
<i>Brown Peatmoss;</i></p> <p>(102) — <i>Sphenolobopsis pearsoni</i> (Sprengel) Schuster
& Kitagawa
<i>A liverwort;</i></p> <p>(103) — <i>Spigelia marilandica</i> (L.) L.
<i>Pink Root;</i></p> <p>(104) — <i>Spiraea virginiana</i> Britton
<i>Virginia Spiraea;</i></p> <p>(105) — <i>Sporobolus heterolepis</i> Gray
<i>Prairie Dropseed;</i></p> <p>(106) — <i>Stylisma pickeringii</i> var. <i>pickeringii</i> (Torrey
ex M.A. Curtis) Gray
<i>Pickering's Morning Glory;</i></p> <p>(107) — <i>Talinum mengesii</i> W. Wolf
<i>Large-flowered Fameflower;</i></p> <p>(108) — <i>Thalictrum cooleyi</i> Ahles
<i>Cooley's Meadowrue;</i></p> <p>(109) — <i>Tortula ammonsiana</i> Crum & Anders.
<i>Ammon's Tortula;</i></p> <p>(110) — <i>Tridens ambiguus</i> (Ell.) J.A. Schultes
<i>Pinelands Triodia;</i></p> <p>(111) — <i>Trillium pusillum</i> Michaux
<i>Carolina Least Trillium;</i></p> <p>(112) — <i>Trisetum spicatum</i> var. <i>molle</i> (Michaux) Beal
<i>Soft Trisetum;</i></p> <p>(113) — <i>Utricularia resupinata</i> B.D. Greene ex Bigelow
<i>Northeastern Bladderwort;</i></p> <p>(114) — <i>Warea cuneifolia</i> (Muhl. ex Nutt.) Nutt.
<i>Carolina Pineland cress;</i></p> <p>(115) — <i>Zephyranthes simpsonii</i> Chapman
<i>Rain Lily.</i></p> |
|--|---|

Species

Status

- | | | |
|-----|---|-----------------------------|
| (1) | <i>Acrobolbus ciliatus</i>
<i>A liverwort;</i> | Special Concern, Vulnerable |
| (2) | <i>Adiantum capillus-veneris</i>
<i>Venus Hair Fern;</i> | Threatened |
| (3) | <i>Adlumia fungosa</i>
<i>Climbing Fumitory;</i> | Special Concern, Vulnerable |

PROPOSED RULES

(4)	<u>Aeschynomene virginica**</u> <u>Sensitive Jointvetch;</u>	Threatened
(5)	<u>Agalinis virgata</u> <u>Branched Gerardia;</u>	Threatened
(6)	<u>Agrostis mertensii</u> <u>Artic Bentgrass;</u>	Endangered
(7)	<u>Allium cuthbertii</u> <u>Striped Garlic;</u>	Threatened
(8)	<u>Alnus viridis</u> <u>Green Alder;</u>	Special Concern, Vulnerable
(9)	<u>Amaranthus pumilus**</u> <u>Seabeach Amaranth;</u>	Threatened
(10)	<u>Amorpha georgiana var. confusa</u> <u>Savanna Indigo-bush;</u>	Threatened
(11)	<u>Amorpha georgiana var. georgiana</u> <u>Georgia Indigo-bush;</u>	Endangered
(12)	<u>Amphicarpum muehlenbergianum</u> <u>Florida Goober Grass, Blue Maidencane;</u>	Endangered
(13)	<u>Andropogon mohrii</u> <u>Bog Bluestem;</u>	Threatened
(14)	<u>Anemone berlandieri</u> <u>Southern Anemone;</u>	Endangered
(15)	<u>Anemone caroliniana</u> <u>Prairie Anemone;</u>	Endangered
(16)	<u>Arabis pycnocarpa var. adpressipilis</u> <u>Hairy Rockcress;</u>	Endangered
(17)	<u>Arethusa bulbosa</u> <u>Bog Rose;</u>	Endangered
(18)	<u>Aristida condensate</u> <u>Big Three-awn Grass;</u>	Threatened
(19)	<u>Aristida simpliciflora</u> <u>Chapman's Three-awn;</u>	Endangered
(20)	<u>Arnoglossum ovatum</u> <u>Savanna Indian-plantain;</u>	Endangered
(21)	<u>Asclepias pedicellata</u> <u>Savanna Milkweed;</u>	Special Concern, Vulnerable
(22)	<u>Asplenium heteroresiliens</u> <u>Carolina Spleenwort;</u>	Endangered
(23)	<u>Asplenium monanthes</u> <u>Single-sorus Spleenwort;</u>	Endangered
(24)	<u>Asplenium ruta-muraria</u> <u>Wall-rue Spleenwort;</u>	Special Concern, Vulnerable
(25)	<u>Astragalus michauxii</u> <u>Sandhills Milkvetch;</u>	Special Concern, Vulnerable
(26)	<u>Baccharis glomeruliflora</u> <u>Silverling;</u>	Special Concern, Historical
(27)	<u>Bacopa caroliniana</u> <u>Blue Water-hyssop;</u>	Threatened
(28)	<u>Bacopa innominata</u> <u>Tropical Water-hyssop;</u>	Special Concern, Historical
(29)	<u>Balduina atropurpurea</u> <u>Purple-disk Honeycomb-head;</u>	Special Concern, Historical
(30)	<u>Baptisia alba</u> <u>Thick-pod White Wild Indigo;</u>	Threatened
(31)	<u>Baptisia albescens</u> <u>Thin-pod White Wild Indigo;</u>	Special Concern, Vulnerable
(32)	<u>Baptisia bracteata</u> <u>Creamy Wild Indigo;</u>	Special Concern, Historical

PROPOSED RULES

(33)	<u>Baptisia minor</u>	<u>Endangered</u>
	<u>Prairie Blue Wild Indigo;</u>	
(34)	<u>Berberis canadensis</u>	<u>Special Concern, Vulnerable</u>
	<u>American Barberry;</u>	
(35)	<u>Betula cordifolia</u>	<u>Special Concern, Vulnerable</u>
	<u>Mountain Paper Birch;</u>	
(36)	<u>Boechera missouriensis</u>	<u>Special Concern, Vulnerable</u>
	<u>Missouri Rockcress;</u>	
(37)	<u>Arabis patens</u>	<u>Threatened</u>
	<u>Spreading Rockcress;</u>	
(38)	<u>Buchnera americana</u>	<u>Special Concern, Historical</u>
	<u>American Bluehearts;</u>	
(39)	<u>Buckleya distichophylla</u>	<u>Threatened</u>
	<u>Piratebush;</u>	
(40)	<u>Bulbostylis warei</u>	<u>Special Concern, Historical</u>
	<u>Ware's Hair Sedge;</u>	
(41)	<u>Calamagrostis cainii</u>	<u>Endangered</u>
	<u>Cain's Reed Grass;</u>	
(42)	<u>Calopogon multiflorus</u>	<u>Endangered</u>
	<u>Many-flowered Grass-Pink;</u>	
(43)	<u>Caltha palustris var. palustris</u>	<u>Endangered</u>
	<u>Marsh-marigold;</u>	
(44)	<u>Camassia scilloides</u>	<u>Threatened</u>
	<u>Wild Hyacinth;</u>	
(45)	<u>Campanula rotundifolia</u>	<u>Endangered</u>
	<u>Bluebells;</u>	
(46)	<u>Campylium stellatum</u>	<u>Special Concern, Vulnerable</u>
	<u>Yellow Starry Fen Moss;</u>	
(47)	<u>Canoparmelia amabilis</u>	<u>Special Concern, Vulnerable</u>
	<u>Worthy Shield Lichen;</u>	
(48)	<u>Cardamine dissecta</u>	<u>Special Concern, Vulnerable</u>
	<u>Dissected Toothwort;</u>	
(49)	<u>Cardamine douglassii</u>	<u>Threatened</u>
	<u>Douglass's Bittercress;</u>	
(50)	<u>Cardamine longii</u>	<u>Special Concern, Vulnerable</u>
	<u>Long's Bittercress;</u>	
(51)	<u>Cardamine micranthera**</u>	<u>Endangered</u>
	<u>Small-anthered Bittercress;</u>	
(52)	<u>Cardamine rotundifolia</u>	<u>Threatened</u>
	<u>Mountain Watercress;</u>	
(53)	<u>Carex argyrantha</u>	<u>Endangered</u>
	<u>Hay Sedge;</u>	
(54)	<u>Carex barrattii</u>	<u>Special Concern, Historical</u>
	<u>Barratt's Sedge;</u>	
(55)	<u>Carex buxbaumii</u>	<u>Special Concern, Vulnerable</u>
	<u>Brown Bog Sedge;</u>	
(56)	<u>Carex careyana</u>	<u>Threatened</u>
	<u>Carey's Sedge;</u>	
(57)	<u>Carex cherokeensis</u>	<u>Endangered</u>
	<u>Cherokee Sedge;</u>	
(58)	<u>Carex conoidea</u>	<u>Special Concern, Vulnerable</u>
	<u>Cone-shaped Sedge;</u>	
(59)	<u>Carex cristatella</u>	<u>Special Concern, Historical</u>
	<u>Small-crested Sedge;</u>	
(60)	<u>Carex decomposita</u>	<u>Special Concern, Vulnerable</u>
	<u>Cypress Knee Sedge;</u>	
(61)	<u>Carex eburnea</u>	<u>Threatened</u>
	<u>Bristle-leaf Sedge;</u>	

PROPOSED RULES

(62)	<u>Carex exilis</u>	<u>Endangered</u>
	<u>Coastal Sedge;</u>	
(63)	<u>Carex hitchcockiana</u>	<u>Special Concern, Vulnerable</u>
	<u>Hitchcock's Sedge;</u>	
(64)	<u>Carex hormathodes</u>	<u>Threatened</u>
	<u>A Sedge;</u>	
(65)	<u>Carex lutea**</u>	<u>Endangered</u>
	<u>Golden Sedge;</u>	
(66)	<u>Carex oligocarpa</u>	<u>Threatened</u>
	<u>Rich-woods Sedge;</u>	
(67)	<u>Carex oligosperma</u>	<u>Endangered</u>
	<u>Few-seeded Sedge;</u>	
(68)	<u>Carex pedunculata var. pedunculata</u>	<u>Special Concern, Vulnerable</u>
	<u>Longstalk Sedge;</u>	
(69)	<u>Carex purpurifera</u>	<u>Special Concern, Vulnerable</u>
	<u>Purple Sedge;</u>	
(70)	<u>Carex radfordii</u>	<u>Threatened</u>
	<u>Radford's Sedge;</u>	
(71)	<u>Carex reniformis</u>	<u>Threatened</u>
	<u>Kidney Sedge;</u>	
(72)	<u>Carex tenax</u>	<u>Endangered</u>
	<u>Wire Sedge;</u>	
(73)	<u>Carex trisperma</u>	<u>Endangered</u>
	<u>Three-seeded Sedge;</u>	
(74)	<u>Carex vestita</u>	<u>Special Concern, Historical</u>
	<u>Velvet Sedge;</u>	
(75)	<u>Carya laciniosa</u>	<u>Threatened</u>
	<u>Big Shellbark Hickory;</u>	
(76)	<u>Carya myristiciformis</u>	<u>Endangered</u>
	<u>Nutmeg Hickory;</u>	
(77)	<u>Celastrus scandens</u>	<u>Endangered</u>
	<u>American Bittersweet;</u>	
(78)	<u>Cetraria arenaria</u>	<u>Special Concern, Vulnerable</u>
	<u>Sand-loving Iceland Lichen;</u>	
(79)	<u>Chamaesyce cordifolia</u>	<u>Threatened</u>
	<u>Heartleaf Sandmat;</u>	
(80)	<u>Chamerion platyphyllum</u>	<u>Endangered</u>
	<u>Fireweed;</u>	
(81)	<u>Chasmanthium nitidum</u>	<u>Threatened</u>
	<u>A Spanglegrass;</u>	
(82)	<u>Chelone cuthbertii</u>	<u>Threatened</u>
	<u>Cuthbert's Turtlehead;</u>	
(83)	<u>Chenopodium simplex</u>	<u>Special Concern, Historical</u>
	<u>Giant-seed Goosefoot;</u>	
(84)	<u>Chiloscyphus appalachianus</u>	<u>Special Concern, Vulnerable</u>
	<u>A Liverwort;</u>	
(85)	<u>Chiloscyphus muricatus</u>	<u>Special Concern, Vulnerable</u>
	<u>A Liverwort;</u>	
(86)	<u>Chrysoma pauciflosculosa</u>	<u>Endangered</u>
	<u>Woody Goldenrod;</u>	
(87)	<u>Cirsium carolinianum</u>	<u>Endangered</u>
	<u>Carolina Thistle;</u>	
(88)	<u>Cirsium lecontei</u>	<u>Special Concern, Vulnerable</u>
	<u>Leconte's Thistle;</u>	
(89)	<u>Cladonia psoromica</u>	<u>Threatened</u>
	<u>Bluff Mountain Reindeer Lichen;</u>	
(90)	<u>Clematis occidentalis</u>	<u>Special Concern, Vulnerable</u>
	<u>Mountain Clematis;</u>	

PROPOSED RULES

(91)	<u>Clinopodium georgianum</u>	<u>Endangered</u>
	<u>Georgia Calamint;</u>	
(92)	<u>Coeloglossum viride var. virescens</u>	<u>Endangered</u>
	<u>Long-bracted Frog Orchid;</u>	
(93)	<u>Coelorachis cylindrical</u>	<u>Special Concern, Historical</u>
	<u>Carolina Jointgrass;</u>	
(94)	<u>Collinsonia tuberosa</u>	<u>Special Concern, Vulnerable</u>
	<u>Piedmont Horsebalm;</u>	
(95)	<u>Collinsonia verticillata</u>	<u>Special Concern, Vulnerable</u>
	<u>Whorled Horsebalm;</u>	
(96)	<u>Conioselinum chinense</u>	<u>Threatened</u>
	<u>Hemlock Parsley;</u>	
(97)	<u>Coptis trifolia var. groenlandica</u>	<u>Threatened</u>
	<u>Goldthread;</u>	
(98)	<u>Cornus asperifolia</u>	<u>Endangered</u>
	<u>Roughleaf Dogwood;</u>	
(99)	<u>Corydalis micrantha ssp. micrantha</u>	<u>Threatened</u>
	<u>Slender Corydalis;</u>	
(100)	<u>Crinum americanum</u>	<u>Special Concern, Historical</u>
	<u>Swamp-lily;</u>	
(101)	<u>Crocanthemum bicknellii</u>	<u>Special Concern, Vulnerable</u>
	<u>Plains Sunrose;</u>	
(102)	<u>Crocanthemum carolinianum</u>	<u>Endangered</u>
	<u>Carolina Sunrose;</u>	
(103)	<u>Crocanthemum corymbosum</u>	<u>Threatened</u>
	<u>Pinebarren Sunrose;</u>	
(104)	<u>Crocanthemum georgianum</u>	<u>Endangered</u>
	<u>Georgia Sunrose;</u>	
(105)	<u>Crocanthemum nashii</u>	<u>Endangered</u>
	<u>Florida Scrub Frostweed;</u>	
(106)	<u>Crocanthemum propinquum</u>	<u>Threatened</u>
	<u>Creeping Sunrose;</u>	
(107)	<u>Crocanthemum rosmarinifolium</u>	<u>Threatened</u>
	<u>Rosemary Sunrose;</u>	
(108)	<u>Croton monanthogynus</u>	<u>Endangered</u>
	<u>Prairie-tea Croton;</u>	
(109)	<u>Cyperus dentatus</u>	<u>Special Concern, Historical</u>
	<u>Toothed Flatsedge;</u>	
(110)	<u>Cyperus granitophilus</u>	<u>Threatened</u>
	<u>Granite Flatsedge;</u>	
(111)	<u>Cyperus lecontei</u>	<u>Theatened</u>
	<u>Leoconte's Flatsedge;</u>	
(112)	<u>Cyperus tetragonus</u>	<u>Special Concern, Vulnerable</u>
	<u>Four-angled Flatsedge;</u>	
(113)	<u>Cystopteris tennesseensis</u>	<u>Endangered</u>
	<u>Tennessee Bladderform;</u>	
(114)	<u>Dalibarda repens</u>	<u>Endangered</u>
	<u>Robin Runaway;</u>	
(115)	<u>Delphinium exaltatum</u>	<u>Endangered</u>
	<u>Tall Larkspur;</u>	
(116)	<u>Deschampsia cespitosa ssp. glauca</u>	<u>Threatened</u>
	<u>Tufted Hairgrass;</u>	
(117)	<u>Desmodium ochroleucum</u>	<u>Special Concern, Historical</u>
	<u>Creamy Tick-trefoil;</u>	
(118)	<u>Desmodium sessilifolium</u>	<u>Special Concern, Historical</u>
	<u>Sessile Tick-trefoil;</u>	
(119)	<u>Diarrhena Americana</u>	<u>Endangered</u>
	<u>Eastern Beakgrass;</u>	

PROPOSED RULES

(120)	<u>Dichanthelium aciculare ssp. neuranthum</u> <u>Nerved Witch Grass</u>	Special Concern, Vulnerable
(121)	<u>Dichanthelium caeruleum</u> <u>Blue Witch Grass;</u>	Endangered
(122)	<u>Dichanthelium hirstii</u> <u>Hirsts' Panic Grass;</u>	Endangered
(123)	<u>Diervilla rivularis</u> <u>Riverbank Bush-honeysuckle;</u>	Threatened
(124)	<u>Dionaea muscipula</u> <u>Venus Flytrap;</u>	Special Concern, Vulnerable
(125)	<u>Dodecatheon meadia var. meadia</u> <u>Eastern Shooting-Star;</u>	Threatened
(126)	<u>Draba ramosissima</u> <u>Branching Draba;</u>	Special Concern, Vulnerable
(127)	<u>Drepanolejeunea appalachiana</u> <u>A Liverwort;</u>	Special Concern, Vulnerable
(128)	<u>Drosera filiformis</u> <u>Threadleaf Sundew;</u>	Special Concern, Vulnerable
(129)	<u>Echinacea laevigata**</u> <u>Smooth Coneflower;</u>	Endangered
(130)	<u>Echinacea purpurea</u> <u>Purple Coneflower,</u>	Special Concern, Vulnerable
(131)	<u>Echinodorus tenellus</u> <u>Dwarf Burhead;</u>	Endangered
(132)	<u>Eleocharis cellulosa</u> <u>Gulfcoast Spikerush;</u>	Endangered
(133)	<u>Eleocharis elongata</u> <u>Florida Spikerush;</u>	Endangered
(134)	<u>Eleocharis robbinsii</u> <u>Robbin's Spikerush;</u>	Special Concern, Vulnerable
(135)	<u>Eleocharis vivipara</u> <u>Viviparous Spikerush;</u>	Endangered
(136)	<u>Elymus trachycaulus ssp. trachycaulus</u> <u>Slender Wheatgrass;</u>	Threatened
(137)	<u>Elymus virginicus var. halophilus</u> <u>Terrell Grass;</u>	Special Concern, Vulnerable
(138)	<u>Enemoin biternatum</u> <u>Eastern Isopyrum;</u>	Special Concern, Vulnerable
(139)	<u>Epidendrum magnoliae</u> <u>Green Fly Orchid;</u>	Threatened
(140)	<u>Eriocaulon aquaticum</u> <u>Seven-angled Pipewort;</u>	Special Concern, Vulnerable
(141)	<u>Eriocaulon parkeri</u> <u>Estuary Pipwort;</u>	Threatened
(142)	<u>Eriocaulon texense</u> <u>Texas Hatpins;</u>	Endangered
(143)	<u>Eriogonum tomentosum</u> <u>Southern Wild-buckwheat</u>	Special Concern, Historical
(144)	<u>Erythrina herbacea</u> <u>Coralbean;</u>	Endangered
(145)	<u>Eupatorium leptophyllum</u> <u>Limesink Dog-fennel;</u>	Endangered
(146)	<u>Eupatorium paludicola</u> <u>Bay Boneset;</u>	Threatened
(147)	<u>Euphorbia commutata</u> <u>Cliff Spurge;</u>	Threatened
(148)	<u>Euphorbia mercurialina</u> <u>Cumberland Spurge;</u>	Special Concern, Vulnerable

PROPOSED RULES

(149)	<u>Filipendula rubra</u>	Endangered
	<u>Queen-of-the-Prairie;</u>	
(150)	<u>Fimbristylis perpusilla</u>	Threatened
	<u>Harper's Fimbry;</u>	
(151)	<u>Fleishcmannia incarnatum</u>	Threatened
	<u>Pink Thoroughwort;</u>	
(152)	<u>Gaillardia aestivalis var. aestivalis</u>	Endangered
	<u>Sandhills Gaillardia;</u>	
(153)	<u>Galactia mollis</u>	Threatened
	<u>Soft Milk-pea;</u>	
(154)	<u>Gaylussacia brachycera</u>	Endangered
	<u>Box Huckleberry;</u>	
(155)	<u>Gaylussacia nana</u>	Endangered
	<u>Confederate Huckleberry;</u>	
(156)	<u>Gelsemium rankinii</u>	Special Concern, Vulnerable
	<u>Swamp Jessamine;</u>	
(157)	<u>Gentiana alba</u>	Special Concern, Vulnerable
	<u>Yellow Gentian;</u>	
(158)	<u>Gentianopsis crinita</u>	Threatened
	<u>Fringed Gentian;</u>	
(159)	<u>Geum aleppicum</u>	Endangered
	<u>Yellow Avens;</u>	
(160)	<u>Geum geniculatum</u>	Special Concern, Vulnerable
	<u>Bent Avens;</u>	
(161)	<u>Geum laciniatum var. trichocarpum</u>	Endangered
	<u>Rough Avens;</u>	
(162)	<u>Geum lobatum</u>	Endangered
	<u>Lobed Barren-strawberry;</u>	
(163)	<u>Geum radiatum**</u>	Endangered
	<u>Spreading Avens;</u>	
(164)	<u>Gillenia stipulata</u>	Threatened
	<u>Indian Physic;</u>	
(165)	<u>Gratiola aurea</u>	Special Concern, Vulnerable
	<u>Golden Hedge-hyssop;</u>	
(166)	<u>Gymnocarpium appalachianum</u>	Threatened
	<u>Appalachian Oak Fern;</u>	
(167)	<u>Gymnoderma lineare**</u>	Endangered
	<u>Rock Gnome Lichen;</u>	
(168)	<u>Hasteola suaveolens</u>	Special Concern, Historical
	<u>Sweet Indian-plantain;</u>	
(169)	<u>Helenium brevifolium</u>	Endangered
	<u>Littleleaf Sneezeweed;</u>	
(170)	<u>Helenium vernale</u>	Endangered
	<u>Spring Sneezeweed;</u>	
(171)	<u>Helianthus floridanus</u>	Threatened
	<u>Florida Sunflower;</u>	
(172)	<u>Helianthus laevigatus</u>	Special Concern, Vulnerable
	<u>Smooth Sunflower;</u>	
(173)	<u>Helianthus occidentalis var. dowellianus</u>	Special Concern, Historical
	<u>Few-leaf Sunflower;</u>	
(174)	<u>Helianthus schweinitzii**</u>	Endangered
	<u>Schweinitz's Sunflower;</u>	
(175)	<u>Helonias bullata**</u>	Threatened
	<u>Swamp Pink;</u>	
(176)	<u>Hexastylis contacta Blomquist</u>	Endangered
	<u>Mountain Heartleaf;</u>	
(177)	<u>Haexastylis naniflora**</u>	Threatened
	<u>Dwarf-flowered Heartleaf;</u>	

PROPOSED RULES

(178)	<u>Hibiscus aculeatus</u> <u>Comfortroot;</u>	Threatened
(179)	<u>Houstonia purpea var. montana**</u> <u>Mountain Bluet;</u>	Endangered
(180)	<u>Hudsonia Montana**</u> <u>Mountain Golden Heather;</u>	Threatened
(181)	<u>Hudsonia tomentosa</u> <u>Sand Heather;</u>	Threatened
(182)	<u>Hymenocallis occidentalis</u> <u>Hillside Spider-lily;</u>	Special Concern, Historical
(183)	<u>Hymenocallis pygmaea</u> <u>Waccamaw River Spiderlily;</u>	Threatened
(184)	<u>Hypericum adpressum</u> <u>Bog St. John's-wort;</u>	Special Concern, Historical
(185)	<u>Hypericum brachyphyllum</u> <u>Coastal Plain St. John's-wort;</u>	Special Concern, Vulnerable
(186)	<u>Hypericum fasciculatum</u> <u>Peelbark St. John's-wort;</u>	Endangered
(187)	<u>Hypericum suffruticosum</u> <u>Pineland St. John's-wort;</u>	Special Concern, Historical
(188)	<u>Ilex collina</u> <u>Long-stalked Holly;</u>	Special Concern, Vulnerable
(189)	<u>Ipomoea imperati</u> <u>Beach Morning-glory;</u>	Threatened
(190)	<u>Isoetes microvela</u> <u>A Quillwort;</u>	Threatened
(191)	<u>Isoetes piedmontana</u> <u>Piedmont Quillwort;</u>	Endangered
(192)	<u>Isotria medeoloides**</u> <u>Small Whorled Pogonia;</u>	Threatened
(193)	<u>Iva microcephala</u> <u>Small-headed Marsh Elder;</u>	Threatened
(194)	<u>Jeffersonia diphylla</u> <u>Twinleaf;</u>	Threatened
(195)	<u>Juncus caesariensis</u> <u>Rough Rush;</u>	Endangered
(196)	<u>Juniperus communis var. depressa</u> <u>Dwarf Juniper;</u>	Special Concern, Vulnerable
(197)	<u>Kalmia angustifolia</u> <u>Sheep-laurel;</u>	Threatened
(198)	<u>Lachnocaulon minus</u> <u>Brown Bogbutton;</u>	Threatened
(199)	<u>Lechea maritime var. virginica</u> <u>Maritime Pinweed;</u>	Endangered
(200)	<u>Lechea torreyi</u> <u>Torrey's Pinweed;</u>	Endangered
(201)	<u>Lejeunea blomquistii</u> <u>A Liverwort;</u>	Special Concern, Vulnerable
(202)	<u>Leptochloa fascicularis var. maritime</u> <u>Long-awned Spangletop;</u>	Endangered
(203)	<u>Liatris aspera</u> <u>Rough Blazing-star;</u>	Threatened
(204)	<u>Liatris heller**</u> <u>Heller's Blazing-star;</u>	Threatened
(205)	<u>Liatris microcephala</u> <u>Small-head Blazing-star;</u>	Special Concern, Vulnerable
(206)	<u>Lilium canadense esp. canadense</u> <u>Yellow Canada Lily;</u>	Endangered

PROPOSED RULES

(207)	<u>Lilium canadense ssp. editorum</u>	Endangered
	<u>Red Canada Lily;</u>	
(208)	<u>Lilium grayi</u>	Threatened
	<u>Gray's Lily;</u>	
(209)	<u>Lilium philadelphicum var. philadelphicum</u>	Endangered
	<u>Wood Lily;</u>	
(210)	<u>Lilium pyrophilum</u>	Endangered
	<u>Sandhills Bog Lily;</u>	
(211)	<u>Limosella australis</u>	Threatened
	<u>Awl-leaf Mudwort;</u>	
(212)	<u>Lindera melissaefolia**</u>	Endangered
	<u>Southern Spicebush;</u>	
(213)	<u>Linum floridanum var. chrysocarpum</u>	Threatened
	<u>Yellow-fruited Flax;</u>	
(214)	<u>Linum sulcatum var. sulcatum</u>	Special Concern, Historical
	<u>Glade Flax;</u>	
(215)	<u>Liparis loeselii</u>	Endangered
	<u>Fen Orchid;</u>	
(216)	<u>Lipocarpha micrantha</u>	Special Concern, Historical
	<u>Small-flowered Hemicarpha;</u>	
(217)	<u>Lithospermum canescens</u>	Threatened
	<u>Hoary Puccoon;</u>	
(218)	<u>Litsea aestivalis</u>	Special Concern, Vulnerable
	<u>Pondspice;</u>	
(219)	<u>Lobelia boykinii</u>	Endangered
	<u>Boykins Lobelia;</u>	
(220)	<u>Lophiola aurea</u>	Endangered
	<u>Golden Crest;</u>	
(221)	<u>Lotus helleri</u>	Special Concern, Vulnerable
	<u>Carolina Birdfoot-trefoil;</u>	
(222)	<u>Ludwigia lanceolata</u>	Endangered
	<u>Lanceleaf Seedbox;</u>	
(223)	<u>Ludwigia linifolia</u>	Threatened
	<u>Flaxleaf Seedbox;</u>	
(224)	<u>Ludwigia ravenii</u>	Threatened
	<u>Raven's Seedbox;</u>	
(225)	<u>Ludwigia sphaerocarpa</u>	Endangered
	<u>Globe-fruit Seebox;</u>	
(226)	<u>Ludwigia suffruticosa</u>	Threatened
	<u>Shrubby Seedbox;</u>	
(227)	<u>Lysimachia asperulaefolia**</u>	Endangered
	<u>Rough-leaf Loosestrife;</u>	
(228)	<u>Lysimachia fraseri</u>	Endangered
	<u>Fraser's ossestrife;</u>	
(229)	<u>Macbridea caroliniana</u>	Endangered
	<u>Carolina Bogmint;</u>	
(230)	<u>Magnolia macrophylla</u>	Threatened
	<u>Bigleaf Magnolia;</u>	
(231)	<u>Malaxis spicata</u>	Special Concern, Vulnerable
	<u>Florida Adder's-mouth;</u>	
(232)	<u>Marshallia grandiflora</u>	Special Concern, Historical
	<u>Large-flowered Barbara's-buttons;</u>	
(233)	<u>Marshallia trinervia</u>	Special Concern, Historical
	<u>Broadleaf Barbara's-buttons;</u>	
(234)	<u>Melicia nitens</u>	Endangered
	<u>Three-flowered Melic;</u>	
(235)	<u>Menyanthes trifoliata</u>	Threatened
	<u>Buckbean;</u>	

PROPOSED RULES

(236)	<u>Micranthes pensylvanica</u> <u>Swamp Saxifrage;</u>	Endangered
(237)	<u>Micropolypodium nimbata</u> <u>West Indian Dwarf Polypody;</u>	Threatened
(238)	<u>Minuartia godfreyi</u> <u>Godfrey's Sandwort;</u>	Endangered
(239)	<u>Minuartia groenlandica</u> <u>Greenland Sandwort;</u>	Threatened
(240)	<u>Minuartia uniflora</u> <u>Single-flowered Sandwort;</u>	Endangered
(241)	<u>Monotropsis odorata</u> <u>Sweet Pinesap;</u>	Special Concern, Vulnerable
(242)	<u>Muhlenbergia glomerata</u> <u>Spiked Muhly;</u>	Special Concern, Vulnerable
(243)	<u>Muhlenbergia sobolifera</u> <u>Rock Muhly;</u>	Special Concern, Vulnerable
(244)	<u>Muhlenbergia torreyana</u> <u>Torrey's Muhly;</u>	Special Concern, Vulnerable
(245)	<u>Myrica gale</u> <u>Sweet Gale;</u>	Endangered
(246)	<u>Myriophyllum laxum</u> <u>Loose Water-milfoil;</u>	Endangered
(247)	<u>Myriophyllum tenellum</u> <u>Leafless Water-milfoil;</u>	Endangered
(248)	<u>Narthecium montanum</u> <u>Appalachian Yellow Asphodel;</u>	Special Concern, Historical
(249)	<u>Oenothera perennis</u> <u>Perennial Sundrops;</u>	Special Concern, Vulnerable
(250)	<u>Oldenlandia boscii</u> <u>Bosc's Bluet;</u>	Endangered
(251)	<u>Orbexilum macrophyllum</u> <u>Bigleaf Scurfpea;</u>	Special Concern, Historical
(252)	<u>Orbexilum onobrychis</u> <u>Lanceleaf Scurfpea;</u>	Special Concern, Historical
(253)	<u>Oxypolis canybi**</u> <u>Canby's Cowbane;</u>	Endangered
(254)	<u>Pachysandra procumbens</u> <u>Allegheny Spurge;</u>	Endangered
(255)	<u>Packera millefolium</u> <u>Divided-leaf Ragwort;</u>	Threatened
(256)	<u>Packera paupercula var. appalachiana</u> <u>Prairie Ragwort;</u>	Threatened
(257)	<u>Packera schweinitziana</u> <u>Schweinitz's Ragwort;</u>	Threatened
(258)	<u>Panicum flexile</u> <u>Wiry Panic Grass;</u>	Threatened
(259)	<u>Parietaria praetermissa</u> <u>Large-seed Pellitory;</u>	Special Concern, Vulnerable
(260)	<u>Parnassia caroliniana</u> <u>Carolina Grass-of-Parnassus;</u>	Threatened
(261)	<u>Parnassia grandifolia</u> <u>Large-leaved Grass-of-Parnassus;</u>	Threatened
(262)	<u>Paronychia herniariodes</u> <u>Michaux's Whitlow-wort;</u>	Endangered
(263)	<u>Paspalum dissectum</u> <u>Mudbank Crown Grass;</u>	Endangered
(264)	<u>Pedicularis lanceolata</u> <u>Swamp Lousewort;</u>	Threatened

PROPOSED RULES

(265)	<u>Pellaea wrightiana</u> <u>Wright's Cliff-brake Fern;</u>	Endangered
(266)	<u>Persicaria hirsute</u> <u>Hairy Smartweed;</u>	Endangered
(267)	<u>Phacelia maculate</u> <u>Spotted Phacelia;</u>	Endangered
(268)	<u>Phegopteris connectilis</u> <u>Northern Beech Fern;</u>	Endangered
(269)	<u>Pinguicula pumila</u> <u>Small Butterwort;</u>	Endangered
(270)	<u>Pityopsis graminifolia var. graminifolia</u> <u>A Silkgrass;</u>	Endangered
(271)	<u>Plantago cordata</u> <u>Heart-leaf Plantain;</u>	Endangered
(272)	<u>Plantago sparsiflora</u> <u>Pineland Pantain;</u>	Threatened
(273)	<u>Platanthera grandiflora</u> <u>Large Purple-fringed Orchid;</u>	Threatened
(274)	<u>Platanthera integra</u> <u>Yellow Fringeless Orchid;</u>	Special Concern, Vulnerable
(275)	<u>Platanthera integrilabia</u> <u>White Fringeless Orchid;</u>	Special Concern, Historical
(276)	<u>Platanthera nivea</u> <u>Snowy Orchid;</u>	Threatened
(277)	<u>Platanthera peramoena</u> <u>Purple Fringeless Orchid;</u>	Threatened
(278)	<u>Poa saltuensis</u> <u>A Bluegrass;</u>	Threatened
(279)	<u>Polemonium reptans var. reptans</u> <u>Jacob's Ladder;</u>	Threatened
(280)	<u>Polygala hookeri</u> <u>Hooker's Milkwort;</u>	Special Concern, Vulnerable
(281)	<u>Polygonella articulate</u> <u>Coast Jointweed;</u>	Special Concern, Historical
(282)	<u>Polygonum glaucum</u> <u>Seabeach Knotweed;</u>	Endangered
(283)	<u>Ponthieva recemosa</u> <u>Shadow-witch;</u>	Threatened
(284)	<u>Portulaca smallii</u> <u>Small's Portulaca;</u>	Threatened
(285)	<u>Prenanthes alba</u> <u>White Rattlesnakeroot;</u>	Threatened
(286)	<u>Pteroglossaspis ecristata</u> <u>Eulophia;</u>	Endangered
(287)	<u>Ptilimnium costatum</u> <u>Ribbed Bishop-weed;</u>	Threatened
(288)	<u>Ptilimnium nodosum**</u> <u>Harperella;</u>	Endangered
(289)	<u>Pyrola elliptica</u> <u>Elliptic Shinleaf;</u>	Special Concern, Historical
(290)	<u>Quercus ilicifolia</u> <u>Bear Oak</u>	Endangered
(291)	<u>Quercus prinoides</u> <u>Dwarf Chinquapin Oak;</u>	Endangered
(292)	<u>Ranunculus ambigens</u> <u>Water-plantain Spearwort;</u>	Special Concern, Historical
(293)	<u>Ranunculus flabellaris</u> <u>Yellow Water-crowfoot;</u>	Special Concern, Historical

PROPOSED RULES

(294)	<u>Ranunculus hederaceus</u> <u>Ivy Buttercup;</u>	<u>Special Concern, Historical</u>
(295)	<u>Rhexia aristosa</u> <u>Awned Meadow-beauty;</u>	<u>Special Concern, Vulnerable</u>
(296)	<u>Rhodiola rosea</u> <u>Roseroot;</u>	<u>Endangered</u>
(297)	<u>Rhododendron prinophyllum</u> <u>Election Pink;</u>	<u>Threatened</u>
(298)	<u>Rhus michauxii**</u> <u>Michaux's Sumac;</u>	<u>Endangered</u>
(299)	<u>Rhynchospora crinipes</u> <u>Mosquito Beak Sedge;</u>	<u>Threatened</u>
(300)	<u>Rhynchospora decurrens</u> <u>Swamp Forest Beaksedge;</u>	<u>Threatened</u>
(301)	<u>Rhynchospora harperi</u> <u>Harper's Beaksedge;</u>	<u>Special Concern, Vulnerable</u>
(302)	<u>Rhynchospora macra</u> <u>Large Beak Sedge;</u>	<u>Threatened</u>
(303)	<u>Rhynchospora odorata</u> <u>Fragrant Beaksedge;</u>	<u>Special Concern, Vulnerable</u>
(304)	<u>Rhynchospora pleiantha</u> <u>Coastal Beaksedge;</u>	<u>Threatened</u>
(305)	<u>Rhynchospora thornei</u> <u>Thorne's Beaksedge;</u>	<u>Special Concern, Vulnerable</u>
(306)	<u>Rhynchospora tracyi</u> <u>Tracy's Beaksedge;</u>	<u>Threatened</u>
(307)	<u>Rubus idaeus ssp. strigosus</u> <u>Red Raspberry;</u>	<u>Threatened</u>
(308)	<u>Rudbeckia heliopsidis</u> <u>Sun-facing Coneflower;</u>	<u>Special Concern, Historical</u>
(309)	<u>Ruellia cilosa</u> <u>Sandhills Wild-petunia;</u>	<u>Threatened</u>
(310)	<u>Ruellia humilis</u> <u>Low Wild-petunia;</u>	<u>Endangered</u>
(311)	<u>Ruellia purshiana</u> <u>Pursh's Wild-petunia;</u>	<u>Special Concern, Vulnerable</u>
(312)	<u>Ruellia strepens</u> <u>Limestone Wild-petunia;</u>	<u>Endangered</u>
(313)	<u>Sabal palmetto</u> <u>Cabbage Palm;</u>	<u>Threatened</u>
(314)	<u>Sabatia kennedyana</u> <u>Plymouth Gentian;</u>	<u>Threatened</u>
(315)	<u>Sageretia minutiflora</u> <u>Small-flowered Buckhorn;</u>	<u>Threatened</u>
(316)	<u>Sagittaria chapmanii</u> <u>Chapman's Arrowhead;</u>	<u>Endangered</u>
(317)	<u>Sagittaria fasciculata**</u> <u>Bunched Arrowhead;</u>	<u>Endangered</u>
(318)	<u>Sagittaria isoetiformis</u> <u>Quillwort Arrowhead;</u>	<u>Threatened</u>
(319)	<u>Sagittaria macrocarpa</u> <u>Streamhead Sagittaria;</u>	<u>Threatened</u>
(320)	<u>Sagittaria weatherbiana</u> <u>Grassleaf Arrowhead;</u>	<u>Endangered</u>
(321)	<u>Sarracenia jonesii**</u> <u>Mountain Sweet Pitcher Plant;</u>	<u>Endangered</u>
(322)	<u>Sarracenia minor</u> <u>Hooded Pitcher Plant;</u>	<u>Endangered</u>

PROPOSED RULES

(323)	<u>Sarracenia oreophila**</u> <u>Green Pitcher Plant;</u>	<u>Endangered</u>
(324)	<u>Sceptridium jenmanii</u> <u>Alabama Grape-fern;</u>	<u>Special Concern, Vulnerable</u>
(325)	<u>Schisandra glabra</u> <u>Magnolia Vine;</u>	<u>Threatened</u>
(326)	<u>Schwalbea americana**</u> <u>Chaffseed;</u>	<u>Endangered</u>
(327)	<u>Scirpus flaccidifolius</u> <u>Reclining Bulrush;</u>	<u>Endangered</u>
(328)	<u>Scirpus lineatus</u> <u>Drooping Bulrush;</u>	<u>Threatened</u>
(329)	<u>Scleria baldwinii</u> <u>Baldwin's Nutrush;</u>	<u>Threatened</u>
(330)	<u>Scleria reticularis</u> <u>Netted Nutrush;</u>	<u>Threatened</u>
(331)	<u>Scutellaria australis</u> <u>Southern Skullcap;</u>	<u>Endangered</u>
(332)	<u>Scutellaria galericulata</u> <u>Hooded Skullcap;</u>	<u>Special Concern, Historical</u>
(333)	<u>Scutellaria leonardii</u> <u>Shale-barren Skullcap;</u>	<u>Endangered</u>
(334)	<u>Scutellaria nervosa</u> <u>Veined Skullcap;</u>	<u>Endangered</u>
(335)	<u>Sebastiania fruticosa</u> <u>Sebastian-bush;</u>	<u>Special Concern, Vulnerable</u>
(336)	<u>Sedum pusillum</u> <u>Puck's Orpine;</u>	<u>Endangered</u>
(337)	<u>Seymeria pectinata</u> <u>Sticky Afzelia;</u>	<u>Special Concern, Historical</u>
(338)	<u>Shortia galacifolia var. brevistyla</u> <u>Northern Oconee Bells;</u>	<u>Endangered</u>
(339)	<u>Shortia galacifolia var. galacifolia</u> <u>Southern Oconee Bells;</u>	<u>Special Concern, Vulnerable</u>
(340)	<u>Sideroxylon tenax</u> <u>Tough Bumelia;</u>	<u>Threatened</u>
(341)	<u>Silene ovata</u> <u>Mountain Catchfly;</u>	<u>Special Concern, Vulnerable</u>
(342)	<u>Silphium connatum</u> <u>Virginia Cup-plant;</u>	<u>Special Concern, Vulnerable</u>
(343)	<u>Silphium perfoliatum</u> <u>Northern Cup-plant;</u>	<u>Threatened</u>
(344)	<u>Sisyrinchium dichotomum**</u> <u>White Irisette;</u>	<u>Endangered</u>
(345)	<u>Solidago leavenworthii</u> <u>Leavenworth's Goldenrod;</u>	<u>Threatened</u>
(346)	<u>Solidago plumosa</u> <u>Yadkin River Goldenrod;</u>	<u>Threatened</u>
(347)	<u>Solidago ptarmicoides</u> <u>Prairie Goldenrod;</u>	<u>Endangered</u>
(348)	<u>Solidago radula</u> <u>Western Rough Goldenrod;</u>	<u>Endangered</u>
(349)	<u>Solidago rigida var. rigida</u> <u>Southeastern Bold Goldenrod;</u>	<u>Threatened</u>
(350)	<u>Solidago spithamea**</u> <u>Blue Ridge Goldenrod;</u>	<u>Threatened</u>
(351)	<u>Solidago tortifolia</u> <u>Twisted-leaf Goldenrod;</u>	<u>Endangered</u>

PROPOSED RULES

(352)	<u>Solidago villosicarpa</u>	Endangered
	<u>Coastal Goldenrod;</u>	
(353)	<u>Sparganium emersum</u>	Threatened
	<u>Greenfruit Bur-reed;</u>	
(354)	<u>Spartina pectinata</u>	Special Concern, Vulnerable
	<u>Freshwater Cordgrass;</u>	
(355)	<u>Sphagnum contortum</u>	Threatened
	<u>A Peatmoss;</u>	
(356)	<u>Spigelia marilandica</u>	Threatened
	<u>Pink-root;</u>	
(357)	<u>Spiraea corymbosa</u>	Endangered
	<u>Shinyleaf Meadowsweet;</u>	
(358)	<u>Spiraea virginiana**</u>	Threatened
	<u>Virginia Spiraea;</u>	
(359)	<u>Spiranthes eatonii</u>	Endangered
	<u>Eaton's Ladies'-tresses;</u>	
(360)	<u>Spiranthes lacera var. lacera</u>	Special Concern, Historical
	<u>Northern Slender Ladies'-tresses;</u>	
(361)	<u>Spiranthes laciniata</u>	Special Concern, Vulnerable
	<u>Lace-lip Ladies'-tresses;</u>	
(362)	<u>Spiranthes longilabris</u>	Endangered
	<u>Giant Spiral Orchid;</u>	
(363)	<u>Spiranthes lucida</u>	Endangered
	<u>Shining Ladies'-tresses;</u>	
(364)	<u>Spiranthes ochroleuca</u>	Threatened
	<u>Yellow Ladies'-tresses;</u>	
(365)	<u>Sporobolus heterolepis</u>	Threatened
	<u>Prairie Dropseed;</u>	
(366)	<u>Sporobolus teretifolius</u>	Threatened
	<u>Wireleaf Dropseed;</u>	
(367)	<u>Sporobolus virginicus</u>	Threatened
	<u>Saltmarsh Dropseed;</u>	
(368)	<u>Stenanthium gramineum var. robustum</u>	Threatened
	<u>Bog Featherbells;</u>	
(369)	<u>Stenanthium leimanthoides</u>	Threatened
	<u>Pinebarren Death-camas;</u>	
(370)	<u>Streptopus amplexifolius</u>	Special Concern, Vulnerable
	<u>White Mandarin;</u>	
(371)	<u>Stylisma aquatica</u>	Endangered
	<u>Water Dawnflower;</u>	
(372)	<u>Stylisma pickeringii var. pickeringii</u>	Special Concern, Vulnerable
	<u>Pickering's Dawnflower;</u>	
(373)	<u>Symphyotrichum depauperatum</u>	Endangered
	<u>Serpentine Aster;</u>	
(374)	<u>Symphyotrichum georgianum</u>	Threatened
	<u>Georgia Aster;</u>	
(375)	<u>Symphyotrichum leave var. concinnum</u>	Threatened
	<u>Narrow-leaf Aster;</u>	
(376)	<u>Symphyotrichum oblongifolium</u>	Threatened
	<u>Aromatic Aster;</u>	
(377)	<u>Symphyotrichum Rhiannon</u>	Threatened
	<u>Buck Creek Aster;</u>	
(378)	<u>Synandra hispidula</u>	Special Concern, Historical
	<u>Synandra;</u>	
(379)	<u>Taxus canadensis</u>	Threatened
	<u>Canada Yellow;</u>	
(380)	<u>Thalictrum cooleyi**</u>	Endangered
	<u>Cooley's Meadowrue;</u>	

PROPOSED RULES

(381)	<u>Thaspium pinnatifidum</u> <u>Mountain Thaspium;</u>	Threatened
(382)	<u>Thelypteris simulata</u> <u>Bog Fern;</u>	Endangered
(383)	<u>Thermopsis fraxinifolia</u> <u>Ash-leaved Golden-banner;</u>	Special Concern, Vulnerable
(384)	<u>Thermopsis mollis</u> <u>Appalachian Golden-banner;</u>	Special Concern, Vulnerable
(385)	<u>Tradescantia virginiana</u> <u>Virginia Spiderwort;</u>	Threatened
(386)	<u>Triantha glutinosa</u> <u>Sticky Bog Asphodel;</u>	Special Concern, Vulnerable
(387)	<u>Trichomanes boschianum</u> <u>Appalachian Filmy-fern;</u>	Endangered
(388)	<u>Trichostema brachiatum</u> <u>Glade Bluecurls;</u>	Endangered
(389)	<u>Tridens ambiguus</u> <u>Pinelands Triodia;</u>	Endangered
(390)	<u>Tridens chapmanii</u> <u>Chapman's Redtop;</u>	Threatened
(391)	<u>Tridens strictus</u> <u>Spike Triodia;</u>	Special Concern, Historical
(392)	<u>Trientalis borealis</u> <u>Starflower;</u>	Endangered
(393)	<u>Trifolium carolinianum</u> <u>Carolina Clover;</u>	Special Concern, Historical
(394)	<u>Trifolium reflexum</u> <u>Buffalo Clover;</u>	Threatened
(395)	<u>Trillium discolor</u> <u>Mottled Trillium;</u>	Threatened
(396)	<u>Trillium flexipes</u> <u>Bent White Trillium;</u>	Special Concern, Historical
(397)	<u>Trillium pusillum var. ozarkanum</u> <u>Alabama Least Trillium;</u>	Endangered
(398)	<u>Trillium pusillum var. pusillum</u> <u>Carolina Least Trillium;</u>	Endangered
(399)	<u>Trillium pusillum var. virginianum</u> <u>Virginia Least Trillium;</u>	Endangered
(400)	<u>Trillium sessile</u> <u>Sessile-flowered Trillium;</u>	Threatened
(401)	<u>Trillium simile</u> <u>Sweet White Trillium;</u>	Threatened
(402)	<u>Trisetum spicatum var. molle</u> <u>Soft Trisetum;</u>	Special Concern, Historical
(403)	<u>Turritis glabra</u> <u>Tower-mustard;</u>	Endangered
(404)	<u>Urtica chamaedryoides</u> <u>Dwarf Stinging Nettle;</u>	Endangered
(405)	<u>Utricularia cornuta</u> <u>Horned Bladderwort;</u>	Threatened
(406)	<u>Utricularia geminiscapa</u> <u>Two-flowered Bladderwort;</u>	Special Concern, Vulnerable
(407)	<u>Utricularia minor</u> <u>Small Bladderwort;</u>	Special Concern, Historical
(408)	<u>Utricularia olivacea</u> <u>Dwarf Bladderwort;</u>	Threatened
(409)	<u>Utricularia resupinata</u> <u>Northeastern Bladderwort;</u>	Endangered

PROPOSED RULES

(410)	<u>Vaccinium macrocarpon</u> Cranberry;	Threatened
(411)	<u>Veratrum woodii</u> Ozark Bunchflower;	Threatened
(412)	<u>Verbena riparia</u> Riverbank Vervain;	Special Concern, Historical
(413)	<u>Veronica americana</u> American Speedwell;	Threatened
(414)	<u>Viola appalachiensis</u> Appalachian Violet;	Special Concern, Vulnerable
(415)	<u>Warea cuneifolia</u> Carolina Pineland-cress;	Endangered
(416)	<u>Woodsia ilvensis</u> Rusty Cliff Fern;	Endangered
(417)	<u>Xyris chapmanii</u> Chapman's Yellow-eyed-grass;	Special Concern, Vulnerable
(418)	<u>Xyris difformis var. floridana</u> Florida Yellow-eyed-grass;	Threatened
(419)	<u>Xyris scabrifolia</u> Harper's Yellow-eyed-grass;	Special Concern, Vulnerable
(420)	<u>Xyris serotina</u> Acid-swamp Yellow-eyed-grass;	Threatened
(421)	<u>Xyris stricta</u> Pineland Yellow-eyed grass;	Endangered
(422)	<u>Zephyranthes simpsonii</u> Rain Lily.	Endangered

Authority G.S. 106-02.15.

02 NCAC 48F .0302 THREATENED PLANT SPECIES LIST

The North Carolina Plant Conservation Board hereby establishes the following list of threatened plant species:

- | | |
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| <p>(1) — <u>Amaranthus pumilus</u> Raf.
Seabeach Amaranth;</p> <p>(2) — <u>Amorpha georgiana var. confusa</u> Wilbur
Savanna Indigo bush;</p> <p>(3) — <u>Aster georgianus</u> Alexander
Georgia Aster;</p> <p>(4) — <u>Astragalus michauxii</u> (Kuntze) F.J. Herm.
Sandhills Milkvetch;</p> <p>(5) — <u>Baptisia minor</u> Lehmann
Prairie Blue Indigo;</p> <p>(6) — <u>Cacalia rugelii</u> (Shuttl. ex Chapm) Barkley & Cronq.
Rugel's Ragwort;</p> <p>(7) — <u>Camassia scilloides</u> (Raf.) Cory
Wild Hyacinth;</p> <p>(8) — <u>Carex conoidea</u> Willd.
Cone-shaped Sedge;</p> <p>(9) — <u>Carex exilis</u> Dewey
Coastal Sedge;</p> <p>(10) — <u>Eleocharis halophila</u> Fern. & Brack.
Salt Spikerush;</p> <p>(11) — <u>Eupatorium resinosum</u> Torr. ex DC.
Resinous Boneset;</p> <p>(12) — <u>Geum geniculatum</u> Michaux
Bent Avens;</p> | <p>(13) — <u>Glyceria nubigena</u> W.A. Anderson
Smoky Mountain Mannagrass;</p> <p>(14) — <u>Gymnoderma lineare</u> (Evans) Yoshimura & Sharp
Gnome Finger Lichen;</p> <p>(15) — <u>Helonias bullata</u> L.
Swamp Pink;</p> <p>(16) — <u>Hexastylis naniflora</u> Blomquist
Dwarf flowered Heartleaf;</p> <p>(17) — <u>Hexastylis rhombiformis</u> Gaddy
French Broad Heartleaf;</p> <p>(18) — <u>Ilex collina</u> Alexander
Long-stalked Holly;</p> <p>(19) — <u>Isoetes piedmontana</u> (Pfeiffer) Reed
Piedmont Quillwort;</p> <p>(20) — <u>Liatris helleri</u> (Porter) Porter
Heller's Blazing Star;</p> <p>(21) — <u>Lilaeopsis carolinensis</u> Coult. & Rose
Carolina Lilaeopsis;</p> <p>(22) — <u>Lilium grayi</u> Watson
Gray's Lily;</p> <p>(23) — <u>Lindera subcoriacea</u> Wofford
Bog spicebush;</p> <p>(24) — <u>Lobelia boykinii</u> T. & G.
Boykin's lobelia;</p> <p>(25) — <u>Macbridea caroliniana</u> (Walt.) Blake
Carolina Bogmint;</p> <p>(26) — <u>Menyanthes trifoliata</u> L.
Buckbean;</p> |
|--|--|

- (27) ~~Myriophyllum laxum Schuttlew. ex Chapman
Loose Watermilfoil;~~
- (28) ~~Parnassia grandifolia DC.
Large leaved Grass of Parnassus;~~
- (29) ~~Platanthera integra (Nuttall) Gray ex Beck
Yellow Fringeless Orchid;~~
- (30) ~~Platanthera nivea (Nutt.) Luer
Snowy Orchid;~~
- (31) ~~Portulaca smallii P. Wilson
Small's Portulaca;~~
- (32) ~~Quercus ilicifolia Wangenheim
Bear oak;~~
- (33) ~~Rhexia aristosa Britton
Awned Meadow beauty;~~
- (34) ~~Rhynchospora pleiantha (Kukenth.) Gale
Coastal Beaksedge;~~
- (35) ~~Ruellia humilis Nutt.
Low Wild-petunia;~~
- (36) ~~Sabatia kennedyana Fern.
Plymouth Gentian;~~
- (37) ~~Sarracenia minor Walt.
Hooded Pitcher Plant;~~
- (38) ~~Schisandra glabra (Brickel) Rehder
Magnolia vine;~~
- (39) ~~Schlotheimia lancifolia Bartr.
Highlands Moss;~~
- (40) ~~Senecio millefolium T. & G.
Divided leaf Ragwort;~~
- (41) ~~Solidago verna M.A. Curtis
Spring-flowering Goldenrod;~~
- (42) ~~Spiranthes longilabris Lindl.
Giant Spiral Orchid;~~
- (43) ~~Sporobolus teretifolius Harper
Wireleaf Dropseed;~~
- (44) ~~Thelypteris simulata (Davenp.) Nieuwl.
Bog Fern;~~
- (45) ~~Trichomanes boschianum Sturm ex Boseb
Appalachian Filmy fern;~~
- (46) ~~Trichomanes petersii A. Gray
Dwarf Filmy fern;~~
- (47) ~~Trillium discolor Wray ex Hook.
Mottled Trillium;~~
- (48) ~~Utricularia olivacea Wright ex Grisebach
Dwarf Bladderwort.~~

- (3) ~~Echinacea laevigata (Boynton & Beadle)
Blake
Smooth Coneflower;~~
- (4) ~~Gentianopsis crinita (Froehlich) Ma
Fringed Gentian;~~
- (5) ~~Geum radiatum Michaux
Spreading Avens;~~
- (6) ~~Hydrastis canadensis L.
Goldenseal, Orangeroot;~~
- (7) ~~Kalmia cuneata Michaux
White Wicky;~~
- (8) ~~Lilium pyrophilum Skinner & Sorrie
Sandhills bog lily;~~
- (9) ~~Pellaea wrightiana Hooker
Wright's Cliff-brake Fern;~~
- (10) ~~Rhus michauxii Sargent
Michaux's Sumac;~~
- (11) ~~Sarracenia jonesii Wherry
Mountain Sweet Pitcher Plant;~~
- (12) ~~Sarracenia oreophila (Kearney) Wherry
Green Pitcher Plant;~~
- (13) ~~Shortia galacifolia T. & G.
Oeonee Bells.~~

~~(b) Special Concern Threatened Plant Species are those species that appear on both the Threatened Species List and on the Special Concern Species List and that can be offered for propagation to propagators under permit.~~

- (1) ~~Eupatorium resinatum Torr. ex DC.
Resinous Boneset;~~
- (2) ~~Helonias bullata L.
Swamp Pink;~~
- (3) ~~Liatris helleri (Porter) Porter
Heller's Blazing Star;~~
- (4) ~~Lilium grayi Watson
Gray's Lily;~~
- (5) ~~Sabatia kennedyana Fern.
Plymouth Gentian;~~
- (6) ~~Schisandra glabra (Brickel) Rehder
Magnolia Vine.~~

~~(c) Special Concern Not Endangered or Threatened Plant Species are those species that appear on the Special Concern Species List but do not appear on the Endangered Species List or the Threatened Species List and that are unlawful to distribute, sell or offer for sale except as otherwise provided in 02 NCAC 48F .0305 and .0306.~~

- (1) ~~Dionaea muscipula Ellis
Venus Flytrap;~~
- (2) ~~Panax quinquefolius L.
Ginseng.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0304 PLANT SPECIES OF SPECIAL CONCERN

~~(a) Special Concern Endangered Plant Species are those species that appear on both the Endangered Species List and on the Special Concern Species List and that can be offered for propagation to propagators under permit.~~

- (1) ~~Cystopteris tennesseensis Shaver
Tennessee Bladderfern;~~
- (2) ~~Delphinium exaltatum Aiton
Tall Larkspur;~~

Authority G.S. 106-202.15.

02 NCAC 48F .0305 COLLECTION AND SALE OF GINSENG

(a) Definitions:

- (1) Department. The North Carolina Department of Agriculture and Consumer Services.

- (2) Ginseng. Any plant of the species *Panax quinquefolius* including cuttings, roots, fruits, seeds, propagules or any other plant part.
 - (3) Ginseng Dealer. Any person who purchases or otherwise obtains ginseng roots which have been collected or cultivated in North Carolina in any quantity for commercial use. This definition does not include those persons who directly collect or cultivate ginseng roots, or who obtain ginseng roots for their own personal use.
 - (4) Export Certificate. A document issued to allow the export or shipment of ginseng out of the state by certifying that the ginseng covered by the document was legally collected or grown in North Carolina.
 - (5) Five Year Old Wild Ginseng Plant. Any wild ginseng plant having at least three prongs (five-leaflet leaves) or, in the absence of leaves, having at least four discernible bud scars plus a bud on the neck (rhizome).
 - (6) Inspector. An employee of the Department or any other person authorized by the Commissioner to enforce the Plant Protection and Conservation Act and the rules adopted thereunder.
 - (7) Person. Individual, corporation, partnership, firm, or association.
 - (8) Record of Ginseng Purchases. A document completed by a ginseng dealer on a form provided by the Department to record ginseng purchases.
 - (9) Record of Harvest Season Collection. A document completed and signed by a collector of wild ginseng and by an Inspector, certifying that the ginseng covered by the document was legally collected during the harvest season.
 - (10) Statement Indicating Legal Collection of Ginseng from One's Own Land. A document completed and signed by a person verifying that the wild collected ginseng being sold was collected from that person's own land.
- (b) Purpose. The purpose of this Rule is to regulate trade in ginseng in ~~North Carolina~~ North Carolina, to obtain federal approval for the export of ginseng from the state, to support the ginseng trade within the ~~state~~ state, and to protect the species from over-collection and extinction.
- (c) Collection of Ginseng:
- (1) Harvest Season for the Collection of Ginseng. The ginseng harvest season shall be from September 1 through ~~April 1~~ December 31. ~~Harvesting ginseng outside of this period is prohibited except when the plants are dug from one's own land.~~
 - (2) ~~Collectors Harvesting or Selling Outside of the Harvest Season. Any person collecting wild ginseng outside of the harvest season must complete a Statement Indicating Legal~~
- ~~Collection of Ginseng from One's Own Land before selling the ginseng. This form shall be available from ginseng dealers. Any person collecting ginseng within the harvest season but wishing to sell the ginseng outside of the season must complete a Record of Harvest Season Collection and have it signed by an Inspector before the end of the harvest season; the form is available from Inspectors.~~
- ~~(3)~~(2) Size of Collected Plants. Collection of any wild ginseng plant not meeting the definition of a five year old wild ginseng plant is prohibited except for the purpose of replanting.
 - ~~(4)~~(3) ~~The~~ Replanting of Ginseng. All persons collecting ginseng from the wild shall plant the seeds of collected plants within 100 feet of where the plants are located. Ginseng seeds may be collected from the wild for replanting to a different location only if the plant bearing the seeds is not also collected in the same harvest season.
 - ~~(5)~~(4) Any person collecting wild ginseng on the lands of another for any purpose shall, at time of collection, have on his or her person written permission from the landowner, as required under G.S. 106-202.19(1).
 - ~~(6)~~(5) Possession of freshly dug ginseng on the lands of another shall constitute prima facie evidence that the ginseng was taken from the same land on which the collector was found.
- (d) ~~Purchase~~ Purchase, Collection and Sale of Ginseng:
- (1) Ginseng Dealer Permits. All ginseng dealers shall obtain a permit from the Plant Industry Division of the Department prior to purchasing ginseng. Permits shall be valid from July 1 or the date of issue, whichever is later, to the following June 30. No ginseng shall be purchased by a ginseng dealer without a current permit.
 - (2) Fees. A ginseng dealer shall pay the following fee for a permit:
 - (A) Resident unlimited quantity – \$100.00
 - (B) Resident limited (up to 100 pounds per license period) – \$50.00
 - (C) Non-resident – \$500.00
 - ~~(2)~~(3) Buying Season for Ginseng. The buying season for wild ~~collected ginseng shall be from September 1 through the following April 1 for green ginseng and from September 15 through the following April 1 for dried ginseng.~~ or wild-simulated green ginseng is September 1 through March 31. The buying season for wild or wild-simulated dry ginseng is September 15 through March 31. To buy wild collected ginseng outside of this buying season

a ginseng dealer must obtain from the collector either:

- (A) a completed Statement Indicating Legal Collection of Ginseng from One's Own Land; or
- (B) a Record of Harvest Season Collection completed by the collector and signed by an Inspector.

~~(3)~~(4) Purchase Records. Every ginseng dealer shall keep a record of each purchase of ginseng collected or grown in North Carolina on the applicable Record of Ginseng Purchases provided by the Department. Forms from previous years, copies, or any forms other than those provided by the Department for the current permit period shall not be used. Records of Ginseng Purchases shall be made available for inspection by an Inspector and applicable records shall be surrendered to an Inspector upon issuance of an Export Certificate or upon request. The applicable Statement Indicating Legal Collection of Ginseng from One's Own Land or Record of Harvest Season Collection shall be attached to any Record of Ginseng Purchases recording a purchase of wild collected ginseng collected outside of the harvest season or bought outside of the buying season.

~~(4)~~(5) Purchase of Ginseng from Other Ginseng Dealers. ~~All ginseng dealers who purchase ginseng from other ginseng dealers located in North Carolina shall purchase only from those ginseng dealers that have valid dealer permits. Such purchases shall be recorded in a Record of Dealer-Dealer Transactions. Ginseng purchased from ginseng dealers who lack valid permits shall not be certified for export or shipment out of the state.~~

~~(A) All ginseng dealers who purchase ginseng from other ginseng dealers located in North Carolina shall purchase only from those ginseng dealers that have valid dealer permits. Such purchases shall be recorded in a Record of Dealer-Dealer Transactions. Ginseng purchased from ginseng dealers who lack valid permits shall not be certified for export or shipment out of the state.~~

~~(B) Each dealer shall submit copies of purchase records monthly between September 1 and March 31. Annual dealer reports shall be provided to the Department at the end of the purchase season. The report must be submitted no later than April 30.~~

~~(C) A copy of end of season weight receipt shall be provided to the~~

Department for any ginseng roots possessed by a dealer at the end of the buying season. The receipt must be retained by the dealer and presented at the time of any future certification of the ginseng for export.

~~(5)~~(6) Exportation and Shipment of Ginseng. All persons who have ginseng in any quantity and wish to export or ship any amount out of the state shall obtain an export certificate from an Inspector. An export certification fee of three dollars (\$3.00) per pound is required for every shipment. The export certification fee must be paid at the time of the inspection and issuance of the export certificate. To obtain an export certificate a person must have accurate records of his purchases, present and surrender the original Record of Ginseng Purchases upon issuance of an export certificate and possess a valid ginseng dealer's permit.

~~(7)~~ Importation of Ginseng. All ginseng imported into North Carolina from other states must obtain the appropriate certificates from the state of origin, which must be presented to a Department representative at the time of inspection.

(e) Cultivation and Sale of Cultivated Ginseng.

~~(1)~~ Buying season for Cultivated Ginseng. Cultivated Ginseng may be sold at any time during the year provided that the grower's ginseng has been certified as Cultivated Ginseng.

~~(2)~~ Certifying Cultivated Ginseng. Cultivated Ginseng certified by a Department representative may be dug or sold any time during the year and does not require a state export certificate, as long as a copy of the certification records accompany the ginseng.

Authority G.S. 106-202.15; 106-202.21.

02 NCAC 48F .0306 COLLECTION AND SALE OF VENUS FLYTRAP

~~(a)~~ Definitions:

~~(1)~~ Department. The North Carolina Department of Agriculture.

~~(2)~~ Flytrap, Venus Flytrap. Any plant of the species *Dionaea muscipula* including cuttings, roots, fruits, seeds, propagules or any other plant part.

~~(3)~~ Person. Individual, corporation, partnership, firm, or association.

~~(b)~~(a) Collection of flytraps:

~~(1)~~ Venus Flytraps shall not be uprooted, dug, taken or otherwise disturbed or removed for any purpose from the lands of another without a written permit from the owner which is dated and valid for no more than 180 days except

~~that the incidental disturbance of flytraps during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or barter.~~

- ~~(2)~~ Venus Flytraps may not be uprooted, dug, taken or otherwise disturbed or removed for any purpose from public lands in North Carolina without a written permit from the agency which is responsible for administration for such public lands.
- ~~(3)~~ The Replanting of Flytraps. All persons collecting flytraps from the wild may plant the seeds of collected plants, if any, in the immediate vicinity of where they are found.
- ~~(4)~~(1) Any person collecting Venus Flytraps on the lands of another shall, at time of collection, have on their person written permission from the landowner, as required under G.S. 106-202.19(1).
- ~~(5)~~(2) Possession of freshly dug Venus Flytraps on the lands of another shall constitute prima facie evidence that the plants were taken from the same land on which the collector was found.

~~(e)(b) Sale of flytraps: No person may sell or offer for sale Venus Flytraps unless they have been lawfully collected, propagated from lawfully obtained stock plants or seed, or collected from one's own land. Lawfully collected flytraps may be sold in accordance with 02 NCAC 48F .0402.~~

Authority G.S. 106-202.15.

SECTION .0400 - COLLECTION; PROPAGATION AND MOVEMENT OF ENDANGERED AND THREATENED PLANT SPECIES

02 NCAC 48F .0401 DEFINITIONS

- ~~(a)~~ "Special Concern Endangered or Special Concern Threatened Plant Species" means a plant species that appears on either the Endangered or Threatened Species List and on the Special Concern Species List and which can be offered for propagation to qualified propagators under permit.
- ~~(b)~~(a) "Department" means the North Carolina Department of Agriculture.
- ~~(c)~~(b) "Inspector" means an employee of the North Carolina Department of Agriculture or any other person authorized by the Commissioner to enforce these Regulations.
- ~~(d)~~(c) "Nursery" means any place where any plants are propagated or grown to be offered.
- ~~(e)~~(d) "Nursery Certificate or Certificate of Plant Inspection" means a document issued by the North Carolina Department of Agriculture or the appropriate plant pest regulatory agency of any other state which declares that the nursery named on the certificate has been inspected and found apparently free of injurious plant pests.
- ~~(f)~~(e) "Offer" means to sell, barter, trade, exchange, export, or to offer for sale, barter, trade, exchange or export or give away for

any purpose including advertising or other promotional purposes.

- ~~(g)~~(f) "Person" means an individual, corporation, partnership, firm, or association.
- ~~(h)~~(g) "Protected Plant Propagator" means a person who has obtained initial plants and has demonstrated that all plants to be offered have been propagated and grown horticulturally from seed or by vegetative propagation of cuttings or meristem tissue.
- ~~(i)~~(h) "Plant" means any member of the plant kingdom, including cuttings, roots, fruits, seeds, propagules or any other plant part.
- ~~(j)~~(i) "Protected Plant Permit and Record" Permit means a document authorizing the collection, movement and possession of a controlled number of any endangered or threatened protected plant or their propagules for scientific research or research, conservation purposes, or any special concern endangered or threatened plant species for propagation and sale of propagated plants.
- ~~(k)~~ "Special Concern Endangered and Threatened Plant Propagation Permit" means a document authorizing the collection and movement for propagation purposes of a controlled number of special concern endangered or threatened plants.
- ~~(l)~~ "Protected Plant Commerce Permit" means a document authorizing the offering of propagated special concern endangered or threatened plants.
- ~~(m)~~ "Compliance Agreement" means a document or agreement entered into between the North Carolina Department of Agriculture and a person wishing to offer a special concern endangered or threatened plant species. Such an agreement describes terms and conditions for duplicating, reproducing, or having made an acceptable facsimile of a special concern endangered or threatened plant commerce permit.
- ~~(n)~~(j) "Special Concern-Vulnerable (SC-V)" means any species or higher taxon of plant which is likely to become a threatened species within the foreseeable future.
- ~~(o)~~(k) "Special Concern-Historical (SC-H)" means any species or higher taxon of plant that occurred in North Carolina at one time, but for which all known populations are currently considered to be either historical or extirpated.
- ~~(p)~~(l) "Rescue" means the collection and movement of any endangered or threatened plant as an ultimate attempt to save the plants from being destroyed.

Authority G.S. 106-202.15.

02 NCAC 48F .0402 PROTECTED PLANT PROPAGATION

- (a) Persons within the State of North Carolina who wish to propagate or offer any special concern endangered, or special concern threatened plant protected plant species shall make application to the North Carolina Department of Agriculture pursuant to 02 NCAC 48F .0407 for the appropriate permits a permit to:
 - (1) obtain propagation stock, and or
 - (2) to offer propagated plants.
- (b) Propagators who wish to collect and move special concern endangered species or special concern threatened species for

propagation purposes must possess a valid protected plant permit and record. Applications for the propagation permit can be obtained from the North Carolina Department of Agriculture, Plant Industry Division.

(c)(b) Persons who wish to offer special concern endangered species or special concern threatened species Applicants must meet the following criteria:

- (1) ~~Provide satisfactory evidence that~~ Identify the source of the initial stock of plants used ~~to propagate special concern endangered or threatened plants have been legally obtained; for propagation;~~
- (2) Demonstrate that all ~~special concern endangered or threatened plants~~ protected plants to be offered have been nursery propagated and grown ~~horticulturally~~ horticulturally from seed or by vegetative propagation of cuttings or meristem tissues;
- (3) Allow for a yearly inspection of site and facilities where ~~special concern, endangered, or threatened plants~~ protected plants are grown or stored for offer after which time a ~~special concern endangered and threatened plant commerce permit and a nursery certificate, as specified in 2 NCAC 10C .0300, shall be issued if the requirements of the law and regulations are met; the special concern endangered and threatened plant commerce permit shall be valid until the following September 30, but may be revoked sooner for violation of the North Carolina Plant Protection and Conservation Act or regulations adopted thereunder; offer.~~ All applicable nursery regulations and requirements must also be met at the time of obtaining protected plant permits. In addition to the yearly inspection, the site and facilities must be made available for inspection at any other time at the request of the North Carolina Department of Agriculture;
- (4) The person ~~or persons~~ offering ~~special concern endangered or threatened plants~~ protected plants shall maintain records of all acquisitions for the length of time these plants are in his possession; Such records shall be available for inspection by ~~an inspector, the Department~~ and recorded on the ~~protected plant permit and record; permits or certificates of origin;~~
- (5) At the time of inspection, the person who has made application to offer any ~~special concern endangered or threatened plant~~ protected plant or plants shall identify each species to be offered by common and scientific name as found in the current edition of "The Manual of Vascular Flora of the Carolinas", or if not found in this edition, as identified by the American Society of Plant Taxonomists. Each species to be offered shall be listed on a

~~special concern endangered and threatened plant commerce protected plant permit and only those species listed shall be offered. Offering plants not listed is grounds for revocation of the special concern endangered or threatened plant commerce protected plant permit and other remedies under the law.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0403 MOVEMENT AND SALE OF SPECIAL CONCERN

(a) ~~Every carload or shipping container of wild or propagated, special concern, endangered, or threatened plants which is offered or transported by any person shall be accompanied by a copy of a valid North Carolina Nursery Certificate and a valid Protected Plant Permit or Record or a Protected Plant Commerce Permit. The wording and form of this copy shall be the same as that of the original permit furnished by the North Carolina Department of Agriculture and all copies must be complete, printed in full, with issuance and expiration date and number included.~~

(b) ~~Every propagated, special concern endangered or threatened plant or container of plants of the same species which is offered at the final point of sale shall be labeled with a permanent tag stating the source of the propagated plant and the protected plant commerce permit number. Labeling shall be the responsibility of the person offering the plant.~~

(c) ~~Out of date nursery certificates and protected plant commerce permits cannot be revised and used after expiration nor can the date and number of expired copies of certificates and permits be changed and such copies used after expiration of the original permit or certificate.~~

(d) ~~At the discretion of the department any holder of a protected plant commerce permit may be required to submit a duplicate of the printed copy for approval.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0404 DUPLICATION OF SPECIAL CONCERN PERMITS

~~Protected plant commerce permits may be duplicated to accompany shipments of listed plants when the person to whom such a permit is issued enters into a compliance agreement with the department. Such an agreement can grant permission to print or have duplicated limited numbers of protected plant commerce permits or have made other acceptable facsimiles of the permit. A compliance agreement can also be used to grant permission to print or duplicate permits with the issuance and expiration dates left blank to be entered at the time of shipment for the current year. Any compliance agreement may be cancelled for violation of the North Carolina Plant Protection and Conservation Act or regulations adopted and all permits or facsimiles must be surrendered.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0406 MOVEMENT FOR CONSERVATION PURPOSES

~~Endangered or threatened plant species may be removed for scientific, propagation, or rescue purposes in accordance with the following specified conditions:~~

- ~~(1) that movement will enhance the survival of the species;~~
- ~~(2) that movement will be consistent with the policy set forth in 106-202.13 of the Plant Protection and Conservation Act;~~
- ~~(3) that the individual(s) moving the endangered and threatened plant species has obtained written permission from the owner or agent of the land from which the affected species is to be removed and which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plant(s) for which permission is granted; and~~
- ~~(4) that a protected plant permit and record has been obtained and shall accompany the container of such plants or the plant itself whenever such plants are moved.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0407 PROTECTED PLANT PERMITS; CERTIFICATE OF ORIGIN

~~An application for a protected plant permit and record to move and possess any endangered or threatened plant species shall be obtained from the North Carolina Department of Agriculture, Plant Industry Division. The application should be returned to the Plant Industry Division for processing.~~

Protected plant permits may be requested from the North Carolina Department of Agriculture, Plant Industry Division.

- (1) Protected Plant Permits. Protected Plant Permits are required for the following activities involving plants or plant parts of any species found on the protected plant list:
 - (a) collection or removal from the wild (including for scientific or rescue purposes)
 - (b) propagation or offering of plants or plant parts for sale.
 - (c) planting, introducing, or reintroducing protected plants or plant parts into non-garden environments

All permitted activities must be in compliance with all other state or federal laws.

- (2) Exempt Activities. Protected Plant Permits are not required for the following activities:
 - (a) purchase of protected plant species from nurseries or dealers who hold necessary permits
 - (b) activities allowed under other existing state laws and regulations
 - (c) collection or removal of plants from one's own land

(d) propagation or sale of plants covered by a current certificate of origin.

(3) Certificate of Origin. A Certificate of Origin shall be issued upon request to anyone selling or distributing any protected plant species legally acquired in-state or from out-of-state. A Certificate of Origin shall be issued only once, and shall be renewed each year at the time of the nursery inspection, as long as the holder of the certificate is maintaining the same stock of plants and as long as the conditions on the Certificate of Origin are being maintained. A new Certificate must be issued at the time of inspection if new plant stock is acquired.

A Certificate may also be issued for protected plants that were originally collected from one's own land and are being propagated for sale. The Certificate shall include:

- (a) The signature of the nurseryman
- (b) The following statement: "I hereby certify that the NC listed species in my possession are nursery propagated and not wild collected in NC, unless by permit, for sale, barter, or trade."
- (c) The name and address of the nursery
- (d) A list of protected species for sale and source(s) of plant material for each species.

(4) Protected Plant Permit Fees. Approved permit requests to collect plants or plant parts from the wild will be assessed fees for each collection event if such collection is anticipated or is likely to have the potential to generate income. A fifty dollar (\$50.00) - one hundred dollar (\$100.00) fee will be applied per species, or two hundred dollars (\$200.00) for each collection if Department staff make the collection on behalf of the permittee. All fees may be waived for non-profit organizations or student research projects. Should a student have residual plants following a scientific study, fees could be charged retroactively. These situations would be reviewed on a case by case basis. These fees may apply to atypical situations such as small gardeners or garden club plant sales as well.

(5) Information Requirements for Protected Plant Permit Applications. All applicants must provide the following information:

- (a) applicant's full name, mailing address, telephone number(s);
- (b) if the applicant is an individual, the date of birth and any institutional affiliation related to the requested permit activity;

- (c) if the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the president or principle officer and full names and addresses of any representatives who will serve as agents during the project;
- (d) the scientific name of the species and the number of plants to be covered by the permit;
- (e) the reason for the application and a description of the work to be carried out, including the proposed method of obtaining the species;
- (f) location where the requested activity is to take place and the location where the plants or plant parts will be held;
- (g) any additional justification and supporting documentation requested by North Carolina Department of Agriculture, Plant Industry Division representatives;
- (h) proposed start and ending date of permit.

- (1) the status of the species in North Carolina;
- (2) the status of the population from which the plants are to be collected or removed;
- (3) the amount of plant material to be collected;
- (4) the conditions under which the plants will be collected or removed;
- (5) the proposed use of the plant material;
- (6) known threats to the species;
- (7) where the plant material will be deposited;
- (8) the need for their rescue;
- (9) estimation of how the proposed activity is likely to affect or enhance the survival of the species;
- (10) policy set forth in the Plant Protection and Conservation Act and by Board decision;
- (11) that the proponent has obtained and can document satisfactory evidence that plants can be legally obtained (for example, written permission from the owner for agent of the land from which the affected species is to be removed.

Authority G.S. 106-202.15.

02 NCAC 48F .0411 ISSUANCE OF PROTECTED PLANT PERMITS

Upon receipt of a properly executed application, a permit shall be issued unless:

- (1) the applicant has been assessed a penalty or convicted of any provision of any statute related to the activity for which the application is requested;
- (2) the applicant has failed to disclose information or material required or requested, or has made false statements in connection with the application;
- (3) the applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;
- (4) authorization of the permit requested potentially threatens a protected plant species population or habitat, or
- (5) applicant has failed to pay any required fees;
- (6) applicant has failed to submit timely, accurate, or valid reports as required under permit;
- (7) NCDA&CS finds through further inquiry that the applicant is not qualified.

Authority G.S. 106-202.15.

02 NCAC 48F .0412 CONDITIONS OF PERMIT ISSUANCE AND ACCEPTANCE

- (a) Any person or entity granted a permit under these provisions acknowledges the need to maintain appropriate records related to the permitted activity, as specified on the permit.
- (b) By accepting the permit, the permittee consents to and shall allow entry by agents or employees of the Department upon the premises where the permitted activity and/or permitted material

Authority G.S. 106-202.15.

02 NCAC 48F .0408 CRITERIA FOR APPROVAL PLANT CONSERVATION PERMITS

~~Decisions on the acceptance or rejection of an application for an endangered and threatened plant conservation permit are based on the following criteria as appropriate:~~

- (1) ~~the status of the species in North Carolina;~~
- (2) ~~the status of the population from which the plants are to be removed;~~
- (3) ~~the amount of plant material to be collected;~~
- (4) ~~the conditions under which the plants will be removed;~~
- (5) ~~the planned packaging and shipment of the plants;~~
- (6) ~~the proposed use of the plant material;~~
- (7) ~~where the plant material will be deposited; and~~
- (8) ~~the need for their rescue.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0409 EMERGENCY PROCEDURES FOR RESCUE OPERATIONS

~~In emergency rescue operations a verbal permit may be acquired with a waiver of Part (4) of Subsection .0406. acquired.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0410 CRITERIA FOR ISSUANCE OF PROTECTED PLANT PERMITS

The proposed justification for a permit will be evaluated using the following criteria as appropriate:

resides at any reasonable hour to inspect the location, records, and materials pertinent to the permit.

(c) The permit holder agrees to abide by any terms and conditions set forth in the permit.

Authority G.S. 106-202.15.

02 NCAC 48F .0413 AMENDMENT OF PERMITS

(a) Permittee request. If circumstances change, an existing permit holder can request to modify the terms and conditions of their permit. Any necessary supporting documentation and justification shall be provided to the Department to make proposed amendments.

(b) The Department reserves the right to amend permits for just cause at any time when necessary.

Authority G.S. 106-202.15.

SECTION .0500 - FORMS

02 NCAC 48F .0501 DESIGNATIONS

The forms used by the plant protection section in plant protection and conservation activities will be known by the following title and numerical designations:

- (1) ~~application for a protected plant permit PC 1;~~
- (2) ~~protected plant conservation certificate PC 2;~~
- (3) ~~protected plant propagation certificate PC 3;~~
- (4) ~~protected plant permit and record PC 4;~~
- (5) ~~protected plant commerce permit PC 5;~~
- (6) ~~special concern endangered and threatened plant compliance agreement PC 6;~~
- (7) ~~application for a ginseng dealer's permit PC 7;~~
- (8) ~~record of wild collected ginseng purchases PC 8;~~
- (9) ~~record of cultivated ginseng purchases PC 9;~~
- (10) ~~ginseng export certificate PC 10;~~
- (11) ~~ginseng dealer's permit PC 11;~~
- (12) ~~record of dealer dealer transactions PC 12;~~
- (13) ~~statement indicating legal collection of ginseng from one's own land PC 13;~~
- (14) ~~record of harvest season collection PC 14.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0502 FORM PC-1

Form PC 1 is an application for a protected plant permit. The following information is required:

- (1) ~~The scientific name of the species and the number of plants to be covered by the permit;~~
- (2) ~~The reason for the application and a description of the work to be carried out with the plants;~~
- (3) ~~The location where the plants will be held;~~
- (4) ~~The method of obtaining the species;~~

- (5) ~~The exact location and ownership of the land from which the species will be collected;~~
- (6) ~~The name, address, and telephone number of the applicant;~~
- (7) ~~The institution or firm with which the applicant is associated;~~
- (8) ~~The signature of the applicant and the date of signing.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0503 FORM PC-2

Form PC 2 is the protected plant conservation certificate issued for the collection and movement of a controlled number of any endangered and threatened plants for scientific or reseue purposes. The following information is required:

- (1) ~~The applicant's name;~~
- (2) ~~A date of expiration;~~
- (3) ~~The permit is signed by the Plant Pest Administrator, Plant Industry Division, North Carolina Department of Agriculture.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0504 FORM PC-3

Form PC 3 is a protected plant propagation certificate issued to qualified nurseries and individuals for the collection, movement and propagation of controlled numbers of special concern endangered or threatened species. The following information is on the certificate:

- (1) ~~The applicant's name;~~
- (2) ~~A date of expiration;~~
- (3) ~~The permit is signed by the Plant Pest Administrator, Plant Industry Division, North Carolina Department of Agriculture.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0505 FORM PC-4

Form PC 4 is a protected plant permit and record. The following information is required:

- (1) ~~The scientific name of the species and the number of plants in possession;~~
- (2) ~~The original source of the plants;~~
- (3) ~~The use of the plants;~~
- (4) ~~The date;~~
- (5) ~~The name, address, and telephone number of the applicant;~~
- (6) ~~The institution or firm applicant is associated with;~~
- (7) ~~The signature of the applicant.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0506 FORM PC-5

Form PC 5 is the permit issued to authorize the offering of special concern endangered or threatened plant species which

have been legally obtained and propagated. The following information is required:

- (1) ~~An expiration date;~~
- (2) ~~The plant species for which the permit is issued;~~
- (3) ~~The plant part for which the permit is issued;~~
- (4) ~~The quantity of the plant for which the permit is issued;~~
- (5) ~~The permit is signed by the Commissioner, North Carolina Department of Agriculture.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0507 FORM PC-6

~~Form PC 6 is a compliance agreement for the authorization to reproduce special concern endangered and threatened plant commerce permits. The following information is required:~~

- (1) ~~The name, address, and location of establishment signing the agreement;~~
- (2) ~~Signature of the owner or a representative of the establishment;~~
- (3) ~~The agreement is signed by the Plant Pest Administrator, Plant Industry Division, North Carolina Department of Agriculture.~~

Authority G.S. 106-202.12 through 106-202.19.

02 NCAC 48F .0508 FORM PC-7

~~Form PC 7 is the application for a ginseng dealer's permit and is issued to ginseng dealers who wish to purchase ginseng after June 1 of each year. The following information is required:~~

- (1) ~~The company name, name of owner, manager or agent, address and telephone number of the ginseng dealer;~~
- (2) ~~The location of ginseng records and roots;~~
- (3) ~~Names of agents representing the dealer;~~
- (4) ~~Signature of ginseng dealer and date of signing.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0509 FORM PC-8

~~Form PC 8 is the record of wild collected ginseng purchases to be completed by ginseng dealers. The following information is required:~~

- (1) ~~A sheet number corresponding to the number of wild collected ginseng purchase records completed by the ginseng dealer in that harvest season;~~
- (2) ~~The year in which the harvest season begins;~~
- (3) ~~The ginseng dealer's name and address;~~
- (4) ~~A record number for each purchase on a sheet;~~
- (5) ~~The date the ginseng is purchased;~~
- (6) ~~The name, address and telephone number of the collector of the ginseng purchased;~~
- (7) ~~The amount of green or dry ginseng purchased, in pounds and ounces;~~

- (8) ~~The counties in which the ginseng roots were collected;~~
- (9) ~~Form PC 8 is signed and dated by the ginseng dealer certifying that the records are accurate and that all ginseng purchased was collected legally.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0510 FORM PC-9

~~Form PC 9 is the record of cultivated ginseng purchases to be completed by ginseng dealers. The following information is required:~~

- (1) ~~A sheet number corresponding to the number of cultivated ginseng purchase records completed by the ginseng dealer in that harvest season;~~
- (2) ~~The year in which the harvest season begins;~~
- (3) ~~The ginseng dealer's name and address;~~
- (4) ~~A record number for each purchase on a sheet;~~
- (5) ~~The date the ginseng is purchased;~~
- (6) ~~The name, address and telephone number of the cultivator of the ginseng;~~
- (7) ~~The amount of ginseng purchased, in pounds and ounces;~~
- (8) ~~The nursery and nursery certificate number, if any, where the ginseng was cultivated;~~
- (9) ~~Form PC 9 is signed and dated by the ginseng dealer certifying that the records are accurate and that the ginseng purchased was cultivated.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0511 FORM PC-10

~~Form PC 10 is the ginseng export certificate issued to ginseng dealers for export or shipment out of state of legally collected or cultivated roots. The following information is required:~~

- (1) ~~Certificate number, assigned by the Department;~~
- (2) ~~Dealer permit number;~~
- (3) ~~Dealer's shipment number for that harvest season;~~
- (4) ~~The total amount of ginseng covered by this certificate, in pounds and ounces stated in both numerals and words;~~
- (5) ~~Whether the ginseng is wild or cultivated;~~
- (6) ~~Whether the ginseng is green or dry;~~
- (7) ~~The purchase dates of the ginseng covered by this certificate;~~
- (8) ~~The name and address of the ginseng dealer;~~
- (9) ~~The purchase record sheet numbers of the ginseng covered by this certificate; and~~
- (10) ~~Form PC 10 is signed by the Director, Plant Industry Division, the ginseng dealer and the inspector issuing the export certification.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0512 FORM PC-11

~~Form PC 11 is a permit issued to a ginseng dealer who has met requirements as established in G.S. 106-202.12-202.22 and 2 NCAC 10G .0100 through .0500. The permit number will be used to identify shipments for which export documents are issued. The following information is required:~~

- ~~(1) Permit number;~~
- ~~(2) Date of issuance;~~
- ~~(3) Expiration date;~~
- ~~(4) Company name and address of the ginseng dealer;~~
- ~~(5) Signature of the Director, Plant Industry Division, North Carolina Department of Agriculture.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0513 FORM PC-12

~~Form PC 12 is the record of dealer dealer transactions to be completed by ginseng dealers for purchases of ginseng from other dealers. The following information is required:~~

- ~~(1) A sheet number corresponding to the number of dealer dealer ginseng purchase records completed by the purchasing ginseng dealer in that harvest season;~~
- ~~(2) The year in which the harvest season begins;~~
- ~~(3) The name and address of the purchasing ginseng dealer;~~
- ~~(4) A record number for each purchase on a sheet;~~
- ~~(5) The date the ginseng is purchased;~~
- ~~(6) The name of the dealer selling the ginseng;~~
- ~~(7) The selling ginseng dealer's permit number;~~
- ~~(8) The amount of green or dry ginseng purchased, in pounds and ounces;~~
- ~~(9) The purchase record sheet numbers of the seller covering the original purchases of the ginseng;~~
- ~~(10) Form PC 12 is signed and dated by the purchasing ginseng dealer certifying that the records are accurate and that the ginseng was legally collected.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0514 FORM PC-13

~~Form PC 13 is the statement indicating legal collection of ginseng from one's own land and is completed by collectors who collect wild ginseng from their own property between April 1 and September 1. The following information is required:~~

- ~~(1) Date ginseng is sold;~~
- ~~(2) Amount of green and dry ginseng sold, in pounds and ounces;~~
- ~~(3) Exact location of land where this ginseng was dug;~~
- ~~(4) Seller's name and address;~~
- ~~(5) Seller's signature and date signed.~~

Authority G.S. 106-202.15.

02 NCAC 48F .0515 FORM PC-14

~~Form PC 14 is the record of harvest season collection issued by an inspector to a collector for wild ginseng collected between September 1 and April 1 but not sold by April 1. The following information is required:~~

- ~~(1) Amount of green and dry ginseng, in pounds and ounces;~~
- ~~(2) Collector's signature and date signed;~~
- ~~(3) Inspector's signature and date signed.~~

Authority G.S. 106-202.15.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .2004-.2005, .2007 and .2104.

Proposed Effective Date: *January 1, 2011*

Public Hearing:

Date: *September 16, 2010*

Time: *2:00 p.m.*

Location: *Crowne Plaza, 1385 Lenoir Rhyne Blvd. SE, Hickory, NC 28902*

Reason for Proposed Action:

12 NCAC 10B .2004 – *The revision sets out that the optional topic of Active Shooter must be taught by a Firearms Instructor who has also attended the Rapid Deployment Instructor Course. This topic requires the instructor to be knowledgeable not only in the area of firearms, but also in the specific techniques that have been taught statewide for Rapid Deployment (i.e., response developed for Columbine-like incidents).*

12 NCAC 10B .2005 – *The revisions set out what will be required for in-service training in 2011. These in-service training programs began in 2005 with Deputies completing four hours of Domestic Violence; then since 2006 Deputies are required to complete 24 hours of in-service. Since 2007 Detention Officers and Telecommunicators are required to complete 16 hours. In the year of 2011, Deputies must likewise complete 24 hours, and Detention Officers and Telecommunicators must complete 16 hours. The only changes are in the topical areas. To improve performance, reduce errors and reduce the number of lawsuits, and protect the public health, safety and welfare by ensuring each officer remains knowledgeable in their areas of enforcement, corrections or communications.*

12 NCAC 10B .2007 – *Because no further actions are anticipated that will rely on the existing Paragraph (3), that language has been removed. The amendment sets out that agencies must report which individuals have completed 2011 in-service training requirements by January 15, 2012. Reporting who has or has not complied with in-service training is needed in order for the Division to enforce the requirements.*

12 NCAC 10B .2104 – Shotgun qualification is being removed as a requirement from the Basic Law Enforcement Training Course (BLET), but the acceptable courses of fire are still contained in the In-Service Firearms Training Manual. The BLET Course formerly adopted the Qualification Manual. The amendment represents no change in the standard, but merely sets out that if an individual is authorized to carry a shotgun, then they must use a course of fire as set out in the firearms manual. The purpose of the amendment is to ensure individuals who are authorized to carry shotguns, are properly qualified to do so.

Procedure by which a person can object to the agency on a proposed rule: Objections shall be submitted in writing explaining the reasons for objection and specifying the portion of the rule to which the objection is being made. Such objection should be sent to Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, P. O. Box 629, Raleigh, NC 27602.

Comments may be submitted to: Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, P. O. Box 629, Raleigh, NC 27602; phone (919) 716-6460; fax (919) 716-6753; email jlohman@ncdoj.gov

Comment period ends: November 1, 2010

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: A copy of the fiscal note can be obtained from the agency.

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2004 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct a Commission-mandated In-Service Training Program:

- (1) The instructors shall:
 - (a) hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306;
 - (b) hold Professional Lecturer Instructor certification issued by either the Commission as set out in either 12 NCAC 10B .0906 or .0916, or the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, or General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306, when teaching a legal block of instruction;
 - (c) hold Professional Lecturer Instructor certification issued by the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, when teaching a medical or psychological block of instruction; or
 - (d) hold Specific Instructor Certification issued by the Criminal Justice Education and Training Standards Commission when teaching the lesson plans published by the NC Justice Academy as follows:
 - (i) Firearms must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e);
 - (ii) Weapons Retention and Disarming Techniques must be taught by Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
 - (iii) Spontaneous Attack Defense and Subject Control/Arrest Techniques Instructor must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(b);
 - (iv) Handcuffing and Impact Weapons Refresher must be taught by a Subject Control

- (v) Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e); Wellness and Stress Awareness and Health and Fitness for Detention Officers must be taught by a Physical Fitness Instructor certified in accordance with 12 NCAC 09B .0304(g); and
- (vi) Law Enforcement Driver Training (classroom and practical) must be taught by a Specialized Law Enforcement Driver Training Instructor certified in accordance with 12 NCAC 09B .0304(f).
- (vii) Active Shooter: Practical Refresher must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e) and who has also attended the Rapid Deployment Instructor Course developed by the North Carolina Justice Academy.

In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (2) The use of guest participants is permitted provided they are subject to the direct on-site supervision of a commission-certified instructor.
- (3) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
- (4) The instructor shall document the successful or unsuccessful completion of training for each person attending a training program and forward a record of their completion to each person's Sheriff or Department Head.

Authority G.S. 17E-4; 17E-7.

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 may use a lesson plan for any of the topical 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 in 12 NCAC 09B .0209.

~~(b) The 2009 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Career Survival: Training & Standards Issues;~~
- ~~(3) Juvenile Minority Sensitivity Training: Juvenile Law;~~
- ~~(4) Domestic Violence;~~
- ~~(5) Drug Diversion for Patrol Officers;~~
- ~~(6) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(7) Any topic areas of the Sheriff's choosing.~~

~~(c) The 2009 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Career Survival for Detention Officers;~~
- ~~(2) Recognition of Mental Illnesses and Suicide Identifiers;~~
- ~~(3) Detention Officer Legal Update; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(d) The 2009 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Professionalism in Emergency Services;~~
- ~~(2) Dealing with the Mentally Ill;~~
- ~~(3) Community, School and Campus Safety Issues for Telecommunicators; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e)~~(b) The 2010 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Race Matters;
- (3) Career Survival: Positive Ways to be Successful;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

~~(f)~~(c) The 2010 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Cryptology and Contraband via Mail;
- (2) Legal Update for Detention Officers;
- (3) Career Survival for Detention Officers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

~~(g)~~(d) The 2010 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Amber and Silver Alerts;
- (2) Call Taking Procedures in Emergency Services;
- (3) Critical Incident Stress Management; and

- (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (e) The 2011 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:
 - (1) Legal Update;
 - (2) Juvenile Minority Sensitivity Training: Interactions, Communications, and Understanding;
 - (3) Career Survival: Leadership and Mentoring;
 - (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter;
 - (5) Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships; and
 - (6) Any topic areas of the Sheriff's choosing.
- (f) The 2011 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:
 - (1) Legal Update for Detention Officers;
 - (2) Career Survival for Detention Officers; Interpersonal Communications;
 - (3) Communicable Diseases and Pandemics; and
 - (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (g) The 2011 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:
 - (1) Elder Abuse Awareness and the Telecommunicator;
 - (2) Tactical Dispatch;
 - (3) Handling Difficult Callers; and
 - (4) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

12 NCAC 10B .2007 SHERIFF/AGENCY HEAD RESPONSIBILITIES

Each Sheriff or Department Head shall ensure that the respectively required In-Service Training Program established by this Section is conducted. In addition, the Sheriff or Department Head shall:

- (1) report to the Division those deputy sheriffs, detention officers and telecommunicators who are inactive;
- (2) maintain a roster of each deputy sheriff, detention officer and telecommunicator who successfully completes the respectively required In-Service Training Program;
- ~~(3) report to the Division by January 15th, 2009:~~
 - ~~(a) those active telecommunicators who fail to complete the 2008 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;~~
 - ~~(b) those active detention officers who fail to complete the 2008 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and~~

- ~~(e) those active deputy sheriffs who fail to complete the 2008 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form;~~
- ~~(4)(3) report to the Division by January 15th, 2010:~~
 - ~~(a) those active telecommunicators who fail to complete the 2009 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;~~
 - ~~(b) those active detention officers who fail to complete the 2009 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and~~
 - ~~(c) those active deputy sheriffs who fail to complete the 2009 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form;~~
- ~~(5)(4) report to the Division by January 15th, 2011:~~
 - ~~(a) those active telecommunicators who fail to complete the 2010 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;~~
 - ~~(b) those active detention officers who fail to complete the 2010 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and~~
 - ~~(c) those active deputy sheriffs who fail to complete the 2010 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.~~
- ~~(5) report to the Division by January 15th, 2012:~~
 - ~~(a) those active telecommunicators who fail to complete the 2011 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;~~
 - ~~(b) those active detention officers who fail to complete the 2011 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and~~
 - ~~(c) those active deputy sheriffs who fail to complete the 2011 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.~~

Authority G.S. 17E-4; 17E-7.

SECTION .2100 - DEPUTY SHERIFFS' AND DETENTION OFFICERS' FIREARMS IN-SERVICE TRAINING REQUALIFICATION PROGRAM

12 NCAC 10B .2104 IN-SERVICE FIREARMS REQUALIFICATION SPECIFICATIONS

(a) All deputy sheriffs and detention officers who are authorized by the sheriff to carry a handgun shall qualify a minimum of once each year with their individual and department-approved service handgun. The course of fire shall not be less stringent than the "Basic Law Enforcement Training Course" requirements for firearms qualification.

(b) All deputy sheriffs and detention officers who are issued, or otherwise authorized by the sheriff to carry a shotgun, rifle, or automatic weapon shall qualify with each weapon respectively a minimum of once each year. The course of fire shall not be less stringent than those set out in the "In-Service Firearms Qualification Manual" as published by the North Carolina Justice Academy. ~~the "Basic Law Enforcement Training Course" requirements for firearms qualification.~~

(c) Qualifications conducted pursuant to Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or ballistic equivalent ammunition to include lead free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(d) All deputy sheriffs and detention officers who are authorized by the sheriff to carry off duty handguns shall qualify with their off duty handgun a minimum of once each year pursuant to 12 NCAC 10B .2103 and .2104(a) and (b) with each handgun the officer carries off duty using ammunition approved by the sheriff.

(e) All deputy sheriffs and detention officers who are issued or have access to any weapons not stated in this Rule must qualify with these weapons once each year using ammunition approved by the sheriff.

(f) In cases where reduced-sized targets are used to simulate actual distances, a modified course of fire may be used.

(g) To satisfy the training requirements for all in-service firearms requalifications, a deputy sheriff or detention officer shall attain a minimum qualification score of 70 percent accuracy with each weapon once in three attempts with no more than three attempts on each course of fire per day.

(h) The "In-Service Firearms Qualification Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments or editions of the referenced materials to apply as a minimum guide for conducting the annual in-service firearms qualification. Copies of the publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

Authority G.S. 17E-4; 17E-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0106 and .0208; and 07M .0401-.0403.

Proposed Effective Date: December 1, 2010

Public Hearing:

Date: September 16, 2010

Time: 1:00 p.m.

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

Reason for Proposed Action: *The Coastal Resources Commission (CRC) is proceeding with rule making in order to make changes to several of its rules and policies to facilitate the permitting of wind energy facilities.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.*

Comments may be submitted to: *James Gregson, Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808*

Comment period ends: October 1, 2010

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:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 07 - COASTAL MANAGEMENT COMMISSION

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS

OF ENVIRONMENTAL CONCERN
SECTION .0100 - INTRODUCTION AND GENERAL
COMMENTS

15A NCAC 07H .0106 GENERAL DEFINITIONS

The following definitions apply whenever these terms are used in this Chapter:

- (1) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence and location of vegetation, which has its distribution influenced by tidal action, and the location of the apparent high tide line.
- (2) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during periods of little or no wind. It can be determined by the presence of such physical and biological indicators as erosion escarpments, trash lines, water lines, marsh grasses and barnacles.
- (3) Unless specifically limited, the term ~~Astructures@~~ structures includes, but is not limited to, buildings, bridges, roads, piers wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring pilings and buoys, pile clusters (dolphins), navigational aids and elevated boat ramps.
- (4) "Mining" is defined as:
 - (a) The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of mineral, ores, or other solid matter.
 - (b) Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location.
 - (c) The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.
- (5) "Wind Energy Facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy.

This definition applies regardless of whether the mining activity is for a commercial or noncommercial purpose, and regardless of the size of the affected area. Activities such as vibracoring, box coring, surface grab sampling, and other drilling and sampling for geotechnical testing, mineral resource investigations, or geological research are not considered mining. Excavation of mineral resources associated with the construction or maintenance of an approved navigation project in accordance

with 15A NCAC 07B .0200 of this Chapter is not considered mining.

Authority G.S. 113A-102; 113A-107.

SECTION .0200 - THE ESTUARINE AND OCEAN
SYSTEMS

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas.
 - (B) Development shall comply with state and federal water and air quality standards.
 - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural Resources.
 - (D) Development shall not increase siltation.
 - (E) Development shall not create stagnant water bodies.
 - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources.
 - (G) Development shall not jeopardize the use of the waters for navigation or for

other public trust rights in public trust areas including estuarine waters.

- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
 - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC).
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values.
- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover

extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
 - (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
 - (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
 - (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10).
 - (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation.
 - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
 - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters.

- (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners.
- (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics.
- (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

This Part does not affect restrictions placed on permits issued after March 1, 1991.
- (2) Hydraulic Dredging
 - (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids.
 - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the Rules in this Subchapter except as provided in Part (G) of this Subparagraph.
 - (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
 - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
 - (F) A water control structure shall be installed at the intake end of the effluent pipe.
 - (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule.
 - (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
 - (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary.
 - (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived

- from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites.
- (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies.
 - (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
 - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
 - (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:
- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
 - (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule.
 - (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
 - (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential

- developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
- (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state.
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
- (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters.
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
- (K) Marinas which require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site.
- (L) Marina design shall comply with all applicable EMC requirements for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d).
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services.
- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters.
- (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule.

- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10).
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
 - (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur.
 - (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 ~~eight~~ square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions do not apply to marinas.
 - (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
 - (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas.
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift.
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use.
- (G) Pier and docking facility length shall be limited by:
 - (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation does not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than

- one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(q) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management.
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level.
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources.
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;

- (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
- (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and
- (v) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
 - (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
 - (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes.
 - (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site.
 - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
 - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC.
 - (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review.
 - (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
 - (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control.
- (C) Material from dredging projects may be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule.
 - (ii) it is allowed to dry prior to being placed on the beach; and
 - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (D) Beach construction shall comply with state and federal water quality standards.
- (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work.
- (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time. Permits may be renewed or modified for maintenance work or repeated need for nourishment.
- (9) Groins
 - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process.
 - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the

- permitting agency prior to initiating any development of the groin.
- (C) Groins shall pose no threat to navigation.
 - (D) The height of groins shall not exceed one foot above normal high water or normal water level.
 - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
 - (F) "L" and "T" sections shall not be allowed at the end of groins.
 - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
- (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).
 - (B) Freestanding moorings shall be permitted only:
 - (i) to riparian property owners within their riparian corridors; or
 - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
 - (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking.
 - (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development.
 - (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state.
 - (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted.
 - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards.
 - (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff.
 - (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal.
 - (J) Freestanding moorings associated with commercial shipping, public service or temporary construction/salvage operations may be permitted without a public sponsor.
 - (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc

- of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels, or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access.
- (L) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a manner that interferes with the operations of an access through any bridge.
 - (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s).
 - (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the state approval request or permit application;
 - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
 - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
 - (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to insure compliance with the provisions of the

Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:

- (i) Monitoring shall be required of the applicant to ensure compliance with all applicable development standards; and
- (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule.
- (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700.
- (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

(13) "Wind Energy Facilities"

(A) An applicant for the development and operation of a wind energy facility shall provide:

- (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
- (ii) and evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;
- (iii) an evaluation of avian and bat impacts of the proposed facility;
- (iv) an evaluation of viewshed impacts of the proposed facility;
- (v) an evaluation of potential user conflicts associated with development in the proposed project area;
- (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.

(B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule.

- (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
- (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
- (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the

Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);

(iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;

(v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters;

(vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13;

(C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to insure compliance with the provisions guidelines for development set out in this Subchapter. Permit conditions may include monitoring to ensure compliance with all applicable development standards.

(D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

SECTION .0400 - COASTAL ENERGY POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the state and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized and equally important public interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits ~~attached to~~ of necessary energy development against with the need to: 1) protect valuable coastal resources, and 2) preserve access to and utilization of public trust resources, the planning of future ~~land uses, uses affecting both land and public trust resources,~~ the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon vital coastal resources or uses, public trust areas and public access rights.

(b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that ~~federal oil and gas~~ leasing actions of the ~~US Department of the Interior~~ federal government be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions and policies of this Rule, as well as any other applicable federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other relevant energy facilities ~~must~~ shall contain sufficient information to allow ~~adequate~~ analysis of the consistency of all proposed activities with these Rules and policies.

Authority G.S. 113A-102(b); 113A-107; 113A-124.

15A NCAC 07M .0402 DEFINITIONS

(a) "Impact Assessment" is an analysis which fully discusses the potential environmental, economic and social consequences, including cumulative and secondary impacts, of a proposed project. At a minimum, the assessment shall include the following and for each of the following shall discuss and assess any effects ~~on any land or water use or natural resource of the coastal area,~~ the project will have on the use of public trust waters, adjacent lands and on the coastal resources of the coastal area, including the effects ~~within the coastal area~~ caused by activities outside the coastal area:

- (1) a full discussion of the preferred sites for those elements of the project affecting ~~any land or water use or natural resource~~ the use of public

trust waters, adjacent lands and the coastal resources of the coastal area:

- (A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full discussion [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
 - (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present ~~reasonable~~ evidence to support the proposed location over a feasible alternate site;
 - (C) In those cases where an applicant chooses a site previously identified by the state as suitable for such development and the site is outside an AEC or not on a barrier island, alternative site considerations shall not be required as part of this assessment procedure;
- (2) a full discussion of the economic impacts, both positive and negative, of the proposed project. This discussion shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This discussion shall include analysis of likely adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts of significance;
 - (3) a full discussion of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;
 - (4) a full discussion of potential adverse impacts on existing industry and potential limitations on the availability ~~of natural~~ of, and accessibility to, coastal resources, particularly including beach compatible sand and water, for future industrial use or development;
 - (5) a full discussion of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;
 - (6) a full discussion of potential risks ~~of danger~~ to human life or property;
 - (7) a full discussion of the impacts on the human environment including noise, vibration and visual impacts;
 - (7)(8) a full discussion of the procedures and time needed to secure an energy facility in the event

of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;

- ~~(8)~~(9) other specific data necessary for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;
- (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed.
- ~~(9)~~(11) a specific demonstration that the proposed project is consistent with relevant local land use plans and with guidelines governing land uses in AECs.

Any impact assessment for a proposal for ~~oil or gas~~ energy exploration or development activities shall include a full discussion of the items described in Subparagraphs (a)(1) through ~~(9)~~(11) of this Rule for the associated energy exploration or development activity, including all ~~reasonably~~ foreseeable assessments of resource potential, including the gathering of scientific data, exploration wells wells, and any delineation activities that are reasonably likely to follow a discovery of oil or gas. development, production, maintenance and decommissioning.

(b) "Major energy facilities" are those energy facilities which because of their size, magnitude or scope of impacts, have the potential to affect any land or water use or ~~natural~~ coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include, but are not necessarily limited to, the following:

- (1) Any facility capable of refining ~~oil~~; petroleum products;
- (2) Any terminals (and associated facilities) capable of handling, processing, or storing ~~liquid propane gas, liquid natural gas, petroleum products or synthetic natural gas;~~
- (3) Any ~~oil or gas~~ petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- (4) Electric Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- (5) Wind energy facilities, including turbines accessory buildings, transmission facilities and other equipment necessary for the operation of a wind generating facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of

one another, capable of generating three megawatts or larger;

- ~~(5)~~(6) Thermal energy generation;
- ~~(6)~~(7) Major pipelines 12 inches or more in diameter that carry ~~crude petroleum, natural gas, liquid natural gas, liquid propane gas, petroleum products~~ or synthetic gas;
- ~~(7)~~(8) Structures, including drillships and floating platforms and structures relocated from other states or countries, located in offshore waters for the purposes of ~~exploration for, or energy exploration, development or production of, oil or natural gas; production;~~ and
- ~~(8)~~(9) Onshore support or staging facilities related to ~~exploration for, or offshore energy exploration, development or production of, oil or natural gas; production.~~

(c) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

Authority G.S. 113A-102(b); 113A-107; 113A-124.

15A NCAC 07M .0403 POLICY STATEMENTS

(a) The placement and operations of major energy facilities in or affecting ~~any land or water~~ the use of public trust waters and adjacent lands or natural coastal resource of the North Carolina coastal area shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and State guidelines in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and ~~rules for land uses in AECs.~~ use standards for development within AECs, as set forth in 15A NCAC 07H.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or ~~natural coastal~~ resource of the North Carolina coastal area shall include a full disclosure of all costs and benefits associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment prepared by the applicant as defined in 15A NCAC 07M .0402. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under

Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concern land use and any applicable permitting process.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources and resources, public trust waters will be protected, waters, and the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, ~~areal~~ aerial extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting ~~any land or water use~~ the use of public trust waters and adjacent lands or natural coastal resource of the coastal area shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on ~~land or water uses~~ the use of public trust waters and adjacent lands in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no significant adverse impacts on ~~land or water uses or natural~~ the use of public trust waters and adjacent lands or coastal resources of the coastal area.
- (2) ~~Necessary~~ For petroleum facilities, necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall completely assess the risks of ~~oil~~ petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information must demonstrate that the potential for ~~oil~~ petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring an

- Oil Spill Response Plan, this information shall be included in such a plan.
- (3) Dredging, spoil disposal and construction of related structures that are ~~reasonably likely to affect any land or water use or natural~~ have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resource of the coastal area shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine environment.
- (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value, such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or interference is ~~reasonably likely to affect any land or water use or natural resource~~ have significant adverse impacts on the use of public trust waters and adjacent lands of the coastal area.
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is ~~reasonably likely to affect any land or water use or natural resource~~ have significant adverse impacts on the use of public trust waters, adjacent lands and natural resources of the coastal area.
- (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that ~~significant~~ significant adverse impacts on ~~any land or water use or natural resource~~ the use of public trust waters, adjacent lands and natural resources of the coastal area shall be avoided.
- (7) ~~Adverse~~ Significant adverse impacts on ~~species identified as~~ federally listed threatened or endangered ~~species on Federal or State lists~~ shall be avoided.
- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites.
- (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing inlets.
- (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
- (A) areas of high biological significance, including offshore reefs, rock ~~outcrops and~~ outcrops, hard bottom areas, sea turtle nesting beaches, ~~freshwater and saltwater~~ coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish ~~habitat-habitat~~ habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation ~~beds, as defined by the~~ Marine Fisheries Commission, ~~shellfish beds, anadromous fish spawning and nursery areas, and~~ colonial bird nesting ~~colonies; areas,~~ and migratory bird routes;
- (B) ~~Tracts~~ tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
- (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
- (D) anchorage areas and ~~eongested~~ port areas;
- (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- (F) dump sites;
- (G) primary dunes and frontal dunes;
- (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges and other areas used in a like manner.
- (I) military air space, training or target area and transit lines;
- (J) cultural or historic sites of more than local significance;
- (K) segments of Wild and Scenic River System.
- (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided.
- (12) If facilities located in the coastal area are abandoned, habitat of equal value to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the

PROPOSED RULES

abandonment of the structure is reasonably likely to affect any land or water use or natural resource of the coastal area.

~~(g) As used in this Section, an event that is "reasonable likely" to occur if credible evidence supports the conclusion that the event will likely occur.~~

Authority G.S. 113A-102(b); 113A-107; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to adopt the rule cited as 15A NCAC 10B .0301 and amend the rules cited as 15A NCAC 10B .0203, .0304; and 10D .0102-.0103.

Proposed Effective Date: August 1, 2011

Public Hearing:

Date: September 7, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 8, 2010

Time: 7:00 p.m.

Location: Central Carolina Community College, Pittsboro Campus Auditorium, 764 West Street, Pittsboro, NC 27312-8822

Public Hearing:

Date: September 9, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 14, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 15, 2010

Time: 7:00 p.m.

Location: Haywood Community College, Student Center Auditorium, 185 Freedlander Drive, Clyde, NC 28721

Public Hearing:

Date: September 16, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 21, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 22, 2010

Time: 7:00 p.m.

Location: Courthouse, 413 Middle Street, New Bern, NC 28560

Public Hearing:

Date: September 23, 2010

Time: 7:00 p.m.

Location: Nash Community College, Brown Auditorium, 522 North Old Carriage Road, Rocky Mount, NC 27804

Reason for Proposed Action:

15A NCAC 10B .0203 – Open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service to include the Currituck National Wildlife Refuge.

15A NCAC 10B .0301 – Creates a trapping definitions section and, if approved, will result in renumbering the existing 15A NCAC 10B .0301 through 15A NCAC 10B .0304 to 15A NCAC 10B .0302 through 15A NCAC 10B .0305.

15A NCAC 10B .0304 – Sets out rules for Collarum™-type traps.

15A NCAC 10D .0102 – Removes trapping restriction on Cowan's Ford Waterfowl Refuge and designates use of "limited access roads" by motor vehicles.

15A NCAC 10D .0103 – Modifies dove season on Croatan Game Land, turkey hunting on North River Game Land, deer and bear hunting on Pond Mountain Game Land, and hunting on Cowan's Ford Waterfowl Refuge.

Procedure by which a person can object to the agency on a proposed rule:

Objections may be submitted in writing or via electronic mail during the comment period to C. Norman Young, Jr., NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001 or nyoung@ncdoj.gov.

Comments may be submitted to: Kate Pipkin, NC Wildlife Resources Commission, 1722 Mail Service Center, Raleigh, NC 27699-1722; phone (919) 707-0065; email kathryn.pipkin@ncwildlife.org

Comment period ends: October 1, 2010

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:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - HUNTING

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

(a) Open Seasons (All Lawful Weapons)

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

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties.

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

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

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

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

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

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

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

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

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph: (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in ~~that part~~ those parts of Currituck County known as the

- Currituck National Wildlife Refuge
and the Mackay Island National
Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe, *Haywood, Henderson, Madison and Transylvania counties** and the following parts of counties:
Avery: That part south of the Blue Ridge Parkway; and
Yancey: That part south of US 19 and US 19E.
*except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280
**see 15A NCAC 10D .0103 for deer of either sex seasons on game lands that differ from the days identified in this Subparagraph
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Burke, Caldwell, McDowell, Mitchell, Polk and the following parts of counties:
Avery: That part north of the Blue Ridge Parkway;
Yancey: That part north of US 19 and US 19E.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland and Rutherford counties.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln and Gaston counties and in the following parts of counties:
Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and
Henderson. That part east of NC 191 and north and west of NC 280.
- (b) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
- (C) Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland and Rutherford counties.

(D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(c) Open Seasons (Muzzle-Loading Rifles, Shotguns and Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms and bow and arrow during the following seasons:

- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.
- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.
*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
- (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.

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

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms and bow and arrow season in all other counties.
- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms and bow and arrow seasons.
- (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms and bow and arrow seasons.

(d) Open Season (Urban Season)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the state, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.
- (2) Participation. Cities that intend to participate in the urban season must send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee. Cities must also submit a map of the city's boundaries within which the urban season shall apply.
- (3) Restrictions:
 - (A) Dogs shall not be used for hunting deer during the urban season.
 - (B) It is unlawful to carry any type of firearm while hunting with a bow during the urban season.
 - (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) In and east of Vance, Franklin, Wake, Harnett, Moore and Richmond counties, the possession limit is six deer, up to four of which may be deer with visible antlers. In all other counties of

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

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

SECTION .0300 - TRAPPING

NOTE: If the following rule is adopted, the Wildlife Commission proposes to request renumbering of the existing 15A NCAC 10B .0301 through 15A NCAC 10B .0304 to 15A NCAC 10B .0302 through 15A NCAC 10B .0305.

15A NCAC 10B .0301 DEFINITIONS

As used in this Section, the following definitions shall apply:

- (1) "Breakaway device" means any device incorporated into a snare or snare component that allows the loop to break open, and an animal to escape completely free of the snare, when a specified amount of force is applied.
- (2) "Collarum™-type trap" means any power-activated snare that is designed to capture and restrain the animal by a cable around the neck.
- (3) "Leghold" and "foothold" mean any trap designed to hold an animal by the foot.

- (4) "Loop stop" means a device that is attached to the snare cable to prevent the loop from closing beyond a specified point.
- (5) "Power-activated" means snare on which the loop closure (speed or direction) is initiated or augmented by some type of powering device (e.g., a spring).
- (6) "Relaxing lock" means a snare lock that allows the snare loop to release constriction pressure on the captured animal when the cable is not taut.
- (7) "Snare" means any restraining device made from a cable and a locking mechanism.
- (8) "Steel-jaw" means any trap in which the jaw(s) are made of metal.

Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.6.

NOTE: If the proposed 15A NCAC 10B .0301 DEFINITIONS is adopted, the Wildlife Commission proposes to request renumbering of the existing 15A NCAC 10B .0301 through 15A NCAC 10B .0304 to 15A NCAC 10B .0302 through 15A NCAC 10B .0305. If renumbering is approved by OAH, this rule will be renumbered to 15 A NCAC 10B.0305.

15A NCAC 10B .0304 TRAPS

(a) A steel-jaw or leghold trap set on dry land with a solid anchor shall not have a chain longer than eight inches unless the chain is fitted with a shock-absorbing device with at least 40 pounds and no more than 75 pounds of pressure to stretch or compress the device.

(b) A Collarum™-type trap shall:

- (1) Have a cable that is 3/16th inch in diameter, a loop stop with a minimum loop diameter of three inches, a relaxing lock, and a breakaway device which requires the animal to apply a certain amount of force not to exceed 285 pounds of force.
- (2) Have a set capture loop no less than 10 inches and no greater than 12 inches in diameter.
- (3) Be equipped with at least one swivel device between the loop and the anchor.
- (4) Be staked in a manner that does not allow the animal or the restraint device to reach any part of a fence or reach rooted, woody vegetation greater than ½ inch in diameter.
- (5) Not be set using a drag or used with a kill pole.

Authority G.S. 113-134; 113-291.6.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the

landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

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

official Commission meeting for final determination.

- (7) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.

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

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, unless the device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule does not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. Furthermore, only shotguns with any size shot and archery equipment as defined in 15A NCAC 10B .0116 may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses. A field trial participant is defined as a Judge, Handler, Scout or Owner.

(2) Exceptions

- (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (B) The resident and nonresident sportsman's licenses include game lands use privileges.
- (C) Judges and nonresidents participating in field trials under the circumstances

set forth in Paragraph (e) of this Rule may do so without the game lands license.

- (D) On the game lands described in Rule .0103(e)(2) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident Handler, Scout or Owner participating therein may participate without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west

of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

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

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- ~~(5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;~~
- ~~(6)~~(5) on the Hunting Creek Swamp Waterfowl Refuge;
- ~~(7)~~(6) on the John's River Waterfowl Refuge in Burke County; and
- ~~(8)~~(7) on the Dupont State Forest Game Lands.

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

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon within 150 yards of any Game Lands building or designated Game Lands camping area, except where posted otherwise, or within 150 yards of any residence located on or adjacent to game lands, except no person shall discharge a firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

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

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or

(2) is a disabled sportsman as defined in Paragraph (k) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in Paragraph (n).

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

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

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

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

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

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

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

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

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

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

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

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

(q) Shooting Ranges. On state-owned game lands, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except

that activities which have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms shall be unloaded and cased when being transported to the shooting range while on Game Lands. No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(r) Limited-access Roads. Roads posted as "Limited-access Roads" are open to motorized vehicles from 6:00 a.m. to 9:00 p.m. only. These roads shall be posted with the opening and closing times.

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

15A NCAC 10D .0103 HUNTING ON GAME LANDS

- (a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.
- (b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.
- (c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated

herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

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

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

(g) Bear Sanctuaries. On Three Days per Week Areas and Six Days per Week Areas bears shall not be taken on lands designated and posted as bear sanctuaries except when

authorized by permit only elsewhere in this Chapter. Wild boar shall not be taken with the use of dogs on bear sanctuaries. Dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15 on bear sanctuaries in and west of the counties and parts of counties described in 15A NCAC 10B .0109.

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

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| <p>(1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.</p> <p>(2) Alligator River Game Land in Tyrrell County</p> <p>(A) Six Day per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.</p> <p>(3) Angola Bay Game Land in Duplin and Pender counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(4) Bachelor Bay Game Land in Bertie, Martin and Washington counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(5) Bertie County Game Land in Bertie County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(6) Bladen Lakes State Forest Game Land in Bladen County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.</p> | <p>(D) On the Singletary Lake Tract deer and bear may be taken only by still hunting.</p> <p>(E) Wild turkey hunting on the Singletary Lake Tract is by permit only.</p> <p>(F) Camping is restricted to Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.</p> <p>(7) Brinkleyville Game Land in Halifax County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable deer with visible antlers season.</p> <p>(C) Horseback riding is prohibited.</p> <p>(8) Brunswick County Game Land in Brunswick County</p> <p>(A) Hunting is by permit only.</p> <p>(B) The use of dogs for hunting deer is prohibited.</p> <p>(9) Buckhorn Game Land in Orange County</p> <p>(A) Hunting is by permit only.</p> <p>(B) Horseback riding is prohibited.</p> <p>(10) Buckridge Game Land in Tyrrell County.</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.</p> <p>(11) Buffalo Cove Game Land in Caldwell and Wilkes Counties</p> <p>(A) Six Days per Week Area</p> <p>(B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.</p> <p>(C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> |
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PROPOSED RULES

- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas, New Year's and Martin Luther King, Jr. Days and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
 - (D) Horseback riding is prohibited.
 - (E) Target shooting is prohibited
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
 - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
 - (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
 - (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (14) Buxton Woods Game Land in Dare County:
 - (A) Six Days per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (15) Cape Fear River Wetlands Game Land in Pender County
 - (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road and south of NC 210 to the Black River.
- (16) Carteret County Game Land in Carteret County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Thursday and Friday preceding the Central muzzle-loading season with any legal weapon by participants in the Disabled Sportsman Program who acquire special hunt permits.
 - (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
 - (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.

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- (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (18) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (20) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three days during the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
- (D) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.
- (23) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (24) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Dove hunting is by permit only for the first two open days ~~from opening day through the following Saturday of the first segment~~ of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (26) Currituck Banks Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.
- (C) Licensed hunting guides may accompany the permitted individual

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- or party provided the guides do not possess or use a firearm.
- (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) No hunting on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dover Bay Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (29) Dupont State Forest Game Lands in Henderson and Transylvania counties
 - (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
 - (C) Participants of the Disabled Sportsman Program who acquire special hunt permits may take deer of either sex with any legal weapon on the Saturday prior to the first segment of the season described in 15A NCAC 10B .0203(b)(1)(B).
- (30) Elk Knob Game Land in Watauga County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek and Hobucken.
- (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
- (F) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 to the end of February and April 1 to May 15 to individuals that possess a valid hunting opportunity permit.

- (35) Gull Rock Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
 - (D) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
 - (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (36) Harris Game Land in Chatham, Harnett and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds shall be prohibited.
 - (E) Wild turkey hunting is by permit only.
 - (F) Target shooting is prohibited.
- (37) Holly Shelter Game Land in Pender County
 - (A) Three Days per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (38) Hyco Game land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (40) Johns River Game Land in Burke County
 - (A) Hunting is by permit only.
 - (B) During permitted deer hunts deer of either-sex may be taken by permit holders.
 - (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31 except by lawful waterfowl hunting permit holders and only on those days written on the permits.

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- (D) The use or construction of permanent hunting blinds is prohibited.
- (41) Jordan Game Land in Chatham, Durham, Orange and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
 - (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season
 - (C) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
 - (A) Six Days per Week Area
 - (B) Use of centerfire rifles is prohibited.
 - (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season shall be prohibited.
 - (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.
- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
 - (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays;

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- Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (50) Mitchell River Game Land in Surry County
 - (D) Target shooting is prohibited.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (52) Needmore Game Land in Macon and Swain counties.
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (53) Neuse River Game Land in Craven County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (54) New Lake Game Land in Hyde and Tyrrell counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Nicholson Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) On Lake Upchurch, the following activities are prohibited:
 - (i) No person shall operate any vessel or vehicle powered by an internal combustion engine; and
 - (ii) Swimming.
- (56) North River Game Land in Camden and Currituck counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
 - ~~(D) Wild turkey hunting is by permit only on that portion in Camden County.~~
 - ~~(E)~~(D) Hunting on the posted waterfowl impoundment is by permit only.
- (57) Northwest River Marsh Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (58) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (D) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
 - (E) Target shooting is prohibited.
- (59) Perkins Game Land in Davie County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (60) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson,

- Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat.
- (D) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (61) Pond Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (D) Deer and bear hunting is by permit only.
- (62) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Rhodes Pond Game Land in Cumberland and Harnett counties
- (A) Hunting is by permit only.
- (B) Swimming is prohibited on the area.
- (64) Roanoke River Wetlands in Bertie, Halifax, Martin and Northampton counties
- (A) Hunting is by Permit only.
- (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
- (C) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (66) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (67) Rockfish Creek Game Land in Hoke County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
- (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (68) Rocky Run Game Land in Onslow County: Hunting is by permit only.
- (69) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter, and during the Deer With Visible Antlers season.

- (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program who acquire special hunt permits, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, raccoon and squirrel seasons indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
 - (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
 - (E) Wild turkey hunting is by permit only.
 - (F) Dove hunting on the field trial grounds is prohibited from the third Sunday in September through the remainder of the hunting season.
 - (G) Opossum, raccoon and squirrel (fox and gray) hunting on the field trial grounds is allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
 - (H) The following areas are permit-only for all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
 - (I) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
 - (J) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (D) Dogs shall only be trained on Mondays, Wednesdays and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
 - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (73) Second Creek Game Land in Rowan County-hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
- (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.

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- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
 - (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
- (A) Six-Day per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season
 - (C) Swimming in all lakes is prohibited.
 - (D) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
- (A) Hunting and trapping is by Permit only.
 - (B) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
 - (C) Entry is prohibited on scheduled hunt or trapping days except for:
 - (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program who acquire special hunt permits may also take either-sex deer with bow and arrow on the Saturday prior to the season described in 15A NCAC 10B .0203(b)(1)(B).
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a game lands license prior to horseback riding on this area.
 - (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
 - (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program who acquire special hunt permits may take deer of either sex with any legal weapon on the Saturday prior to the first segment

- of the bow and arrow season described in 15A NCAC 10B .0203(b)(1)(B).
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (85) Vance Game Land in Vance County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
- (i) Access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
- (ii) Hunting is by permit only; and
- (iii) The use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only
- (B) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.
- (i) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
 Bertie, Halifax and Martin counties-Roanoke River Wetlands
 Bertie County-Roanoke River National Wildlife Refuge
 Bladen County-Suggs Mill Pond Game Lands
 Burke County-John's River Waterfowl Refuge
 Dare County-Dare Game Lands (Those parts of bombing range posted against hunting)
 Dare County-Roanoke Sound Marshes Game Lands
 Davie-Hunting Creek Swamp Waterfowl Refuge
~~Gaston, Lincoln and Mecklenburg counties-Cowan's Ford Waterfowl Refuge~~
 Henderson and Transylvania counties-Dupont State Forest Game Lands
- (k) Free-ranging swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons, except in Cherokee, Clay, Graham, Jackson, Macon, and Swain counties. Dogs may not be used to hunt free-ranging swine except on game lands which allow the use of dogs for hunting deer or bear and during the applicable deer or bear season.
- (l) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where specifically prohibited in Paragraph (h) of this Rule.

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

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

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

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 10C .0205, .0211, .0305 and .0401.

Proposed Effective Date: August 1, 2011

Public Hearing:

Date: September 7, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 8, 2010

Time: 7:00 p.m.

Location: Central Carolina Community College, Pittsboro Campus Auditorium, 764 West Street, Pittsboro, NC 27312-8822

Public Hearing:

Date: September 9, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 14, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 15, 2010

Time: 7:00 p.m.

Location: Haywood Community College, Student Center Auditorium, 185 Freedlander Drive, Clyde, NC 28721

Public Hearing:

Date: September 16, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 21, 2010

Time: 7:00 p.m.

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

Public Hearing:

Date: September 22, 2010

Time: 7:00 p.m.

Location: Courthouse, 413 Middle Street, New Bern, NC 28560

Public Hearing:

Date: September 23, 2010

Time: 7:00 p.m.

Location: Nash Community College, Brown Auditorium, 522 North Old Carriage Road, Rocky Mount, NC 27804

Reason for Proposed Action:

15A NCAC 10C .0205 – Modifies some designations of "Public Mountain Trout Waters in Avery, Jackson, Macon, Madison, Mitchell, Surry, Watauga, and Wilkes counties.

15A NCAC 10C .0211 – Prohibits possession of "giant" crayfish species in the genus Cherax and any mussel in the family Dreissenidae.

15A NCAC 10C .0305 – Modifies creel and size limits in specified areas for black bass, gray trout and sea trout.

15A NCAC 10C .0401 – Specifies minimum size and creel limit for gray trout.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing or via electronic mail during the comment period to C. Norman Young, Jr., NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001 or nyoung@ncdoj.gov.

Comments may be submitted to: Christian Waters, NC Wildlife Resources Commission, 1721 Mail Service Center, Raleigh, NC 27699-1721; phone (919) 707-0223; email christian.waters@ncwildlife.org

Comment period ends: October 1, 2010

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:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

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

- (A) Alleghany County:
 - New River (not trout water)
 - Little River (Whitehead to McCann Dam)
 - Brush Creek (except where posted against trespass)
 - Big Pine Creek
 - (Big) Glade Creek
 - Bledsoe Creek

- Pine Swamp Creek
- South Fork New River (not trout water)
- Prather Creek
- Cranberry Creek
- Piney Fork
- Meadow Fork

- Yadkin River (not trout water)
- Roaring River (not trout water)
- East Prong Roaring River (that portion on Stone Mountain State Park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

- (B) Ashe County:
 - New River (not trout waters)
 - North Fork New River (Watauga County line to Sharp Dam)
 - Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River)
 - Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)
 - Big Laurel Creek
 - Three Top Creek (portion not on game lands)
 - South Fork New River (not trout waters)
 - Cranberry Creek (Alleghany County line to South Fork New River)
 - Nathans Creek
 - Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 - Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Roan Creek
 - Beaver Creek

- Pine Swamp Creek (all forks)
 - Old Fields Creek
 - Mill Creek (except where posted against trespass)
 - (C) Avery County:
 - Nolichucky River (not trout waters)
 - North Toe River (headwaters to Mitchell County line, except where posted against trespass)
 - Squirrel Creek
 - Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line, including portions of tributaries on game lands)
 - Wildcat Lake
 - Catawba River (not trout water)
 - Johns River (not trout water)
 - Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 - Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
 - Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 - Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 - Boyde Coffey Lake
 - Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
 - Milltimber Creek
 - (D) Buncombe County:
 - French Broad River (not trout water)
 - Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
 - Dillingham Creek (Corner Rock Creek to Ivy Creek)
 - Stony Creek
 - Corner Rock Creek (including tributaries, except Walker Branch)
 - Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
 - Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
 - Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)
 - Lake Powhatan
 - Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
 - Catawba River (Muddy Creek to the City of Morganton water intake dam) [Special Regulations apply. See Subparagraph (a)(7) of this Rule.]
 - South Fork Catawba River (not trout water)
 - Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
 - Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Johns River (not trout water)
 - Parks Creek (portion not on game lands not trout water)
 - Carroll Creek (game lands portion above SR 1405 including tributaries)
 - Linville River (portion within Linville Gorge Wilderness Area, including

PROPOSED RULES

- tributaries, and portion below Lake James powerhouse from upstream bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:
Catawba River (not trout water)
Johns River (not trout water)
Wilson Creek (game lands portion downstream of Lost Cove Creek to Brown Mountain Beach dam, except where posted against trespass) [Delayed Harvest Regulations apply to game lands portion between Lost Cove Creek and Phillips Branch. See Subparagraph (a)(5) of this Rule.)
Estes Mill Creek (not trout water)
Mulberry Creek (portion not on game lands not trout water)
Boone Fork [not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
Boone Fork Pond
Yadkin River (Happy Valley Ruritan Community Park to SR 1515)
Buffalo Creek (mouth of Joes Creek to McCloud Branch)
Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)
- (G) Cherokee County:
Hiwassee River (not trout water)
Shuler Creek (Joe Brown Highway (SR 1325) bridge to Tennessee line)
Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
Valley River (headwaters to US 19 business bridge in Murphy)
Hyatt Creek (including portions of tributaries on game lands)
- Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)
- (H) Clay County:
Hiwassee River (not trout water)
Fires Creek (foot bridge in the US Forest Service Fires Creek Picnic Area to SR 1300)
Tusquitee Creek (headwaters to lower SR 1300 bridge)
Nantahala River (not trout water)
Buck Creek (game land portion downstream of US 64 bridge)
- (I) Graham County:
Little Tennessee River (not trout water)
Calderwood Reservoir (Cheoah Dam to Tennessee State line)
Cheoah River (not trout water)
Yellow Creek
Santeetlah Reservoir (not trout water)
West
Buffalo Creek
Little
Buffalo Creek
Santeetlah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek)
(Big) Snowbird Creek (old railroad junction to SR 1127 bridge, including portions of tributaries on game lands)
Mountain Creek (game lands boundary to SR 1138 bridge)
Long
Creek (portion not on game lands)

- Tulula Creek (headwaters to lower bridge on SR 1275)
 Cheoah Reservoir
 Fontana Reservoir (not trout water)
 Stecoah Creek
 Panther Creek (including portions of tributaries on game lands)
- (J) Haywood County:
 Pigeon River (Stamey Cove Branch to upstream US 19-23 bridge)
 Cold Springs Creek (including portions of tributaries on game lands)
 Jonathan Creek (upstream SR 1302 bridge to Pigeon River, except where posted against trespass)
 Richland Creek (Russ Avenue (US 276) bridge to US 23-74 bridge)
 West Fork Pigeon River (Tom Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
 (Rocky) Broad River (Rocky River Lane to Rutherford County line)
 Green River - upper (mouth of Joe Creek to mouth of Bobs Creek)
 Green River - lower (Lake Summit Dam to I-26 bridge)
 (Big) Hungry River
 Little Hungry River
 French Broad River (not trout water)
 Cane Creek (SR 1551 bridge to US 25 bridge)
 Mud Creek (not trout water)
 Clear Creek (SR 1591 bridge at Jack Mountain Lane to SR 1582)
 Mills River (not trout water)
 North Fork Mills River (game lands portion below the Hendersonville watershed dam). [Delayed Harvest Regulations apply.
- (L) Jackson County:
 Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between the downstream NC 107 bridge at Love Field and the Dillsboro dam. US 23-441 bridge. See Subparagraph (a)(5) of this Rule.]
 Scott Creek (entire stream, except where posted against trespass)
 Dark Ridge Creek (Jones Creek to Scotts Creek)
 Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
 Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
 Cullowhee Creek (Tilley Creek to Tuckasegee River)
 Bear Creek Lake
 Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Wolf Creek Lake
 Balsam Lake
 Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Tanasee Creek Lake
- (M) Macon County:
 Little Tennessee River (not trout water)
 Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]
 Queens Creek Lake
 Burningtown Creek (including portions of tributaries on game lands)
 Cullasaja River Sequoyah Dam to US 64 bridge near junction of SR 1672, including portions of

tributaries on game lands, excluding those portions of Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]

~~Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)~~
Skitty Creek

Cliffside Lake

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

(N) Madison County:

French Broad River (not trout water)

Shut-In Creek (including portions of tributaries on game lands)

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

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

Meadow Fork Creek

Roaring Fork (including portions of tributaries on game lands)

Little Creek

Max Patch Pond

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

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

Spillcorn Creek (entire stream, excluding tributaries)

Shelton Laurel Creek (confluence of Big

Creek and Mill Creek to NC 208 bridge at Belva) Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Mill Creek (headwaters to confluence with Big Creek)

Puncheon Fork (Hampton Creek to Big Laurel Creek)

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

Ivy Creek (not trout waters) Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)

(O) McDowell County:

Catawba River (Catawba Falls Campground to Old Fort Recreation Park)

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

Little Buck Creek (game land portion including portions of tributaries on game lands)

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

North Fork Catawba River (headwaters to SR 1569 bridge)

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

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

(P) Mitchell County:

Nolichucky River (not trout water)

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

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

Cane Creek (SR 1219 to NC 226 bridge)

Cane Creek (NC 226 bridge to NC 80 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Grassy Creek (East Fork Grassy Creek to mouth)

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

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

(Q) Polk County:

Broad River (not trout water)

North Pacolet River (Joels Creek to NC 108 bridge)

Green River (Fishtop Falls Access Area to the natural gas pipeline crossing) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph (a)(5) of this Rule.]

(R) Rutherford County:

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

(S) Stokes County:

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

(T) Surry County:

Yadkin River (not trout water)

Ararat River (SR 1727 bridge downstream to the NC 103 bridge)

Ararat River (NC 103 bridge to US 52 bridge) [Delayed

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

Stewarts Creek (not trout water)

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

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

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

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

(U) Swain County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah Reservoir

Fontana Reservoir (not trout water)

Alarka Creek (game lands boundary to Fontana Reservoir)

Nantahala River (Macon County line to existing Fontana Reservoir water level)

Tuckasegee River (not trout water)

Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)

Connelly Creek (including portions of tributaries on game lands)

(V) Transylvania County:

French Broad River (junction of west and north forks to US 276 bridge)

- Davidson River (Avery Creek to lower US Forest Service boundary line)
 East Fork French Broad River (Glady Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Little River (confluence of Lake Dense outflow to 100 yards downstream of Hooker Falls) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Fork French Broad River
 West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
 New River (not trout waters)
 North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
 Maine Branch (headwaters to North Fork New River)
 South New Fork River (not trout water)
 Meat Camp Creek
 Norris Fork Creek
 Howard Creek (downstream from lower falls)
 Middle Fork New River (Lake Chetola Dam to South Fork New River)
 Yadkin River (not trout water)
 Stony Fork (headwaters to Wilkes County line)
 Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 Watauga River (adjacent to the intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (X) Wilkes County:
 Yadkin River (not trout water)
 Roaring River (not trout water)
 East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]
 Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Prong Roaring River (headwaters to second bridge on SR 1736)
 Bell Branch Pond
 Boundary Line Pond
 West Prong Roaring River (not trout waters)
 Pike Creek
 Pike Creek Pond
 Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)
 Reddies River (Town of North Wilkesboro water intake dam to confluence

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

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

South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)

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

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

Lewis Fork Creek (not trout water)

South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)

Fall Creek (except portions posted against trespass)

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

(Y) Yancey County:

Nolichucky River (not trout water)

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

Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)

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

North Toe River (not trout water)

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

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

(A) Alleghany County:
Big Sandy Creek (portion on Stone Mountain State Park)

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

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

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

(C) Avery County:
Birchfield Creek (entire stream)
Cow Camp Creek (entire stream)
Cranberry Creek (headwaters to US 19E/NC 194 bridge)

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

Gragg Prong (entire stream)
Horse Creek (entire stream)
Jones Creek (entire stream)
Kentucky Creek (entire stream)
North Harper Creek (entire stream)
Plumtree Creek (entire stream)
Roaring Creek (entire stream)
Rockhouse Creek (entire stream)
South Harper Creek (entire stream)
Webb Prong (entire stream)
Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]

(D) Buncombe County:

- (E) Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Burke County:
 All waters located on South Mountain State Park, except the main stream of Jacob Fork
 Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
- (F) Nettle Branch (game land portion)
 Caldwell County:
 Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
 Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
 Rockhouse Creek (entire stream)
- (G) Cherokee County:
 Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:
 Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Little Buffalo Creek (entire stream)
 South Fork Squally Creek (entire stream)
 Squally Creek (entire stream)
- (I) Haywood County
 Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]
 Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters
- (J) Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Jackson County:
 Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Gage Creek (entire stream)
 North Fork Scott Creek (entire stream)
 Shoal Creek (Glennville Reservoir pipeline to mouth) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Tanasee Creek (entire stream)
 West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glennville Lake) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (K) Madison County:
 Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (L) Mitchell County:
 Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
 Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
 Wiles Creek (game land boundary to mouth)
- (M) Transylvania County:
 All waters located on Gorges State Park
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (N) Watauga County:
 Dugger Creek (portions on ~~Laurel~~ Reynolds Blue Ridge development, including tributaries. Anglers must check in at ~~Laurel~~ the development security office on Triplett Rd. prior to fishing) [Catch and Release/Artificial Lure Only

- Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Dutch Creek (headwaters to second bridge on SR 1134)
 Howards Creek (headwaters to lower falls)
 Laurel Creek (portions on ~~Laurel~~ Reynolds Blue Ridge development, including tributaries. Anglers must check in at ~~Laurel~~ the development security office on Triplett Rd. prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Watauga River (Avery County line to steel bridge at Riverside Farm Road)
 Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)
- (O) Wilkes County:
 Big Sandy Creek (portion on Stone Mountain State Park)
 Dugger Creek (portions on ~~Laurel~~ Reynolds Blue Ridge development, including tributaries. Anglers must check in at ~~Laurel~~ the development security office on Triplett Rd. prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Garden Creek (portion on Stone Mountain State Park)
 Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
 Widow Creek (portion on Stone Mountain State Park)
- (P) Yancey County:
 Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)
 Lickskillet Creek (entire stream)
 Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
 Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
 Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
 Wilson Creek (game land portion)
- (C) Buncombe County:
 Carter Creek (game land portion)
- (D) Burke County:
 Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
 Flat Creek
 Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
 Newberry Creek (game land portion)
- (G) Watauga County:
 Dugger Creek (portions on ~~Laurel~~ Reynolds Blue Ridge development, including tributaries. Anglers must check in at ~~Laurel~~ the development security office on Triplett Rd. prior to fishing)
 Laurel Creek (portions on ~~Laurel~~ Reynolds Blue Ridge development, including tributaries. Anglers must check in at ~~Laurel~~ the development security office on Triplett Rd. prior to fishing)
Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake)
- (H) Wilkes County:
 Dugger Creek (portions on ~~Laurel~~ Reynolds Blue Ridge development, including tributaries. Anglers must check in at ~~Laurel~~ the development security office on Triplett Rd. prior to fishing)
 Harris Creek (portion on Stone Mountain State Park)
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and

- Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (headwaters to Upper Creek, including tributaries)
Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
- (B) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Caldwell County:
Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)
- (D) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (E) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (F) Jackson County:
Tuckasegee River (downstream NC 107 bridge at Love Field Downstream to the Dillsboro dam) to the US 23-441 bridge.)
- (G) Macon County:
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- (H) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)
- (I) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
Mill Creek (US70 bridge to I 40 bridge)
- (J) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)
North Toe River (US 19E bridge to NC 226 bridge)
- (K) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (L) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
Ararat River (NC 103 bridge to US 52 bridge)
- (M) Transylvania County:
East Fork French Broad River (Gladly Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (N) Watauga County:
Watauga River (adjacent to intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)
Coffee Lake
- (O) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State

- Park lower boundary)
 - Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
 - Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)
 - Elk Creek (portion on Leatherwood Mountains development)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].
 - (A) Cherokee County:
 - Bald Creek (game land portions)
 - Dockery Creek (game land portions)
 - North Shoal Creek (game land portions)
 - (B) Graham County:
 - Deep Creek
 - Long Creek (game land portion)
 - Franks Creek
 - (C) Haywood County:
 - Hemphill Creek (including tributaries)
 - Hurricane Creek (including portions of tributaries on game lands)
 - (D) Jackson County:
 - Buff Creek
 - Chattooga River (SR 1100 bridge to South Carolina state line)
 - (lower) Fowler Creek (game land portion)
 - Scotsman Creek (game land portion)
 - Shoal Creek (Glennville Reservoir pipeline to mouth)
 - West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glennville Lake)
 - (E) Macon County:
 - Chattooga River (SR 1100 bridge to South Carolina state line)
 - Jarrett Creek (game land portion)
 - Kimsey Creek
 - Overflow Creek (game land portion)
 - Park Creek
 - Tellico Creek (game land portion)
 - Turtle Pond Creek (game land portion)
 - (F) Madison County:
 - Big Creek (headwaters to the lower game land boundary, including tributaries)
 - (G) Transylvania County:
 - North Fork French Broad River (game land portions downstream of SR 1326)
 - Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)
- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:
 - Burke County
 - Catawba River (Muddy Creek to City of Morganton water intake dam).
 - Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length; no bait restrictions; no closed season.
 - (b) Fishing in Trout Waters
 - (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].
 - (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.
 - (A) Open Season. There is a year round open season for the licensed taking of trout.
 - (B) Creel Limit. The daily creel limit is four trout.
 - (C) Size Limit. The minimum size limit is seven inches.
 - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout

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- waters except those waters listed in 15A NCAC 10C .0205(a)(6).
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

(Melanooides tuberculatus), virile crayfish (Orconectes (Gremicambarus) virilis), rusty crayfish (Orconectes (Procericambarus) rusticus), Australian red claw crayfish or "red claw" (Cherax quadricarinatus, or other species of "giant" crayfish species in the genus Cherax), white amur or "grass carp" (Ctenopharyngodon idella), swamp or "rice" eel (Monopterus albus), red shiner (Cyprinella lutrensis), or zebra mussel (Dreissena polymorpha) or quagga mussel (Dreissena rostriformis bugensis) or any mussel in the family Dreissenidae, or to stock any of them in the public or private waters of North Carolina.

(b) A person may buy, possess or stock triploid grass carp only for the purpose of controlling aquatic vegetation under a permit issued by the Executive Director when the director determines that conditions of such possession or stocking provide minimal probability of escape and threat to sensitive aquatic habitat and that the carp is certified to be sterile by genetic testing at a federal, state, or university laboratory.

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

15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES

(a) It is unlawful to transport, purchase, possess, or sell any live individuals of piranha, "walking catfish" (Clarias batrachus), snakehead fish (from the Family Channidae, formerly Ophiocephalidae), black carp (Mylopharyngodon piceus), rudd (Scardinius erythrophthalmus), round goby (Neogobius melanostomus), tubenose goby (Proterorhinus marmoratus), ruffe (Gymnocephalus cernuus), Japanese mysterysnail (Cipangopaludina japonica), Chinese mysterysnail (Cipangopaludina chinensis malleata), red-rim melania

Authority G.S. 113-134; 113-274(c)(1c); 113-292.

SECTION .0300 - GAME FISH

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	1	42 in.	ALL YEAR
Pickeral: Chain and Redfin	None	None	ALL YEAR
Walleye	8 (exc. (9))	None (exc. (9))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5 (exc. (21))	14 in. (exc. (8,10)) (8,10&21)	ALL YEAR (exc. (17))
Smallmouth and Spotted	5 (exc.(21))	12 in. (exc. (8,10&21))	ALL YEAR
Roanoke and Rock Bass	None (exc. (24))	None (exc. (24))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 14 in.	ALL YEAR
Flounder	8	14 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. (19))	ALL YEAR

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Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1,2,5,6,11,&13)	16 in. (excs.1,2,5,6,11&13)	ALL YEAR (excs. 6,13&15)
Shad: (American and hickory)	10 aggregate (exc. (22))	None	ALL YEAR (exc. (18))
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish	None (excs. 4,12&16)	None (exc.(12))	ALL YEAR (exc. (4))
NONGAME FISHES	None (excs. 14,20&23 <u>14,20,23&25</u>)	None (excs. 14,20&23 <u>14,20,23&25</u>)	ALL YEAR (exc. (7))

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam and in John H. Kerr Reservoir the creel limit on striped bass and Morone hybrids is two in the aggregate and the minimum size limit is 26 inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone hybrids is four in aggregate with no minimum size limit.
- (2) In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in B. Everett Jordan Reservoir the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake Gaston and Roanoke Rapids Reservoir the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 20 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30.
- (3) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its

tributaries, and in all other inland fishing waters east of Interstate 95, subject to the exceptions listed in this Paragraph, the daily creel limit for striped bass and their hybrids is two fish in aggregate. The minimum length limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed. In these waters, the season for taking and possessing striped bass is closed from May 1 through September 30. In the inland fishing waters of the Cape Fear River and its tributaries, the season for taking and possessing striped bass is closed year-round. In the Pee Dee River and its tributaries from the South Carolina line upstream to Blewett Falls Dam, the season for taking and possessing striped bass and their hybrids is open year-round, the daily creel limit is three fish in aggregate and the minimum length limit is 18 inches.

- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in

Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, Lake Raleigh in Wake County, Randleman Reservoir in Randolph and Guilford counties, Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95 (except Tar River Reservoir in Nash County), South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed. In Lake Norman the minimum size limit for black bass is 14 inches.

- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir and in the Roanoke River and its tributaries downstream of Roanoke Rapids dam and in the Cashie, Middle, and Eastmost rivers and their tributaries. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: all public waters west of Interstate 77, South Yadkin

River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and Roanoke River and tributaries below Roanoke Rapids dam, as listed above. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.

- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) Size and creel limits on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.

- (17) In Sutton Lake, no largemouth bass shall be possessed from December 1 through March 31.
- (18) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be possessed.
- (20) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other inland fishing waters east of Interstate 95.
- (21) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) no ~~smallmouth-black~~ bass between 14 and 20 inches in length shall be possessed and only one ~~smallmouth black~~ bass greater than 20 inches may be possessed in the daily creel limit. No minimum size limit applies to ~~smallmouth black~~ bass less than 14 inches in length in this section of New River.
- (22) In the inland waters of Roanoke River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad. In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American shad may be possessed.
- (23) In Lake Norman and Badin Lake the daily creel limit for blue catfish greater than 32 inches in length is one fish.
- (24) In all public fishing waters east of Interstate 77, the minimum length for Roanoke and rock bass is 8 inches and the daily creel limit is two fish in aggregate.
- (25) In inland fishing waters the minimum length for gray trout (weakfish) is 12 inches and the daily creel limit is one fish.

grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.
- (2) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, and in all other inland fishing waters east of Interstate 95.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir and Lake Wylie, except that one fish per day may be taken by bow and arrow.
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
- (6) The minimum size limit for gray trout (weakfish) is 12 inches and the daily creel limit is one fish.

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

(c) Nongame fishes, except alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties), blue crab, and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Eels less than six inches in length may not be taken from inland waters for any purpose.

(d) Freshwater mussels, including the Asiatic clam (Corbicula fluminea), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It is unlawful to possess more than 200 freshwater mussels.

(e) Size and creel limits as set in this Rule on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.

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

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

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

SECTION .0400 - NONGAME FISH

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

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or

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 .0313, 0329 and .0348.

Proposed Effective Date: December 1, 2010

Public Hearing:

Date: September 14, 2010

Time: 10:00 a.m.

Location: 5th Floor, NC Wildlife Resources Commission, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action:

15A NCAC 10F .0313, .0329, .0348 – To add "no-wake" zones in Person, Rowan and Hyde counties at the request of local governments.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing or via electronic mail during the comment period to C. Norman Young, Jr., NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001 or nyoung@ncdoj.gov.

Comments may be submitted to: Betsy Foard, NC Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701; phone (919) 707-0013; email betsy.foard@ncwildlife.org

Comment period ends: October 1, 2010

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: A copy of the fiscal note can be obtained from the agency.

- State 15A NCAC 10F .0313, .0348
Local
Substantial Economic Impact (>=\$3,000,000)
None 15A NCAC 10F .0329

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0313 HYDE COUNTY

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

- (1) Swan Quarter Canal near the Town of Swan Quarter beginning at its entrance at Marker #10 in Pamlico Sound and extending the entire length of the canal;
(2) Carawan Canal near the Town of Swan Quarter beginning at its entrance located 440 yards North by Northeast from Marker #7 off Long Point in Pamlico Sound and extending the entire length of the canal;
(3) The waters within 50 yards of all public boat launching areas providing access to Pamlico Sound;
(4) Far Creek near the Town of Engelhard beginning at its entrance at Marker #10 in Pamlico Sound and extending the entire length of the canal;
(5) Fodrey Canal. That portion of Fodrey Canal beginning at its entrance at the number 3 beacon and extending inland for a distance of 300 yards;
(6) Silver Lake in Okracoke. Harbor-wide. Harbor-wide; and
(7) The entire waters of the Hydeland Canal beginning at the Hydeland Canal Access Area (35.42131N, 76.20915W) and ending at the end of SR 1122 (35.40873N, 76.21185W).

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

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

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

15A NCAC 10F .0329 ROWAN COUNTY

(a) Regulated Areas. This Rule applies only to those portions of High Rock Lake and Tuckertown Lake which lie within the boundaries of Rowan County.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive

Director, or his representative, on the regulated areas described in Paragraph (a) of this Rule.

(d) Speed Limit in Specific Zones. No person shall operate a vessel at greater than no-wake speed within 50 yards of the following locations on the regulated areas described in Paragraph (a) of this Rule:

- (1) Tamarac Marina on Dutch Second Creek;
- (2) ~~oove~~ The Cove on the west side of Dutch Second Creek south of Tamarac Marina off Poole Road;
- (3) I-85 bridge at Yadkin River;
- (4) Goodman Lake Road Bridge at Crane Creek;
- (5) Bringle Ferry Road Bridge at Dutch Second Creek;
- (6) Stokes Ferry Road Bridge at Riles Creek; ~~and~~
- (7) Highway 49 bridge at Tuckertown ~~Lake~~; Lake; and
- (8) The Rowan Shrine Club dock.

(e) 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 waters of the regulated areas described in Paragraph (a) of this Rule.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Rowan County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

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

15A NCAC 10F .0348 PERSON COUNTY

(a) Regulated Area. This Rule applies to the Mayo Electric Generating Plant Reservoir, otherwise known as Mayo Reservoir, which is located in Person County.

(b) Restricted Zones. Except for authorized personnel of the power company, no person shall operate a motorboat or vessel in any restricted zone which is marked to prevent entry by boats.

(c) Mast Height. No person shall place or operate on the regulated area described in Paragraph (a) of this Rule any sailboat or other vessel having a mast or any superstructure extending vertically above water level a distance of 35 feet or more.

(d) Speed Limit. Except as provided in Paragraph (e) of this Rule, no person shall operate a vessel at greater than no-wake speed within 50 yards of any marked bridge, boat launching ramp, pier, boat storage structure, or boat service area on the regulated area described in Paragraph (a) of this Rule.

(e) Skiing. Except to leave or return to the shore or a boat launching ramp, no skiing is permitted within any speed zone described in Paragraph (d) of this Rule. In leaving or returning to the shore or boat ramp, all vessels pulling skiers shall be operated on a course perpendicular to the shore line. Upon

dropping skiers within any such speed zone, the boat speed shall be reduced to no-wake speed.

(f) Swimming Areas. No person shall operate any vessel or water skis within a marked public swimming area.

(g) Boating Access. No vessel shall be placed on the regulated area described in Paragraph (a) of this Rule from any point other than the boat launching ramp provided on SR 1515.

(h) No Wake Zone. No person shall operate a vessel at greater than no wake speed within 50 yards of the following location:

The waters of the channel on Mayo Reservoir beginning north of the Triple Springs Boating Access Area, shore to shore from 36.48051N; 78.87763W to 36.47994N, 78.87963W, southward ending at an area below the Mayo Park ADA Fishing Pier shore to shore from 36.47753N; 78.87681W to 36.4772N; 78.87828W.

~~(h)~~(i) Placement and Maintenance of Markers. The Board of Commissioners of Person County is designated a suitable agency for placement and maintenance of markers implementing this Rule. Provided the said board exercises its supervisory responsibility, it may delegate the actual placement and maintenance to some other responsible agency, corporation, group or individual. With regard to marking the regulated area described in Paragraph (a) of this Rule, the supplementary standards set forth in Rule .0301(g) of this Section shall apply.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rules cited as 15A NCAC 13A .0108 and .0116-.0117.

Proposed Effective Date: January 1, 2011

Public Hearing:

Date: August 17, 2010

Time: 1:00 p.m. – 3:00 p.m.

Location: 401 Oberlin Road, Conference Rooms 1 and 2, Raleigh, NC 27605

Reason for Proposed Action:

15A NCAC 13A .0108 – As required by Section 1.8(d) of Session Law 2007-107 House Bill 36, the Department of Environment and Natural Resources Division of Waste Management has studied the need for further regulation of hazardous waste transfer facilities, as defined in G.S. 130A-290(a)(13a). The proposed amendments to Rule .0108(a)(1) incorporate existing requirements from G.S. 130-295.05 for registration, notification, and records retention. The proposed amendments to Rule .0108(a)(1) and (2) incorporate requirements for emergency preparedness and prevention, container management, records, inspections, security, emergency procedures, and additional emergency notification requirements as recommended based on results of the study required by House Bill 36, adopted as Session Law 2007-107.

15A NCAC 13A .0116 – The North Carolina Legislaturer's Session Law 2007-107, [House Bill 36] signed June 26, 2007, required in Section 1.5(b) the addition of a factor for

determining inspection frequency at "Special Purpose Commercial Hazardous Waste Facilities." The additional Factor concerns the increase or decrease in "Sensitive Land Use" in the area surrounding these facilities. The benefits of this rule change as directed by the Legislature would afford greater scrutiny and oversight of North Carolina's special purpose commercial hazardous waste treatment, storage or disposal facilities and thus provide an increased protection for the citizens of North Carolina.

15A NCAC 13A .0117 – The stated changes to Rule .0116 require Rule .0117 to be amended to include categories 4 and 5 and the corresponding fees. The increase in fees as required by G.S. 130A-295.02(h), which states, in part, "The Department shall establish and revise as necessary a schedule of fees to be assessed on the users of each such facility to recover the actual cost of the resident inspector program at that facility" and therefore requires Rule .0117 to be amended by a 50 percent increase in fees to recover "the actual cost of the resident inspector program."

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing by contacting: Elizabeth W. Cannon, Chief, Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646. Written objections to the proposed text of the rules published in the North Carolina Register shall be specific. All comments and written exceptions for or against the proposed text of the rules will be considered.

Comments may be submitted to: Elizabeth W. Cannon, Chief, Hazardous Waste Section, 401 Oberlin Road, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 508-8534; fax (919) 715-3605; email Elizabeth.Cannon@ncdenr.gov

Comment period ends: October 1, 2010

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: A copy of the fiscal note can be obtained from the agency.

- State** 15A NCAC 13A .0108, .0117
- Local**
- Substantial Economic Impact** (≥\$3,000,000)

None 15A NCAC 13A .0116

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

SECTION .0100 - HAZARDOUS WASTE

15A NCAC 13A .0108 STDS APPLICABLE TO HAZARDOUS WASTE TRANSPORTERS AND TRANSFER FACILITIES – PART 263

(a) 40 CFR 263.10 through 263.12 (Subpart A), "General", are incorporated by reference including subsequent amendments and ~~editions~~–editions, except that 40 CFR 263.12 is not incorporated by reference. The following provisions are substituted for 263.12:

- (1) A transfer facility used for storage of hazardous waste for more than 24 hours but 10 days or less shall comply with (a)(2) through (a)(12) all as adopted by reference in 15A NCAC 13A .0110, except where otherwise noted.
- (2) The owner or operator of a transfer facility which stores manifested shipments of hazardous waste for more than 24 hours but 10 days or less shall notify the Department on the RCRA Subtitle C Site Identification Form (EPA 8700-12). The owner or operator of a new facility shall submit a notification form at least 30 days before the storage of hazardous waste is to begin. The transfer facility shall update the information on the EPA 8700-12 form annually and when changes occur and send it to the Department.
- (3) Prior to receiving hazardous waste in North Carolina the owner or operator of a transfer facility shall obtain an EPA Identification number for each transfer facility location. Any owner or operator who has not obtained an EPA Identification number for each transfer facility location may obtain one by applying to the Department using the EPA 8700-12 form.
- (4) The owner or operator of the transfer facility shall comply with the requirements of 40 CFR Part 265 (Subpart C), "Preparedness and Prevention", and (Subpart I), "Use and Management of Containers", except the aisle space requirements described in 15A NCAC 13A .0110(c) and the special requirements for incompatible wastes described in 40 CFR 265.177(c) as adopted by reference in 15A NCAC 13A .0110 do not apply at transfer facilities to containers stored in trucks or trailers loaded in accordance with DOT

- regulations described in 40 CFR 263.10 as adopted by reference in 15A NCAC 13A .0108.
- (5) The owner or operator of the transfer facility shall ensure that the facility will be closed in a manner which satisfies the requirements of the closure performance and decontamination standards of 40 CFR 265.111, and 265.114 as adopted by reference in 15A NCAC 13A .0110. The transfer facility shall notify the Department prior to closure using the comment section of the notification form 8700-12.
- (6) Records required in Subparagraph (a)(7) of this Rule shall be maintained and shall be available for inspection by the Department. A transfer facility shall retain all records, logs, or documents required for a period of three years. The retention period shall be extended during the course of any unresolved enforcement action regarding the regulated activity.
- (7) The owner or operator of a transfer facility shall maintain a written or electronic record of when all hazardous waste enters and leaves the facility. This record shall include the generator's name, the generator's EPA identification number, and the manifest number. For conditionally exempt small quantity generators without an EPA identification number, the record shall include the name and address of the generator. This recordkeeping requirement applies to all hazardous wastes including hazardous waste generated by CESQGs. The owner or operator of a transfer facility shall also maintain a written or electronic record of the weekly inspection of the areas where containers are stored and the results of the inspection, including any evidence of container failure, the condition of secondary containment (if applicable), and remediation, correcting any problems noted.
- (8) The owner or operator of a transfer facility shall comply with the security requirements of 40 CFR 265.14 as adopted by reference in 15A NCAC 13A .0110.
- (9) The owner or operator of a transfer facility shall comply with the emergency procedure requirements of 40 CFR 262.34(d)(5) as adopted by reference in 15A NCAC 13A .0107 in the event of a release, fire or explosion, which could threaten human health or the environment.
- (10) If any of the following events occur, a transfer facility operator shall notify by verbal communication the North Carolina Division of Waste Management (DWM) Hazardous Waste Section (919) 508-8400 within 72 hours and a written report shall be submitted within 15 days that includes the information required in Subparagraph (a)(12) of this Rule:
- (A) A spill or discharge of hazardous waste at a transfer facility that exceeds 25 gallons or 10 pounds, or 2.2 pounds of an acutely hazardous waste as listed in 40 CFR 261 (Subpart D) as adopted in 15A NCAC 13A .0106; or
- (B) A fire or explosion.
- (11) Verbal communication within 72 hours is not required if both of the following conditions are met:
- (A) The release is confined and expected to stay within a building or an otherwise wholly enclosed structure owned by the responsible party, in which the floors and walls are of non-earthen materials which are impervious to the release substance(s); and
- (B) The release is cleaned up within 24 hours of discovery.
- (12) Within 15 days of a reportable incident, the facility must submit a written report of the incident to the Hazardous Waste Section, 1646 Mail Service Center, 401 Oberlin Rd., Suite 150, Raleigh, N.C. 27699-1646 detailing the following information:
- (A) Facility location;
- (B) Date, time and duration of the release;
- (C) Description and quantity of the hazardous waste (including EPA codes and common names);
- (D) Cause and method of the discharge, spillage, or release;
- (E) Description and extent of area impacted by the release, including any persons or wildlife injured or areas of distressed vegetation;
- (F) Remedial action taken and disposition of waste collected during the cleanup; and
- (G) Name, title and mailing address of the person submitting the report.
- (b) 40 CFR 263.20 through 263.22 (Subpart B), "Compliance With the Manifest System and Record keeping", are incorporated by reference including subsequent amendments and editions.
- (c) Upon discovering a significant manifest discrepancy, the transporter or owner/operator of a transfer facility must attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter or owner/operator of a transfer facility must immediately submit to the Department a letter describing the discrepancy and attempts

to reconcile it with a copy of the manifest or shipping paper at issue.

(d) For the purposes of this Rule, Manifest manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity are:

- (1) for bulk waste, variations greater than 10 percent in weight; ~~and, and~~
- (2) for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload).

Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).

(e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges", are incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c); 150B-21.6.

15A NCAC 13A .0116 SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITY

(a) The Department shall evaluate all commercial hazardous waste facilities to determine a score for each facility in accordance with Paragraph (c) of this Rule.

(b) A commercial hazardous waste facility (other than an incinerator or a land disposal facility) with a volume of waste of 20,000 tons or less per year of hazardous waste and having a total score pursuant to Paragraph (c) of this Rule ~~of less than 33~~ of equal to or less than 40 is designated as a special purpose commercial hazardous waste facility. These facilities shall be classified as follows:

<u>Total Score</u>	<u>Category</u>
1-13 <u>1-11</u>	1
14-22 <u>Greater than 11-18</u>	2
23-32 <u>Greater than 18-25</u>	3
<u>Greater than 25-32</u>	4
<u>Greater than 32-40</u>	5

(c) A score for each facility shall be determined by adding the total score for Paragraphs (d) through (k) ~~Subparagraphs (e)(1) - (e)(7)~~ of this Rule and subtracting the score for Paragraph (l) ~~Subparagraph (e)(8)~~ of this Rule.

~~(d)(1)~~ (d) A score shall be assigned for size ~~smallness~~ of the facility by adding the applicable score for storage and the applicable score for treatment using Table 1.

TABLE 1

<u>Size of Facility</u>	<u>Constructed Capacity</u>	<u>Score</u>
Smallness of Facility	Constructed Capacity	Score
Storage:	<10,000 <u>Less than 10,000</u>	1
(gallons)	10,000-100,000	2
	>100,000 <u>Greater than 100,000</u>	3
Treatment:	<10,000 <u>Less than 10,000</u>	1
(gallons	10,000-100,000	2
per day)	>100,000 <u>Greater than 100,000</u>	3

~~(e)(2)~~ (e) A score shall be assigned for type of treatment permitted by adding the score for each type of treatment being performed by the facility using Table 2.

TABLE 2

<u>Type of Treatment Being Performed</u>	<u>Score</u>
Storage Only	1
Solvent Recovery	2
Metal Recovery	2
Energy Recovery	2
Fuel Blending	2
Aqueous Treatment	3
Stabilization	2
Incineration	5
Residuals Management	5
Other Treatment	2

PROPOSED RULES

(f)(3) A score shall be assigned for the nature of hazardous waste being treated or stored by adding the score for ~~acute waste, if acute waste totals more than 1,000 pounds, and the score for each other type of hazardous waste that constitutes ten percent or more of the total hazardous waste handled by the facility,~~ each type of waste managed at the facility using Table 3. However, if the facility is permitted for storage only and no treatment is performed, the score for the nature of hazardous waste shall be reduced by one-half for each hazardous waste stream stored only.

TABLE 3

<u>Nature of Hazardous Waste</u> (from Annual Report <u>(from Annual Report as listed in the Permit)</u>	<u>Score</u> <u>Score</u>
Corrosive	1
Ignitable	2
Reactive	3
Reactive	2
Toxicity Characteristic	2
Listed Toxic	2
Acute	3

(g) (4)-A score shall be assigned for volume of hazardous waste by using the applicable score in Table 4.

TABLE 4

<u>Volume of Waste (Tons from Annual Report)</u>	<u>Score</u>
<2,000 <u>Less than 2,000</u>	1
2,000-10,000	2
10,000-20,000	3

(h)(5) A score shall be assigned for uniformity, similarity and lack of diversity of waste streams by using the applicable score in Table 5.

TABLE 5

<u>Uniformity, Similarity, Lack of Diversity of</u> <u>Waste Streams (Number of EPA Waste Codes)</u> <u>As Listed in the Permit</u>	<u>Score</u>
Uniformity, Similarity, Lack of Diversity of Waste Streams (EPA Waste Numbers) From Annual Report	Score
<5 <u>Less than 5</u>	1
5-75	2
<u>>75 Greater than 75</u>	3

(i)(6) A score shall be assigned for predictability and treatability of site specific waste streams by using the applicable score in Table 6.

TABLE 6

<u>Predictability and Treatability of Waste Streams</u>	<u>Score</u>
Simple Waste Streams and Treatment	1
Complex Waste Streams and Treatment (Incompatibles, highly toxic, or multicode waste streams).	2

(j)(7) A score shall be assigned for compliance history for the past two years by using the highest applicable score in Table 7.

TABLE 7

<u>Compliance History for Past Two Years</u>	<u>Score</u>
Class II Violations	1
Class I Violations	2
Penalties	3
Injunctions	5

PROPOSED RULES

(8) A score shall be assigned for reclamation by using the applicable score in Table 8.

TABLE 8

<u>Reclamation (Credit Given)</u>	<u>Score</u>
<u>Pretreatment for Off-site Reclamation</u>	<u>1</u>
<u>On-site Reclamation</u>	<u>2</u>

(k) A score shall be assigned for annual changes, which increase/decrease "sensitive land use" within a ¼ mile radius of the commercial hazardous waste facility's property boundary by using the applicable score in Table 8. Each score shall be added together.

TABLE 8

<u>Changes in "sensitive land use"</u>	<u>Score</u>
<u>Increases</u>	
<u>Greater than 5 percent – less than 10 percent increase in the number of residential housing units as compared to the baseline.</u>	<u>1</u>
<u>Greater than or equal to 10 percent increase in the number of residential housing units as compared to the baseline, or 30 percent increase in the number of total sensitive land uses over a period of the previous four years.</u>	<u>2</u>
<u>Greater than 50 percent increase in the number of non-residential sensitive land uses as compared to the baseline.</u>	<u>1</u>
<u>Decreases</u>	
<u>Greater than 5 percent – less than 10 percent decrease in the number of residential housing units as compared to the baseline.</u>	<u>-1</u>
<u>Greater than or equal to 10 percent decrease in the number of residential housing units as compared to the baseline, or 30 percent decrease in the number of total sensitive land uses over a period of the previous four years.</u>	<u>-2</u>
<u>Greater than 50 percent decrease in the number of non-residential sensitive land uses as compared to the baseline.</u>	<u>-1</u>

"Sensitive land use", as defined in G.S. 130A-295.01(f), includes residential housing, places of assembly, places of worship, schools, day care providers, and hospitals. Sensitive land use does not include retail businesses.

"Baseline", as referred to below, means:

- (1) for existing "Special Purpose Commercial Hazardous Waste Facilities" as the January 2008 data collected from the local government that has planning jurisdiction over the site on which the facility is located; and
- (2) for new "Special Purpose Commercial Hazardous Waste Facilities" as the data from the local government that has planning jurisdiction over the site on which the facility is located collected in the year in which the facility permit is first issued.

(l) A score shall be assigned for on-site reclamation by using the applicable score in Table 9.

TABLE 9

<u>Reclamation (Credit Given)</u>	<u>Score</u>
<u>Pretreatment for Off-site Reclamation</u>	<u>1</u>
<u>On-site Reclamation</u>	<u>2</u>

(m)(d) The information referred to in ~~Paragraph (e)~~ Paragraphs (c) through (l) of this Rule shall be determined based on the facility's permit, the previous year's annual report, and compliance history. If no annual report was submitted, quarterly projections of waste volume shall be submitted to the Department by the facility. Each facility may be re-evaluated at any time new information is received by the Department concerning the factors in ~~Paragraph (e)~~ Paragraphs (c) through (l) of this Rule.

(n)(e) The frequency of inspections at special purpose commercial hazardous waste facilities shall be determined by the facility's classification as follows:

<u>Category</u>	<u>Minimum Inspections</u>
<u>1</u>	<u>2 per month</u>
<u>2</u>	<u>4 per month</u>
<u>3</u>	<u>6 per month</u>
<u>4</u>	<u>8 per month</u>

Authority G.S. 130A-295.02(j).

15A NCAC 13A .0117 FEE SCHEDULES

(a) A commercial hazardous waste storage, treatment, or disposal facility other than a special purpose facility shall pay monthly, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities as required by G.S. 130A-294.1, a charge of forty-one dollars (\$41.00) per hour of operation. The fee shall be paid for any time when hazardous waste is managed or during periods of maintenance, repair, testing, or calibration. Each facility shall submit an operational schedule to the Department on a quarterly basis.

(b) A special purpose commercial hazardous waste facility shall pay monthly, in addition to the fees applicable to all hazardous waste treatment, storage or disposal facilities as required by G.S. 130A-294.1, a charge of ~~three dollars (\$3.00)~~ per ton of hazardous waste received during the previous month and an additional charge based on the frequency of inspections as follows: noted in the following schedules:

<u>Category</u>	<u>Fee</u>
<u>1</u>	<u>\$888.00</u>
<u>2</u>	<u>\$1,776.00</u>
<u>3</u>	<u>\$2,664.00</u>

(1) Effective January 1, 2011 to December 31, 2011, three dollars and fifty cents (\$3.50) per ton of hazardous waste received and:

<u>Category</u>	<u>Fee</u>
<u>1</u>	<u>\$1,110.00</u>
<u>2</u>	<u>\$2,220.00</u>
<u>3</u>	<u>\$3,330.00</u>
<u>4</u>	<u>\$4,440.00</u>
<u>5</u>	<u>\$5,550.00</u>

(2) Effective January 1, 2012 to December 31, 2012, four dollars (\$4.00) per ton of hazardous waste received and:

<u>Category</u>	<u>Fee</u>
<u>1</u>	<u>\$1,221.00</u>
<u>2</u>	<u>\$2,442.00</u>
<u>3</u>	<u>\$3,663.00</u>
<u>4</u>	<u>\$4,884.00</u>
<u>5</u>	<u>\$6,105.00</u>

(3) Effective January 1, 2013, four dollars and fifty cents (\$4.50) per ton of hazardous waste received and:

<u>Category</u>	<u>Fee</u>
<u>1</u>	<u>\$1,332.00</u>
<u>2</u>	<u>\$2,664.00</u>
<u>3</u>	<u>\$3,996.00</u>
<u>4</u>	<u>\$5,328.00</u>
<u>5</u>	<u>\$6,660.00</u>

Authority G.S. 130A-295.02(h).

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Rules Review Commission intends to adopt the rule cited as 26 NCAC 05 .0113.

Proposed Effective Date: *December 1, 2010*

Public Hearing:

Date: *September 16, 2010*

Time: *9:00 a.m.*

Location: *Office of Administrative Hearings, Rules Review Commission Room, 1711 New Hope Church Road, Raleigh, NC 27609*

Reason for Proposed Action: *At least two times within the past year the Commission has received requests to allow persons to withdraw their letters of objection that make an approved rule subject to legislative review and a delayed effective date. The Administrative Procedure Act (G.S. 150B) does not address the question and the Commission has had no policy for considering these requests. The Commission desires to address this issue and proposes a rule to allow the withdrawal of such a letter under certain conditions.*

Procedure by which a person can object to the agency on a proposed rule: *Any person may object to the proposed rule by submitting a written statement of objection(s) to: Joseph J. DeLuca, RRC Commission Counsel, 1711 New Hope Church Road, Raleigh, NC 27609.*

Comments may be submitted to: *Joseph J. DeLuca, RRC Commission Counsel, 1711 New Hope Church Road, Raleigh, NC 27609; phone (919) 431-3081; fax (919) 431-3104; email joe.deluca@oah.nc.gov*

Comment period ends: *October 1, 2010*

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:

- State
- Local
- Substantial Economic Impact (≥\$3,000,000)
- None

CHAPTER 05 - RULES REVIEW COMMISSION

26 NCAC 05 .0113 WITHDRAWAL OF OBJECTION LETTERS

- (a) A person may request that the Commission allow withdrawal of his or her previously filed objection letter to a rule prior to the meeting at which that rule is approved as set out below.
- (b) A request to withdraw an objection letter after a rule has been approved is untimely and shall be returned to the requesting party with a denial by the Commission staff.
- (c) The original request to withdraw a previously filed objection letter must be signed by the person who wrote the objection letter, notarized and delivered to the Commission by the close of business on the last day prior to the meeting at which the rule that is the subject of the objection letter is approved.
- (d) The Commission shall act on the request to withdraw the previously filed objection letter at the meeting. The staff

attorney offering comments on the rule shall also announce how the request to withdraw the previously filed objection letter would affect the rule's effective date and whether the rule would be subject to legislative review.

(e) The Commission shall base its decision on:

[The Commission shall consider and adopt the factors that should be used in making the decision whether to grant or deny the request to withdraw an objection letter. Some that have been suggested include:

- (1) the factual circumstances concerning the objection letter and the request to withdraw any letter;
- (2) any defects in either the objection letter or the request to withdraw the objection letter;
- (3) the history of the particular rulemaking;
- (4) the notice provided to all parties and the Commission;
- (5) the good faith of the person making the withdrawal request; and
- (6) any factors the Commission may use in deciding whether to grant a waiver from its rules.

Your comments on these are particularly requested.]

Authority G.S. 143B-30.1.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on June 17, 2010.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

AGRICULTURE, COMMISSIONER OF

<u>Adoption by Reference</u>	02	NCAC	09M	.0102*	24:16 NCR
<u>Duty to Verify Suppliers</u>	02	NCAC	09M	.0103*	24:16 NCR

AGRICULTURE, BOARD OF

<u>Admission Rules</u>	02	NCAC	20B	.0104*	24:16 NCR
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STRUCTURAL PEST CONTROL COMMITTEE

<u>Subterranean Termite Control: Buildings After Constructed</u>	02	NCAC	34	.0503*	24:09 NCR
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AGRICULTURE, BOARD OF

<u>Importation Requirements: Avian Species</u>	02	NCAC	52B	.0210	24:14 NCR
<u>Avian Influenza (H5N2)</u>	02	NCAC	52B	.0505	24:14 NCR
<u>Poultry and Ratite Dealers: Licensing and Records</u>	02	NCAC	52B	.0608*	24:14 NCR

BANKS, OFFICE OF THE COMMISSIONER OF

<u>Definitions</u>	04	NCAC	03M	.0101*	24:09 NCR
<u>Financial Responsibility</u>	04	NCAC	03M	.0205*	24:09 NCR
<u>Approval of Providers and Programs and Course of Study: P...</u>	04	NCAC	03M	.0301*	24:09 NCR
<u>Annual Reporting Requirements</u>	04	NCAC	03M	.0401*	24:09 NCR

CHILD CARE COMMISSION

<u>Application for a License for a Child Care Center</u>	10A	NCAC	09	.0302*	24:08 NCR
<u>On-Going Requirements for a Permit</u>	10A	NCAC	09	.0304*	24:08 NCR
<u>Staff/Child Interactions</u>	10A	NCAC	09	.0501*	24:08 NCR
<u>Developmental Day Centers</u>	10A	NCAC	09	.0505*	24:14 NCR
<u>Activity Schedules and Plans for Centers</u>	10A	NCAC	09	.0508*	24:08 NCR
<u>Activities: General Requirements for Centers</u>	10A	NCAC	09	.0509	24:08 NCR
<u>Activity Areas: Preschool Children Two Years and Older</u>	10A	NCAC	09	.0510*	24:08 NCR
<u>General Safety Requirements</u>	10A	NCAC	09	.0604*	24:08 NCR
<u>Safe Sleep Policy</u>	10A	NCAC	09	.0606*	24:08 NCR
<u>Health Standards for Staff</u>	10A	NCAC	09	.0701*	24:08 NCR
<u>Standards for Substitutes and Volunteers</u>	10A	NCAC	09	.0702*	24:08 NCR
<u>Emergency Medical Care</u>	10A	NCAC	09	.0802*	24:08 NCR
<u>General Nutrition Requirements</u>	10A	NCAC	09	.0901*	24:08 NCR
<u>Aquatic Activities</u>	10A	NCAC	09	.1403*	24:08 NCR

APPROVED RULES

<u>Building Approval for School-Aged Children</u>	10A NCAC 09	.1505	24:08 NCR
<u>Application for a License for a Family Child Care Home</u>	10A NCAC 09	.1702*	24:08 NCR
<u>Caregiver Interactions</u>	10A NCAC 09	.1703*	24:08 NCR
<u>Requirements for Daily Operations</u>	10A NCAC 09	.1718*	24:08 NCR
<u>Requirements for Records</u>	10A NCAC 09	.1721*	24:08 NCR
<u>Safe Sleep Policy</u>	10A NCAC 09	.1724*	24:08 NCR
<u>Administrative Penalties General Provision</u>	10A NCAC 09	.2201*	24:08 NCR
<u>Retention of Forms and Reports by a Child Care Operator</u>	10A NCAC 09	.2318*	24:14 NCR
<u>Scope</u>	10A NCAC 09	.2501*	24:08 NCR
<u>Special Provisions for Licensure</u>	10A NCAC 09	.2502	24:08 NCR
<u>Building Code Requirements</u>	10A NCAC 09	.2503*	24:08 NCR
<u>Space Requirements</u>	10A NCAC 09	.2504*	24:08 NCR
<u>Health Requirements for Children</u>	10A NCAC 09	.2505*	24:08 NCR
<u>General Safety Requirements</u>	10A NCAC 09	.2506*	24:08 NCR
<u>Age Appropriate Activities</u>	10A NCAC 09	.2508*	24:08 NCR
<u>Scope</u>	10A NCAC 09	.2801*	24:08 NCR
<u>Application for a Voluntary Rated License</u>	10A NCAC 09	.2802*	24:08 NCR
<u>Program Standards for a Three Component Rated License for...</u>	10A NCAC 09	.2803	24:08 NCR
<u>Staff/Child Ratios for a Three Component Rated License</u>	10A NCAC 09	.2810	24:08 NCR
<u>Education Standards for a Rated License for Child Care C...</u>	10A NCAC 09	.2811	24:08 NCR
<u>Education Standards for Centers that Provide Care Only to...</u>	10A NCAC 09	.2812	24:08 NCR
<u>Compliance History Standards for a Rated License for Chil...</u>	10A NCAC 09	.2813	24:08 NCR
<u>Program Standards for a Rated License for Family Child Ca...</u>	10A NCAC 09	.2814	24:08 NCR
<u>Education Standards for a Rated License for Family Child ...</u>	10A NCAC 09	.2815	24:08 NCR
<u>Compliance History Standards for a Rated License for Fami...</u>	10A NCAC 09	.2816	24:08 NCR
<u>Scope</u>	10A NCAC 09	.2901*	24:14 NCR
<u>License</u>	10A NCAC 09	.2902*	24:14 NCR
<u>Staff Qualifications</u>	10A NCAC 09	.2903	24:14 NCR
<u>Program Requirements</u>	10A NCAC 09	.2904*	24:14 NCR
<u>Family Services</u>	10A NCAC 09	.2905	24:14 NCR

INSURANCE, DEPARTMENT OF

<u>Review/Audit of Third Party Administrators</u>	11 NCAC 12	.0332*	24:18 NCR
<u>Refund of Unearned Premium for Credit Insurance</u>	11 NCAC 12	.0714	24:18 NCR

PRIVATE PROTECTIVE SERVICES BOARD

<u>Fees for Licenses and Trainee Permits</u>	12 NCAC 07D	.0202*	24:16 NCR
<u>Fees for Unarmed Security Guard Registration</u>	12 NCAC 07D	.0702	24:16 NCR
<u>Fees for Armed Security Guard Firearm Registration Permit</u>	12 NCAC 07D	.0802*	24:16 NCR

ALARM SYSTEMS LICENSING BOARD

<u>Renewal or Re-issue of License</u>	12	NCAC	11	.0204*	24:14 NCR
<u>Renewal or Reregistration of Registration</u>	12	NCAC	11	.0306*	24:14 NCR
<u>Accreditation Standards</u>	12	NCAC	11	.0503*	24:14 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Large Municipal Waste Combustors</u>	15A	NCAC	02D	.1205*	24:14 NCR
<u>Small Municipal Waste Combustors</u>	15A	NCAC	02D	.1212*	24:14 NCR

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

<u>Fees and Charges</u>	15A	NCAC	12B	.1206*	n/a G.S. 150B-21.5(a)(5)
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TRANSPORTATION, DEPARTMENT OF

<u>Definitions</u>	19A	NCAC	03D	.0517*	24:18 NCR
<u>Licensing of Safety or Exhaust Emissions Inspection Stations</u>	19A	NCAC	03D	.0518*	24:18 NCR
<u>Stations</u>	19A	NCAC	03D	.0519*	24:18 NCR

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

<u>Use of CPA Title</u>	21	NCAC	08H	.0105*	n/a G.S. 150B-21.5(b)(1)
<u>Non-Resident Notification</u>	21	NCAC	08H	.0106*	n/a G.S. 150B-21.5(b)(1)
<u>Forfeiture or Inactivation of Certificate and Reissuance ...</u>	21	NCAC	08J	.0106*	n/a G.S. 150B-21.5(a)(3)
<u>Registration and Renewal</u>	21	NCAC	08K	.0104*	n/a G.S. 150B-21.5(a)(6)
<u>Accounting Principles</u>	21	NCAC	08N	.0209*	n/a G.S. 150B-21.5(a)(6)
<u>Forecasts</u>	21	NCAC	08N	.0210*	n/a G.S. 150B-21.5(a)(4)
<u>Responsibilities in Tax Practice</u>	21	NCAC	08N	.0211*	n/a G.S. 150B-21.5(a)(6)
<u>Outsourcing to Third-Party Service Providers</u>	21	NCAC	08N	.0214*	n/a G.S. 150B-21.5(a)(5)
<u>Consulting Services Standards</u>	21	NCAC	08N	.0304*	n/a G.S. 150B-21.5(a)(6)
<u>Valuation Services Standards</u>	21	NCAC	08N	.0308*	n/a G.S. 150B-21.5(a)(6)
<u>Auditing Standards</u>	21	NCAC	08N	.0403*	n/a G.S. 150B-21.5(a)(6)
<u>Accounting and Review Services Standards</u>	21	NCAC	08N	.0404*	n/a G.S. 150B-21.5(a)(6)
<u>Governmental Accounting Standards</u>	21	NCAC	08N	.0405*	n/a G.S. 150B-21.5(a)(4)
<u>Attestation Standards</u>	21	NCAC	08N	.0406*	n/a G.S. 150B-21.5(a)(4)

CHIROPRACTIC EXAMINERS, BOARD OF

<u>Certification of Radiologic Technologists</u>	21	NCAC	10	.0206*	24:15 NCR
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COSMETIC ART EXAMINERS, BOARD OF

<u>Definitions</u>	21	NCAC	14A	.0101*	24:18 NCR
<u>Office Hours</u>	21	NCAC	14A	.0103	24:18 NCR
<u>Dimensions of Beauty Salon</u>	21	NCAC	14F	.0107	24:18 NCR
<u>Condition of Equipment</u>	21	NCAC	14G	.0112*	24:18 NCR
<u>Bathroom Facilities</u>	21	NCAC	14H	.0110	24:18 NCR
<u>Animals</u>	21	NCAC	14H	.0117*	24:18 NCR
<u>Permanent Files</u>	21	NCAC	14I	.0101*	24:18 NCR

APPROVED RULES

<u>Inspection Reports and Reports of Student Hours</u>	21	NCAC	14I	.0103	24:18 NCR
<u>Storing and Labeling of Cosmetics</u>	21	NCAC	14J	.0203	24:18 NCR
<u>Live Model Performances</u>	21	NCAC	14K	.0107*	24:18 NCR
<u>Passing Grades for Examination</u>	21	NCAC	14N	.0110*	24:12 NCR
<u>Re-examination</u>	21	NCAC	14N	.0113*	24:12 NCR
<u>Full Time and Part Time Equivalency</u>	21	NCAC	14N	.0115*	24:12 NCR
<u>Licenses Required</u>	21	NCAC	14P	.0106	24:18 NCR
<u>Establishment of Cosmetic Art Schools</u>	21	NCAC	14P	.0111	24:04 NCR
<u>Continuing Education Requirements</u>	21	NCAC	14R	.0101*	24:18 NCR
<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC	14R	.0102*	24:18 NCR
<u>Criteria for Continuing Education Courses</u>	21	NCAC	14R	.0103*	24:18 NCR
<u>Uniform</u>	21	NCAC	14S	.0101	24:18 NCR
<u>Time Requirements According to Hours</u>	21	NCAC	14S	.0102	24:18 NCR
<u>Approved Field Trips</u>	21	NCAC	14S	.0103*	24:18 NCR
<u>Equipment for Beginner Department</u>	21	NCAC	14S	.0104	24:18 NCR
<u>Storing and Labeling of Cosmetics</u>	21	NCAC	14S	.0105*	24:18 NCR
<u>Equipment</u>	21	NCAC	14S	.0106*	24:18 NCR
<u>Performances</u>	21	NCAC	14S	.0107*	24:18 NCR
<u>Students' Personal Supplies</u>	21	NCAC	14S	.0108*	24:18 NCR
<u>Tests</u>	21	NCAC	14S	.0109	24:18 NCR
<u>Approval of Credit for Natural Hair Care Instruction/Anot...</u>	21	NCAC	14S	.0110	24:18 NCR
<u>Services Performed</u>	21	NCAC	14S	.0111	24:18 NCR
<u>Licensing of Natural Hair Care Specialists</u>	21	NCAC	14S	.0112*	24:18 NCR

DENTAL EXAMINERS, BOARD OF

<u>Board Conducted Reexamination</u>	21	NCAC	16C	.0405	24:10 NCR
<u>Credentials and Permits for Moderate Conscious Sedation, ...</u>	21	NCAC	16Q	.0301*	24:10 NCR
<u>Clinical Requirements and Equipment</u>	21	NCAC	16Q	.0302*	24:10 NCR

NURSING, BOARD OF

<u>Listing and Renewal</u>	21	NCAC	36	.0404*	24:18 NCR
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ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

<u>Expirations and Renewals of Certificates</u>	21	NCAC	56	.0505	24:16 NCR
<u>Expirations and Renewals of Certificates</u>	21	NCAC	56	.0606	24:16 NCR
<u>Annual Renewal</u>	21	NCAC	56	.0804	24:16 NCR

REAL ESTATE COMMISSION

<u>Course Description</u>	21	NCAC	58E	.0602*	24:14 NCR
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ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS, BOARD OF

<u>Secretary-Treasurer</u>	21	NCAC	62	.0104	24:16 NCR
<u>Petition for Rulemaking</u>	21	NCAC	62	.0201	24:16 NCR

APPROVED RULES

<u>Notice</u>	21	NCAC	62	.0202	24:16	NCR
<u>Hearings</u>	21	NCAC	62	.0203	24:16	NCR
<u>Justification of Rulemaking Decision</u>	21	NCAC	62	.0204	24:16	NCR
<u>Record of Rulemaking Proceedings</u>	21	NCAC	62	.0205	24:16	NCR
<u>Fees</u>	21	NCAC	62	.0206	24:16	NCR
<u>Declaratory Rulings</u>	21	NCAC	62	.0208	24:16	NCR
<u>Opportunity for an Administrative Hearing</u>	21	NCAC	62	.0301	24:16	NCR
<u>Request for a Hearing</u>	21	NCAC	62	.0302	24:16	NCR
<u>Notice</u>	21	NCAC	62	.0305	24:16	NCR
<u>Intervention</u>	21	NCAC	62	.0306	24:16	NCR
<u>Change of Venue</u>	21	NCAC	62	.0307	24:16	NCR
<u>Disqualification of Board Members</u>	21	NCAC	62	.0308	24:16	NCR
<u>Failure to Appear</u>	21	NCAC	62	.0309	24:16	NCR
<u>Continuances</u>	21	NCAC	62	.0310	24:16	NCR
<u>Pre-Hearing Conference</u>	21	NCAC	62	.0314	24:16	NCR
<u>Simplification of Issues</u>	21	NCAC	62	.0315	24:16	NCR
<u>Subpoenas</u>	21	NCAC	62	.0316	24:16	NCR
<u>Transcripts</u>	21	NCAC	62	.0317	24:16	NCR
<u>Record of Contested Cases</u>	21	NCAC	62	.0319	24:16	NCR
<u>Statutory Authority and Definitions</u>	21	NCAC	62	.0401	24:16	NCR
<u>Applications</u>	21	NCAC	62	.0402*	24:16	NCR
<u>Examination</u>	21	NCAC	62	.0403*	24:16	NCR
<u>Authorized Expenditures and Fees</u>	21	NCAC	62	.0405*	24:16	NCR
<u>Renewal</u>	21	NCAC	62	.0407*	24:16	NCR
<u>Public Inspection</u>	21	NCAC	62	.0408	24:16	NCR
<u>Specialized Training</u>	21	NCAC	62	.0411*	24:16	NCR
<u>Environmental Health Specialist Intern Experience</u>	21	NCAC	62	.0414	24:16	NCR
<u>Code of Ethics</u>	21	NCAC	62	.0415	24:16	NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

PHARMACY, BOARD OF

<u>Advanced Pharmacy Technician</u>	21	NCAC	46	.1418*	24:15	NCR
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**TITLE 02 – DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

02 NCAC 09M .0102 ADOPTION BY REFERENCE

Title 21, Part 203 of the Code of Federal Regulations, "Prescription Drug Marketing", is adopted by reference, including subsequent amendments and editions. Copies may be obtained at no cost at the United States Government Printing Office website at http://www.access.gpo.gov/nara/cfr/waisidx_09/21cfrv4_09.html.

History Note: Authority G.S. 106-145.12; 106-145.10;
Eff. July 1, 2010.

02 NCAC 09M .0103 DUTY TO VERIFY SUPPLIERS

Wholesale prescription drug distributors that have distribution facilities in North Carolina shall not purchase or accept delivery of a prescription drug from suppliers that are not licensed or registered to ship or sell in or into North Carolina.

History Note: Authority G.S. 106-145.12; 106-145.1;
Eff. July 1, 2010.

02 NCAC 20B .0104 ADMISSION RULES

(a) All persons entering the North Carolina State Fair grounds must pay the established admission fee except persons holding worker's permits. One-time-only admissions may be issued to those persons who are employed by the Fair or are asked to

appear on the grounds by the Fair management for a specific purpose relative to the operation of the fair.

(b) The gates of the North Carolina State Fair shall be open to visitors from 9:00 a.m. until midnight each day of the fair. Exhibit buildings shall be open from 9:00 a.m. to 9:45 p.m. daily.

(c) The State Fair Manager may operate a pass-out system at one or more of the outside gates. Persons exiting through these gates may, upon request, have their hand or vehicle stamped for readmittance through the same gate without additional charge. Readmittance must occur before 10:00 p.m. on the same day as pass-out or the hand stamp shall not be honored.

(d) Outside gate admission prices are as follows:

- | | | |
|-----|---------------------------------------|--------|
| (1) | adult/child, 13 years of age and over | \$8.00 |
| (2) | child, 6 through 12 years of age | \$3.00 |
| (3) | senior citizen, 65 and over | Free |
| (4) | child, under 6 years of age | Free |

(e) Outside gate admission prices for advance ticket sales are as follows:

- | | | |
|-----|--|--------|
| (1) | adult/child, 13 years of age and over | \$6.00 |
| (2) | child, 6 through 12 years of age | \$2.00 |
| (3) | senior citizen, 65 and over | Free |
| (4) | child, under 6 years of age | Free |
| (5) | adult group sales purchasing a minimum of 40 tickets | \$5.00 |

History Note: Authority G.S. 106-503; Eff. February 1, 1976;

Amended Eff. August 16, 2010; February 1, 2007; July 1, 2000; October 1, 1993; June 1, 1989; July 1, 1985; April 1, 1984.

02 NCAC 34 .0503 SUBTERRANEAN TERMITE CONTROL: BUILDINGS AFTER CONSTRUCTED

(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 or 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 they shall be cut off above the ground or floor level and the wood removed from the concrete; and the 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 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 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 top of 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, all pillars, pilasters, chimneys, pressure treated wood supports, and step buttresses; inside of foundation walls; outside of foundation walls; 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 on wood or similar type materials, including extruded or expanded rigid foam insulation or similar materials, extend to or below grade, trench soil to a depth below and under the edge of the stucco or similar type 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 type 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) Paragraph (b) of this Rule shall be followed if applicable to basement or crawl space construction.

(b) The following standards and requirements 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. As an exception, 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) 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) A reapplication of termiticide is required 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 abide by Paragraphs (a) and (b) of this Rule provided that:

- (1) The licensee has written proof that he or his 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 do not apply to subterranean termite treatment performed using termite bait(s) labeled for protection of the entire structure when the licensee provides a warranty for the control of subterranean termites on the entire structure.

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. July 1, 2010; August 1, 2002; July 1, 1998.

**02 NCAC 52B .0210 IMPORTATION
REQUIREMENTS: AVIAN SPECIES**

History Note: Authority G.S. 106-539; 106-540; 106-543;

Eff. April 1, 1984;

Temporary Amendment Eff. August 13, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. January 1, 1994;

Repealed Eff. July 1, 2010.

02 NCAC 52B .0505 AVIAN INFLUENZA (H5N2)

History Note: Authority G.S. 106-307.5;

Eff. July 1, 1986;

Repealed Eff. July 1, 2010.

**02 NCAC 52B .0608 POULTRY AND RATITE
DEALERS: LICENSING AND RECORDS**

(a) A poultry or ratite dealer, as defined in G.S. 106-541(3), shall register with the Department of Agriculture and Consumer Services on or before July 1 of each year on a form furnished by the Department.

(b) A poultry or ratite dealer shall keep records of purchases and sales of poultry and ratites, showing the date of each purchase or sale, the number of birds and the name and address of the seller or purchaser on a form provided by the Department. A poultry dealer shall also keep records of any disease testing performed on birds under his control that are subject to the requirements of this Section. These records must be available for examination upon request by the Department and shall be kept for three years.

History Note: G.S. 106-540; 106-547;

Eff. July 1, 2010.

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is provided or required by the context:

- (1) Terms used in this Subchapter which are defined in the Act have the same meaning as set forth in the Act.

- (2) When any term in this Subchapter is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, the reference shall be deemed to be to the regulation or rule as it is in effect and interpreted in its most current version.
- (3) "Act" means Article 19B of Chapter 53 of the North Carolina General Statutes, commonly known as the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act," or "NC SAFE Act."
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term includes any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail or other electronic means, billboard or similar display. The term does not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor does the term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.
- (5) "Call Report" means a report of condition on a company and its operations which includes financial and loan activity information.
- (6) "Commission" means the North Carolina Banking Commission. For purposes of complying with these Rules by credit unions, Banking Commission means the North Carolina Credit Union Commission.
- (7) "Controlling person" means a person who, with regard to a licensee:
 - (a) has the ability to exercise "control", as the term is defined in G.S. 53-244.030(7), or
 - (b) otherwise has the power to direct the management and policy of the licensee.
- (8) "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
- (9) "License" means a mortgage lender, mortgage servicer, mortgage broker, exclusive mortgage broker, or mortgage loan originator license issued pursuant to the Act and this Subchapter.
- (10) "Material" when used in connection with facts or information provided to the Commissioner by a licensee or applicant, means facts or information that a reasonable person knows, or should know, would be likely to influence a decision to grant, suspend, condition, limit, renew, or revoke a license or to take other disciplinary action against a licensee or exempt person, including:
 - (a) notice of a pending administrative action involving the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;
 - (b) the issuance of an administrative order against the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;
 - (c) notice of a pending criminal charge against the licensee or applicant for actions related to financial services or moral turpitude;
 - (d) the entry of a conviction or one of the following on a criminal charge against the licensee or applicant for licensure for a felony or other criminal charge for actions related to financial services or moral turpitude:
 - (i) plea of guilty;
 - (ii) plea of no contest or nolo contendere;
 - (iii) prayer for judgment continued;
 - (iv) deferred prosecution agreement;
 - (v) an adjudication or verdict of guilty by a domestic, foreign, military, or other court of competent jurisdiction;
 - (vi) the equivalent of any of the foregoing in a domestic, foreign, military, or other court of competent jurisdiction; or
 - (vii) any other classification that is deemed a conviction pursuant to the applicable law in the jurisdiction where the criminal charge was brought.
 - (e) a change in status to the licensee's bond, including the reduction or cancellation of such bond; and
- (11) "Material" when used in connection with facts or information provided to the Commissioner, by a licensee or applicant for licensure, also means facts and information regarding the licensee's identity and contact information, including:

- (a) the licensee's primary phone number, mailing address, and principal office address;
 - (b) any assumed name, trade name, or d/b/a (doing business as) under which the licensee may be operating;
 - (c) the address at which files or documents retained pursuant to the Act or the rules in this Subchapter are stored;
 - (d) the identity of the licensee's bonding company or carrier, and bond number;
 - (e) for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker, mortgage servicer, or provider of settlement services; and
 - (f) for corporate licensees, the identity of the licensee's owners, officers, directors, qualifying individual, branch manager(s), or control persons.
- (12) "Material" when used in connection with facts or information provided to a borrower, means facts or information that a reasonable person knows, or should know, would reasonably be expected to influence a borrower's decision with regard to one or more loans, including:
- (a) the total compensation the mortgage broker expects to receive from all sources in connection with each loan option presented to the borrower;
 - (b) the terms of each loan option presented to the borrower;
 - (c) the anticipated monthly payment (including property tax and insurance payments) for each loan option presented to the borrower;
 - (d) if the loan contains a variable rate feature or other terms which may result in a change to the borrower's monthly payments over the life of the loan, the circumstances upon which the terms or payments will change and the impact of the changes upon the borrower's required monthly payments; and
 - (e) any affiliate relationships that may exist between the licensee and any party or parties to the sale or financing of the subject property, or any provider of settlement services.
- (13) "Material" when used in connection with the word "change" or "changes," means a change to any material facts or information.
- (14) "Nationwide Mortgage Licensing System and Registry" or "NMLS&R" has the same meaning as in the NC SAFE Act.
 - (15) "Prelicensing Education" means a classroom or classroom equivalent education program required by G.S. 53-244.070.
 - (16) "Program" means a prelicensing program.
 - (17) "Provider" means any person who provides a program.
 - (18) "Qualified Written Test" means the mortgage prelicensing qualified written test required by G.S. 53-244.080.
 - (19) "Settlement Services" has the same meaning as defined in federal Real Estate Procedures Act (RESPA) 12 U.S.C. Sec. 2601 et. seq. Regulation X, 24 C.F.R. Part 3500 et. seq.
 - (20) "Testing Provider" means an organization approved by the NMLS&R to administer the qualified written test.
- History Note: Authority G.S. 53-244.118; Temporary Adoption Eff. July 1, 2002; Eff. April 1, 2003; Amended Eff. July 1, 2010; July 18, 2008.*

04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY

(a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly under G.S. 53-244.60(4), the applicant shall:

- (1) If a mortgage lender:
 - (A) provide an audited statement of financial condition that demonstrates a net worth of at least \$100,000;
 - (B) provide evidence of warehouse line of credit of \$1,000,000 or other evidence of funding capacity to conduct mortgage originations;
 - (C) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of outstanding judgments or tax liens against applicant, its officers or directors, by creditors; and
 - (D) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.
- (2) If a mortgage broker:
 - (A) provide a certified statement of financial condition that demonstrates a net worth of at least \$25,000;
 - (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that

does not contain evidence of outstanding judgments or tax liens against applicant, its officers or directors, by creditors; and

- (C) provide evidence (in the form of a copy of a bank statement or other verifiable document) that the broker owns and holds on a continual basis cash or other liquid assets in a demand deposit account under the firm's name of at least ten thousand dollars (\$10,000.00) in an FDIC-insured financial institution.

(3) If a mortgage loan originator:

- (A) have a credit score from any of the three major credit rating agencies (Experian, TransUnion or Equifax) of 600 or greater;
- (B) demonstrate a history of satisfying debt obligations, as indicated by an absence of outstanding tax liens, other government liens or filings, outstanding judgments, except judgments resulting solely from medical expenses, by creditors; and
- (C) not have any foreclosures or accounts delinquent in excess of 90-days within the past three years.

(4) If a mortgage servicer:

- (A) provide an audited statement of financial condition that demonstrates a net worth of at least \$100,000.00;
- (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of outstanding judgments or tax liens against applicant, its officers or directors, by creditors; and
- (C) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.

(b) The Commissioner shall not waive any requirement listed in Paragraph (a) of this Rule unless he believes the predominant weight of the evidence supports a determination that the applicant has the financial responsibility necessary to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly.

(c) Financial Responsibility is an ongoing requirement and upon issuance of a license, a licensee must continue to meet the requirements of Paragraph (a) of this Rule.

History Note: Authority G.S. 53-92; 53-104; 53-244.060(4); 53-244.118;
Eff. July 18, 2008;
Amended Eff. July 1, 2010.

04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND COURSES OF STUDY; PROVIDER REQUIREMENTS; QUALIFIED WRITTEN TEST

(a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a provider approved as required by G.S. 53-244.070(b). The Commissioner shall make available to the public a listing of approved providers' courses of study, and times and locations at which the qualified written test will be administered.

(b) Approval for any prelicensing education course shall expire in accordance with NMLS&R's rules regarding expiration of approval.

(c) The Commissioner may deny, revoke, suspend, condition, limit, or terminate approval of any provider or any individual course of study upon a finding that:

- (1) the provider has refused or failed to comply with any applicable provision of this Subchapter;
- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the qualified written test questions;
- (3) the provider has knowingly employed in connection with any program any person who has been convicted of any crime described in G.S. 53-244.060(2) or (3).

(d) Providers shall:

- (1) Designate one person as a contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.
- (2) Retain, and make available to the Commissioner upon request, the following material from each program on file at one location for a minimum of three years:
 - (A) class schedules;
 - (B) advertisements;
 - (C) bulletins, catalogues, and other publications distributed to students;
 - (D) a list of student names, with unique identifier, for each program; and
 - (E) the name of the instructor.
- (3) Refrain from the use of any words, symbols or other means which indicate that either the provider or a program has received the NMLS&R approval unless such approval has been issued and remains in effect.

History Note: Authority G.S. 53-244.060; 53-244.070; 53-244.080; 53-244.118;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003;
Amended Eff. July 1, 2010; July 18, 2008.

04 NCAC 03M .0401 REPORTING REQUIREMENTS

(a) No later than 90 days after the end of the calendar year, mortgage lenders, mortgage servicers and mortgage brokers shall file an annual report in a format required by the NMLS&R unless the Commissioner determines that the report is not in the public interest. The annual report shall be supplemented with additional information about operations, characteristics of loans made, or other similar composite data if the Commissioner determines that this additional information is necessary in order to safeguard the interests of the borrowing public (See N.C. Gen. Stat. 53-244.118). Mortgage brokers shall as a part of the annual report provide certification from the insured financial institution holding the account required under 04 NCAC 03M .0205(a)(2)(C) that the account exists and that the account has contained an average daily balance, for the previous year covered by the annual report of ten thousand dollars \$10,000 or more. Failure to timely submit an annual report is grounds for summary suspension pursuant to G.S. 53-244.114.

(b) Mortgage lenders, mortgage servicers, and mortgage brokers shall provide an audited statement of financial condition or a certified statement of financial condition as required by 04 NCAC 03M.0205(a) within 90 days of the end of the licensee's fiscal year. If not shown in the audited statement of financial condition, mortgage lenders shall provide evidence of available warehouse lines of credit or other funding facilities.

(c) Beginning on January 1, 2011, mortgage lenders and mortgage brokers shall provide information on the characteristics of loan originations in an electronic format prescribed by the Commissioner on a quarterly basis within 45 days after the close of the calendar quarter. Mortgage lenders shall provide:

- (1) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;
- (2) Information sufficient to enable a computation of key items in the federal Truth in Lending disclosures, including the annual percentage rate, finance charge, and a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures;
- (3) Information included in the "Good Faith Estimate" (GFE) disclosure required under the federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, itemization of settlement charges and all broker compensation;
- (4) Information included in the final HUD-1 Settlement Statement, if maintained by the mortgage lender in an electronic format;
- (5) Information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if

maintained by the mortgage lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, the maximum amount of penalty);

- (6) Information typically used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), borrowers' income, monthly payment amount, housing debt-to-income ratio, total debt-to-income ratio, and credit score(s) of borrowers; and
- (7) Information included in a Loan Application Register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act,

Mortgage brokers shall provide information identified above unless such information is not prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an electronic format. The Commissioner shall permit mortgage lenders and mortgage brokers to utilize compatible third-party software to provide information required under this Paragraph.

(d) On a quarterly basis, mortgage lenders and mortgage brokers shall provide call reports containing financial and loan activity information in an electronic format through the NMLS&R.

(e) Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage brokers, and mortgage loan originators shall report within 30 days the name of any person suspected of making a material misstatement in connection with the mortgage lending or servicing process to the Commissioner. Mortgage lenders and mortgage brokers shall report within 30 days any loan repurchased due to a material misstatement made in connection with the mortgage lending process.

(f) Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage broker, and mortgage loan originators shall report within 30 days the name of any person suspected of making a material misstatement in connection with an inquiry, investigation, or examination to the Commissioner.

History Note: Authority G.S. 53-244.108; 53-244.118; Eff. April 1, 2003; Amended Eff. July 1, 2010; July 3, 2008.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who

is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative. A provisional classification may be accepted in accordance with Rule .0401(1) of this Chapter. When a center does not conform with a building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division shall accept the inspector's documentation in lieu of compliance with the standard. Nothing in this Rule is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Chapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for review to verify compliance with provisions of this Chapter and G.S. 110:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Chapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall demonstrate to the Division representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and staff development activities; and required criminal records check documentation;
- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Daily records of arrival and departure times at the center for each child;
- (5) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the

signature of the person who conducted the drill;

- (6) Records of monthly playground inspections documented on a checklist provided by the Division; and

- (7) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable requirements as follows:

- (1) If all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.

- (2) If all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.

- (3) The license shall be displayed in an area that parents are able to view daily.

(g) When a person applies for a child care center license, the Secretary shall deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;

- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;

- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;

- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (1), (2), or (3) of this Paragraph. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;

- (B) has a financial interest in the operation of the facility;
- (C) provides care to children at the facility;
- (D) resides in the facility; or
- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
- (6) if abuse or neglect has been substantiated against the person.

- (1) supervision of children (6 points),
 - (2) staff/child ratio (6 points),
 - (3) staff qualifications and training (2 to 5 points),
 - (4) health and safety practices (3 to 6 points),
 - (5) discipline (6 points),
 - (6) developmentally appropriate activities (2 to 4 points),
 - (7) adequate space (6 points),
 - (8) nutrition and feeding practices (1 to 3 points),
 - (9) program records (1 to 3 points), and
 - (10) transportation (1 to 3 points), if applicable.
- The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage. The yearly compliance history percentage shall be averaged over the specified time period as in accordance with G.S. 110-90(4) for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

History Note: Authority G.S. 110-85; 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1996; November 1, 1989; July 1, 1988; January 1, 1987.

10A NCAC 09 .0304 ON-GOING REQUIREMENTS FOR A PERMIT

- (a) Each operator shall schedule a fire inspection within 12 months of the center's previous fire inspection. The operator shall notify the local fire inspector when it is time for the center's annual fire inspection. The operator shall submit the original of the completed annual fire inspection report to the Division's representative within one week of the inspection visit on the form provided by the Division.
- (b) Each center shall be inspected at least annually by an Environmental Health Specialist for compliance with applicable sanitation requirements adopted by the Commission for Public Health as described in 15A NCAC 18A .2800.
- (c) A new building inspection is not required unless the operator plans to begin using space not previously approved for child care, has made renovations to the building, has added new construction, or wants to remove any restriction related to building codes currently on the permit.
- (d) When the Division's representative documents noncompliance during a visit, the representative shall:
 - (1) Advise the operator to submit written verification that the noncompliance has been corrected;
 - (2) Return to the center for an unannounced visit at a later date to determine if compliance has been achieved; or
 - (3) Recommend issuance of a provisional license in accordance with Section .0400 of this Chapter or recommend the revocation of the permit or administrative actions in accordance with Section .2200 of this Chapter.
- (e) The Division shall assess the compliance history of a center by evaluating the violations of requirements that have occurred. Demerits shall be assigned for each occurrence of violations of these requirements:

- (f) Each center shall maintain accurate records and documents as described in Rule .0302(c) and (d) of this Section, and these records and documents shall be made available to the Division for review to verify compliance with provisions of this Chapter and the General Statute.

History Note: Authority G.S. 110-85; 110-88(5); 110-93; 143B-168.3; 150B-3; Eff. July 1, 1998; Amended Eff. July 1, 2010; May 1, 2006.

10A NCAC 09 .0501 STAFF/CHILD INTERACTIONS

- Staff shall relate to children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation and participating in many activities with the children. For example, staff shall:
- (1) Make eye contact when speaking to a child;
 - (2) Engage children in conversation to share experiences, ideas and opinions;
 - (3) Help children develop problem-solving skills; and
 - (4) Facilitate learning by providing positive reinforcement, encouraging efforts and recognizing accomplishments.

History Note: Authority G.S. 110-85; 110-91(8),(11); 143B-168.3; Eff. July 1, 2010.

10A NCAC 09 .0505 DEVELOPMENTAL DAY CENTERS

Child care centers which meet the criteria for developmental day centers, as defined in 10A NCAC 09 .2901, are deemed to be in compliance with the provisions of Rules. 0508 through .0511 of this Section by complying with the requirements for activities for developmental day centers set forth in 10A NCAC 09 .2904.

History Note: Authority G.S. 110-85; 110-88(14); 110-91(2),(12); 143B-168.3; Eff. January 1, 1987; Amended Eff. July 1, 2010; July 1, 1998; July 1, 1988.

10A NCAC 09 .0508 ACTIVITY SCHEDULES AND PLANS FOR CENTERS

(a) All centers shall have a schedule for each group of children posted for easy reference by parents and by caregivers.

(b) When children two years old or older are in care, the schedule shall include the following:

- (1) Show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest.
- (2) Show blocks of time that are scheduled for activities for indoor and outdoor areas.
- (3) Reflect times and activities that are developmentally appropriate for the children in care.
- (4) Reflect daily opportunities indoors and outdoors for free-choice activities, teacher-directed activities, and a minimum total of one hour of outdoor time throughout the day, if weather conditions permit. When children are in care for four hours or less per day the center shall provide a minimum total of 30 minutes of outdoor time daily, if weather conditions permit.

(c) When children under two years old are in care, the schedule shall include regular daily events such as arrival and departure, free choice times, outside time and teacher-directed activities. Interspersed among the daily events shall be individualized caregiving routines such as eating, napping and toileting. There shall be a minimum of 30 minutes of outdoor time throughout the day either as part of a small group, whole group, or individual activity, if weather conditions permit.

(d) All centers shall develop a written plan of developmentally appropriate activities designed to stimulate social, emotional, intellectual and physical development for each group of children in care.

- (1) The activity plan shall always be current and accessible for easy reference by parents and caregivers.
- (2) The activity plan shall include at least one daily activity for each developmental goal specified in this Paragraph. Activities which allow children to choose to participate with the whole group, part of the group, or independently shall be identified. The plan shall reflect that the children have at least four

different activities daily, at least one of which is outdoors, if weather conditions permit.

- (3) The activity plan shall also include a daily gross motor activity which may occur indoors or outdoors.

(e) The schedule and activity plan may be combined as one document that shall always be current and posted for easy reference by parents and caregivers.

History Note: Authority G.S. 110-85; 110-91(2),(12); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; July 1, 1998.

10A NCAC 09 .0509 ACTIVITIES: GENERAL REQUIREMENTS FOR CENTERS

The learning environment consists of the indoor and outdoor area which encourages child initiated and teacher supported activities as follows:

- (1) Each center shall have developmentally appropriate equipment and materials accessible on a daily basis.
- (2) The materials and equipment indoors and outdoors shall be sufficient to provide a variety of play experiences which promote the children's social, emotional, intellectual and physical development.
- (3) Teacher-made and home-made equipment and materials may be used if they are safe and functional. Materials and equipment that are accessible to children shall not be coated or treated with, nor shall they contain, toxic materials such as creosote, pentachlorophenol, tributyl tin oxide, dislodgeable arsenic and any finishes which contain pesticides.
- (4) Developmentally appropriate equipment and materials shall be provided for a variety of outdoor activities which allow for vigorous play and large muscle development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The center shall provide space and time for vigorous indoor activities when children cannot play outdoors.

History Note: Authority G.S. 110-85; 110-91(2),(12); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; July 1, 1998; January 1, 1996.

10A NCAC 09 .0510 ACTIVITY AREAS: PRESCHOOL CHILDREN TWO YEARS AND OLDER

When preschool children two years and older are in care the following apply:

- (1) Each center shall have equipment and materials available in activity areas on a daily basis. Centers with a licensed capacity of 3 to 12 children located in a residence are not

required to have activity areas, but must have equipment and materials available daily both indoors and outdoors for the children in care.

- (2) An activity area is an identifiable space which is accessible to the children and where related equipment and materials are kept in an orderly fashion.
- (3) Each activity area shall contain enough materials to allow three related activities to occur at the same time. The materials and equipment shall be in sufficient quantity to allow at least three children to use the area regardless of whether the children choose the same or different activities.
- (4) Each center shall make at least four of the activity areas listed in G.S. 110-91(12) available daily to preschool children two years or older as follows:
 - (a) Centers with a licensed capacity of 30 or more children shall have at least four activity areas available in the space occupied by each group of children.
 - (b) Centers with a licensed capacity of less than 30 children shall have at least four activity areas available daily. Separate groups of children may share use of the same activity areas.
 - (c) Centers with a licensed capacity of 3 to 12 children located in a residence shall have at least four types of activities available daily.
- (5) In addition to the activity areas which are available each day, each center shall have materials and equipment in sufficient quantity, as described in Item (3) of this Rule, to ensure that activities are made available at least once per month in each of the five activity areas listed G.S. 110-91(12).
- (6) Each center shall provide materials and opportunities for music and rhythm, science and nature, and sand and water play for each group of children at least weekly, indoors or outdoors.
- (7) When screen time, including television, videos, video games, and computer usage is provided, it shall be:
 - (a) Offered only as a free-choice activity,
 - (b) Used to meet a developmental goal, and
 - (c) Limited to no more than a total of two and a half hours per week, per child.

Usage time periods may be extended for specific special events, projects, on-site computer classes, or occasions such as a current event, holiday, or birthday celebration.

History Note: Authority G.S. 110-85; 110-91(6),(12); 143B-168.3;

Eff. July 1, 1988;

Amended Eff. July 1, 2010; July 1, 1998; October 1, 1991.

10A NCAC 09 .0604 GENERAL SAFETY REQUIREMENTS

- (a) Potentially hazardous items, such as archery equipment, hand and power tools, nails, chemicals, propane stoves, lawn mowers, and gasoline or kerosene, whether or not intended for use by children, shall be stored in locked areas or with other safeguards, or shall be removed from the premises.
- (b) Firearms and ammunition are prohibited in a licensed child care program unless carried by a law enforcement officer.
- (c) Electrical outlets not in use which are located in space used by the children shall be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.
- (d) Electric fans shall be mounted out of the reach of children or shall be fitted with a mesh guard to prevent access by children.
- (e) All electrical appliances shall be used only in accordance with the manufacturer's instructions.
- (f) Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.
- (g) All materials used for starting fires, such as matches and lighters, shall be kept in locked storage or shall be stored out of the reach of children.
- (h) Smoking is not permitted in space used by children when children are present. All smoking materials shall be kept in locked storage or out of the reach of children.
- (i) Fuel burning heaters, fireplaces and floor furnaces shall be provided with a protective screen attached securely to substantial supports to prevent access by children and to prevent objects from being thrown into them.
- (j) Plants that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.
- (k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.
- (l) Gas tanks shall be located so they are not accessible to the children or shall be in a protective enclosure or surrounded by a protective guard.
- (m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.
- (n) Once a day, prior to initial use, the indoor and outdoor premises shall be checked for debris, vandalism, and broken equipment. Debris shall be removed and disposed.
- (o) Plastic bags, toys, and toy parts small enough to be swallowed, and materials that can be easily torn apart such as foam rubber and styrofoam, shall not be accessible to children under three years of age, except that styrofoam plates and larger pieces of foam rubber may be used for supervised art activities and styrofoam plates may be used for food service. Latex and rubber balloons shall not be accessible to children under five years of age.

(p) When non-ambulatory children are in care, a crib or other device shall be available for evacuation in case of fire or other emergency. The crib or other device shall be fitted with wheels in order to be easily moveable, have a reinforced bottom, and shall be able to fit through the designated fire exit. For centers that do not meet institutional building code, and the exit is more than eight inches above grade, the center shall develop a plan to ensure a safe and timely evacuation of the crib or other device. This plan shall be demonstrated to a Division representative for review and approval. During the monthly fire drills required by Rule 10A NCAC 09 .0302(d)(4), the evacuation crib or other device shall be used in the manner described in the evacuation plan.

(q) A first aid kit must always be available on site.

History Note: Authority G.S. 110-85; 110-91(3),(6); 143B-168.3; Eff. January 1, 1991; Amended Eff. January 1, 1996; November 1, 1991; Temporary Amendment Eff. October 1, 1997; Amended Eff. July 1, 2010; December 1, 2007; April 1, 2001; July 1, 1998.

10A NCAC 09 .0606 SAFE SLEEP POLICY

(a) Each center licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

- (1) specifies that caregivers shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged six months or less, the center receives a written waiver of this requirement from a health care professional, or
 - (B) for an infant older than six months, the center receives a written waiver of this requirement from a health care professional, or a parent, or a legal guardian;
- (2) specifies whether pillows, blankets, toys, or other objects may be placed with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (3) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (4) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75° F;
- (5) specifies the means by which caregivers shall visually check on sleeping infants aged 12 months or younger;
- (6) specifies the frequency with which caregivers shall visually check on sleeping infants aged 12 months or younger;
- (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger with such

documents to be maintained for a minimum of one month; and

- (8) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The center shall post a copy of its safe sleep policy or a poster about infant safe sleep practices in a prominent place in the infant room.

(c) A copy of the center's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the center;
- (3) the date the center's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(d) If a center amends its safe sleep policy, it shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(e) A health care professional's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping as specified in Subparagraph (a)(1) of this Rule shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's health care professional or parent; and
- (3) specify the infant's authorized sleep positions;

The center shall retain the waiver in the child's record as long as the child is enrolled at the center.

(f) For each infant with a waiver on file at the center as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

History Note: Authority G.S. 110-85; 110-91(15); 143B-168.3; Eff. May 1, 2004; Amended Eff. July 1, 2010.

10A NCAC 09 .0701 HEALTH STANDARDS FOR STAFF

(a) All personnel, employed by a child care center, including the director, shall have on file within 60 days of the date of employment, a statement signed by a health care professional

that indicates that the person is emotionally and physically fit to care for children. When submitted the medical statement shall not be older than 12 months.

(b) The Division, or the director of the child care center, may request another evaluation of an employee's emotional and physical fitness to care for children when there is reason to believe that there has been deterioration in the person's emotional or physical fitness to care for children.

(c) A test showing each employee, including the director, to be free of active tuberculosis is required prior to employment. The results indicating the individual is free of active tuberculosis shall be obtained within the 12 months prior to the date of employment.

(d) Each employee, including the director, shall also annually submit a medical statement from a health care professional, or must complete a health questionnaire giving information about the status of his/her health on a form provided by the Division.

(e) Staff medical statements, proof of a tuberculosis test, and completed health questionnaires shall be included in the employee's individual personnel file in the center.

(f) Emergency medical care information shall be on file for each individual staff person. That information shall include the name, address, and telephone number of the person to be contacted in case of an emergency, the responsible party's choice of health care professional, and preferred hospital; any chronic illness the individual has and any medication taken for that illness; and any other information that has a direct bearing on assuring safe medical treatment for the individual. This emergency medical care information shall be on file in the center on the staff person's first day of employment and shall be updated as changes occur and at least annually.

History Note: Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3;

Eff. January 1, 1986;

Amended Eff. July 1, 2010; July 1, 1998.

**10A NCAC 09 .0702 STANDARDS FOR
SUBSTITUTES AND VOLUNTEERS**

(a) In child care centers the substitute staff and volunteers who are counted in the child care staff/child ratio shall comply with the health standards contained in this Section.

(b) All substitutes and volunteers not included in the child care staff/child ratio shall complete the health questionnaire described in Rule .0701 of this Section prior to the first day of work and complete a health questionnaire annually thereafter as long as they continue to work in the center.

(c) A test showing each substitute and volunteer is free of active tuberculosis is required prior to the first day of work. The results of the test shall be obtained within the 12 months prior to employment or the beginning of the volunteer activity. This Paragraph applies only to individuals who volunteer more than once per week.

(d) The age of substitute staff and volunteers shall be verified prior to the first day of work by documenting the substitute staff or volunteer's date of birth in the individual's record. Any substitute teacher shall be at least 18 years old and literate.

(e) Emergency medical care information as described in Rule .0701(f) of this Section shall be on file for all substitutes and volunteers on the person's first day of work and shall be updated as changes occur and at least annually.

History Note: Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3;

Eff. January 1, 1986;

Amended Eff. July 1, 2010; July 1, 1998; October 1, 1991.

10A NCAC 09 .0802 EMERGENCY MEDICAL CARE

(a) Each child care center shall have a written plan which assures that emergency medical care is available or can be obtained for children. The plan shall be reviewed during staff orientation with new staff and with all staff at least twice each year. This plan shall give the procedures to be followed to assure that any child who becomes ill or is injured and requires medical attention while at the center, or while participating in any activity provided or sponsored by the center, receives appropriate medical attention. The following information shall be included in the center's emergency medical care plan:

- (1) The name, address, and telephone number of a health care professional, community clinic, or local health department that is available to provide medical consultation;
- (2) The name, address, and telephone number of the emergency room to be used when the parent's or family's health care professional cannot be reached or when transporting the ill or injured child to the person's preferred hospital could result in serious delay in obtaining medical attention;
- (3) Designation of a means of transportation always available for use in the event of a medical emergency;
- (4) The name of the person, and his or her alternate, at the center, responsible for determining which of the following is needed, carrying out that plan of action, and assuring that appropriate medical care is given:
 - (A) Simple first aid given at the center for an injury or illness needing only minimal attention;
 - (B) Advice from previously identified medical consultant in order to decide if care is to be given at the center or if the ill or injured child is to be transported to a designated medical resource; or
 - (C) Immediate transportation of the child to a designated medical resource for appropriate treatment;
- (5) The person(s) at the center responsible for:
 - (A) Assuring that the signed authorization described in Paragraph (c) of this Rule is taken with the ill or injured child to the medical facility;

- (B) Accompanying the ill or injured child to the medical facility;
- (C) Notifying a child's parents or emergency contact person about the illness or injury and where the child has been taken for treatment;
- (D) Notifying the medical facility about the ill or injured child being transported for treatment; and
- (E) Obtaining substitute staff, if needed, to maintain required staff/child ratio and adequate supervision of children who remain in the center; and

(6) A statement giving the location of the telephone located on the premises which is in good working condition and is always available for use in case of emergency. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted within sight of the telephone. A telephone located in an office in the center that is sometimes locked during the time the children are present shall not be designated for use in an emergency.

(b) Emergency medical care information shall be on file for each individual child. That information shall include the name, address, and telephone number of the parent or other person to be contacted in case of an emergency, the responsible party's choice of health care professional and preferred hospital; any chronic illness the individual has and any medication taken for that illness; and any other information that has a direct bearing on assuring safe medical treatment for the child. This emergency medical care information shall be on file in the center on the child's first day of attendance and shall be updated as changes occur and at least annually.

(c) Each child's parent, legal guardian, or full-time custodian shall sign a statement authorizing the center to obtain medical attention for the child in an emergency. That statement shall be on file on the first day the child attends the center. It shall be easily accessible to staff so that it can be taken with the child whenever emergency medical treatment is necessary.

(d) An incident report shall be completed each time a child receives medical treatment by a health care professional, community clinic, or local health department, as a result of an incident occurring while the child is at the child care center. This incident report shall include:

- (1) the child's name, date and time of incident, part of body injured, type of injury,
- (2) the names of adult witnesses to incident,
- (3) a description of how and where incident occurred,
- (4) the piece of equipment involved (if any),
- (5) any treatment received, and
- (6) the steps taken to prevent reoccurrence.

This report shall be signed by the person completing it and by the parent, and maintained in the child's file. A copy of the

incident report shall be mailed to a representative of the Division within seven calendar days after treatment.

(e) An incident log shall be completed any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form provided by the Division.

History Note: Authority G.S. 110-85; 110-91(1),(9); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; July 1, 1998; January 1, 1996; October 1, 1991; November 1, 1989.

10A NCAC 09 .0901 GENERAL NUTRITION REQUIREMENTS

(a) Meals and snacks served to children in a child care center shall comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free of charge from the Division at the address in Rule .0102(1) of this Chapter.

(b) Menus for nutritious meals and snacks shall be planned at least one week in advance. At least one dated copy of the current week's menu shall be posted where it can be seen easily by parents and food preparation staff when food is prepared or provided by the center, except in centers with a licensed capacity of 3 to 12 children located in a residence. A variety of food shall be included in meals and snacks. Any substitution shall be of comparable food value and shall be recorded on the menu.

(c) When children bring their own food for meals or snacks to the center, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the center must provide additional food necessary to meet those requirements.

(d) Drinking water must be freely available to children of all ages. Drinking fountains or individual drinking utensils shall be provided. When a private water supply is used, it must be tested by and meet the requirements of the Commission for Public Health.

(e) Children's special diets or food allergies shall be posted in the food preparation area and in the child's eating area.

(f) The food required by special diets may be provided by the center or may be brought to the center by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the center and written instructions shall be provided by the child's parent, health care professional, or a licensed dietician/nutritionist. If the diet is not prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on file at the center.

(g) Food and beverages with little or no nutritional value served as a snack, such as sweets, fruit drinks, soft drinks, etc., shall be available only for special occasions.

(h) Accommodations for breastfeeding mothers shall be provided that include seating and an electrical outlet in a place other than a bathroom that is shielded from view by staff and the public which may be used by mothers while they are breastfeeding or expressing milk.

History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; July 1, 1998; October 1, 1991; November 1, 1989.

10A NCAC 09 .1403 AQUATIC ACTIVITIES

(a) This Rule applies to children and staff in child care centers that participate in aquatic activities.

(b) The requirements in this Rule apply to aquatic activities, which are defined as activities that take place in, on, or around a body of water such as swimming, swimming instruction, wading, visits to water parks, and boating. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.

(c) For every 25 children in care participating in aquatic activities, there shall be at least one person who has a life guard training certificate issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activities. These lifeguards shall not be counted in the required staff-child ratios referenced in Paragraph (d) of this Rule.

(d) Children under the age of three shall not participate in aquatic activities except, to the extent necessary, to implement any child's Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).

(e) The following staff-child ratios shall be maintained whenever children participate in aquatic activities:

Age of Children	Ratio Staff/Children
3 to 4 Years	1/8
4 to 5 Years	1/10
5 Years and Older	1/13

Notwithstanding the staff-child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.

(f) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. Adequate supervision means that half of the center staff needed to meet the staff-child ratios in Paragraph (d) of this Rule is in the water and the other half is out of the water. If an uneven number of staff are needed to meet the required staff-child ratios, the majority shall be in the pool. Staff shall be stationed in pre-assigned areas that will enable them at all times to hear, see, and respond quickly to the children who are in the water and children who are out of the water. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage and shall communicate with

one another about children moving from one area to another area.

(g) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision including restroom or changing room use;
- (3) how discipline is handled during aquatic activities; and
- (4) the facility's specific field trip and transportation policies and procedures.

(h) Before staff first supervise children on an aquatic activity, and annually thereafter, staff shall sign and date statements that they have reviewed:

- (1) the center policies as specified in Paragraph (f) of this Rule;
- (2) any specific guidelines provided by the pool operator or other off-site aquatic facility; and
- (3) the requirements of this Rule.

The current statement shall be maintained in the staff person's personnel file for one year or until it is superseded by a new statement.

(i) Any outdoor swimming pool which is located on the child care facility premises shall be enclosed by a fence and shall be separated from the remaining outdoor play area by that fence.

(j) Swimming pool safety rules shall be posted in a prominent place visible to children and staff for any swimming pool located on the child care facility premises. These rules shall state:

- (1) the location of a first-aid kit;
- (2) that only water toys are permitted;
- (3) that children shall not run or push one another;
- (4) that swimming is allowed only when an adult is present; and
- (5) that glass objects are not allowed.

(k) All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules is on file with the Division of Child Development, 319 Chapanoke Road, Raleigh, NC 27603, or may be obtained at no cost by writing the North Carolina Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630.

(l) Children shall wear an age or size appropriate life jacket whenever they participate in boating, rafting or canoeing activities.

History Note: Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; November 1, 2007; January 1, 1996; January 1, 1992; January 1, 1987.

10A NCAC 09 .1505 BUILDING APPROVAL FOR SCHOOL-AGED CARE

History Note: Authority G.S. 110-92; 143B-168.3; Eff. January 1, 1986; Repealed Eff. July 1, 2010.

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.

(c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:

- (1) The structure complies with the North Carolina Building Code for family child care homes or has written approval for use as a family child care home by the local building inspector.
- (2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance. Exception: Single wide manufactured homes will be limited to a maximum of three preschool-age children (not more than two may be two years of age or less) and two school-age children.
- (3) All children are kept on the ground level with an exit at grade.
- (4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.
- (5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.
- (6) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved

by the Department of Insurance for that installation and are provided with a protective screen attached securely to substantial supports are allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.

- (7) All indoor areas used by children are heated in cool weather and ventilated in warm weather.
- (8) Hot pipes or radiators which are accessible to the children are covered or insulated.
- (9) Accommodations for breastfeeding mothers are provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

- (1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months;
- (2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course;
- (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- (4) a completed health questionnaire;
- (5) a copy of current pet vaccinations for any pet in the home;
- (6) a negative well water bacteriological analysis if the home has a private well;
- (7) copies of any inspections required by local ordinances; and
- (8) any other documentation required by the Division according to these Rules to support the issuance of a license.

(e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the requirements, to offer technical assistance when needed, and to provide information about local resources. The issuance of a license applies as follows:

- (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;
- (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve full compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued; or

- (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.
- (f) The Division shall allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to relocate, and notifies the Division of the relocation; and the Division representative is unable to visit before the relocation occurs. A person shall not operate until he or she has received from the Division either temporary permission to operate or a license.
- (g) When a person applies for a family child care home license, the Secretary shall deny the application for the license under the following circumstances:
 - (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
 - (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
 - (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
 - (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:
 - (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to the children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
 - (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
 - (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

- (h) The license shall not be bought, sold, or transferred from one individual to another.
- (i) The license is valid only for the location address/addresses listed on it.
- (j) The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.
- (k) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.
- (l) A licensee shall notify the Division whenever a change occurs which affects the information shown on the license.

History Note: Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987.

10A NCAC 09 .1703 CAREGIVER INTERACTIONS

Caregivers shall relate to children in positive ways by helping them feel welcome and comfortable, treating them with respect, listening to what they say, responding to them with acceptance and appreciation and participating in many activities with the children. For example, caregivers shall:

- (1) Make eye contact when speaking to a child;
- (2) Actively engage children in conversation to share experiences, ideas and opinions;
- (3) Help children develop problem-solving skills; and
- (4) Facilitate learning by providing positive reinforcement, encouraging efforts and recognizing accomplishments.

History Note: Authority G.S. 110-85; 110-91(8),(11); 143B-168.3; Eff. July 1, 2010.

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

(a) The operator shall provide the following on a daily basis for all children in care:

- (1) Meals and snacks which comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food and number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free of charge from the Division at the address in Rule .0102 of this Chapter;
- (2) A meal or snack at least every four hours;

- (3) Drinking water freely available to children;
- (4) Developmentally appropriate equipment and materials for a variety of outdoor activities which allow for vigorous play, large and small muscle development, and social, emotional, and intellectual development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors;
- (5) An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet;
- (6) A quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care;
- (7) Adequate supervision as described below:
 - (A) For children who are awake, staff shall interact with the children while moving about the indoor or outdoor area, and shall be able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time; and
 - (B) For children who are sleeping or napping, the staff are not required to visually supervise them, but shall be able to hear and respond quickly to them. Children shall not sleep or nap in a room with a closed door between the children and the supervising staff. The staff shall be on the same level of the home where children are sleeping or napping.
- (8) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face;
- (9) The opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach;
- (10) Developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule. The written schedule shall:
 - (A) Show blocks of time usually assigned to types of activities and include periods of time for both active play and quiet play or rest;
 - (B) Be displayed in a place where parents are able to view;
 - (C) Reflect daily opportunities for both free choice and guided activities;
 - (D) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit; and
 - (E) Include a daily gross motor activity which may occur indoors or outdoors; and
- (11) When screen time, including videos, video games, and computer usage, is provided, it shall be:
 - (A) Offered only as a free choice activity,
 - (B) Used to meet a developmental goal, and
 - (C) Limited to no more than two and a half hours per week for each child two years of age and older.

Usage time periods may be extended for specific special events, projects, occasions such as a current event, homework, on-site computer classes, holiday; and birthday celebration. Screen time is prohibited for children under the age of two years. The operator shall offer alternate activities for children under the age of two years.

 - (b) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used. Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care professional.
 - (c) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.
 - (d) The parent or health care professional of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care professional, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent or health care professional to reflect changes in the child's needs as he or she develops.

History Note: Authority G.S. 110-85; 110-88; 110-91(2),(12); Eff. July 1, 1998; Amended Eff. July 1, 2010; March 1, 2006; May 1, 2004.

10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS

(a) The operator shall maintain the following health records for each child who attends on a regular basis, including his or her own preschool child(ren):

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;
- (3) a health and emergency information form provided by the Division that is completed and signed by a child's parent. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
 - (A) the child's name, address, and date of birth;
 - (B) the names of individuals to whom the child may be released;
 - (C) the general status of the child's health;
 - (D) any allergies or restrictions on the child's participation in activities with instructions from the child's parent or physician;
 - (E) the names and phone numbers of persons to be contacted in an emergency situation;
 - (F) the name and phone number of the child's physician and preferred hospital;
 - (G) authorization for the operator to seek emergency medical care in the parent's absence; and
- (4) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.

(b) The operator shall complete and maintain other records which include:

- (1) documentation of the operator's procedures in emergency situations, on a form which is provided by the Division;
- (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
- (3) incident reports that are completed each time a child receives medical treatment by a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department, as a result of an incident occurring while the child is in the family child care home. Each incident shall be reported on a form provided by the Division, signed by the operator and the parent, and maintained in the child's file. A copy shall be mailed to a

representative of the Division within seven calendar days after the incident occurs;

- (4) an incident log which is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division;
- (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by a representative of the Division; and
- (6) Accurate daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each child.

(c) Written records shall be maintained as follows:

- (1) All children's records as required in this Chapter, except medication permission slips as required in Rule .1720(c)(13) of this Section, must be kept on file one year from the date the child is no longer enrolled.
- (2) Additional caregiver records as required in this Chapter shall be maintained on file one year from the employee's last date of employment.
- (3) Current program records as required in this Chapter shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:
 - (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(13)
Infant Feeding Schedule	.1718(6)
SIDS Sleep Chart/Visual Check	.1724(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721 (b)(6)
Emergency Numbers	.1720(a)(8)
Emergency Procedures Form	.1721(b)(1)
Field Trip/Transportation Permission	.1723(1)
Fire Drill Log	.1721(b)(2)

Incident Log	.1721(b)(4)
Playground Inspection	.1721(b)(5)
Pet Vaccinations	.1720(d)(10)

- (4) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1720(d)(1), .1719(7), and .1702(d) of this Section shall remain on file at the family child care home for as long as the license remains valid.
- (5) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.
- (6) All records required in this Chapter shall be available for review by a representative of the Division.

History Note: Authority G.S. 110-85; 110-88; 110-91(1),(9); Eff. July 1, 1998; Amended Eff. July 1, 2010; July 1, 2008; April 1, 2003; April 1, 2001.

10A NCAC 09 .1724 SAFE SLEEP POLICY

- (a) Each operator licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:
 - (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged six months or less, the operator receives a written waiver of this requirement from a health care professional; or
 - (B) for an infant older than six months, the operator receives a written waiver of this requirement from a health care professional, or a parent, or a legal guardian;
 - (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play pen with a firm padded surface when sleeping;
 - (3) specifies whether pillows, blankets, toys, and other objects may be placed in a crib with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
 - (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
 - (5) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75°F;
 - (6) specifies the means by which the operator shall visually check sleeping infants aged 12 months or younger;

- (7) specifies the frequency with which the operator shall visually check sleeping infants aged 12 months or younger;
- (8) specifies how the operator shall document compliance with visually checking on sleeping infants aged 12 months or younger, with such documents to be maintained for a minimum of one month; and
- (9) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy or a poster about safe sleep practices in a prominent place in the infant sleeping room or area.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) A health care professional's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's health care professional or parent; and
- (3) specify the infant's authorized sleep positions;

The operator shall retain the waiver in the child's record as long as the child is enrolled at the home.

(f) For each infant with a waiver on file at the home as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, or play pen that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

History Note: Authority G.S. 110-85; 110-91(15); 143B-168.3; Eff. May 1, 2004; Amended Eff. July 1, 2010.

10A NCAC 09 .2201 ADMINISTRATIVE PENALTIES: GENERAL PROVISIONS

(a) Pursuant to G.S. 110-102.2, the secretary or designee may order one or more administrative penalties against any operator who violates any provision of Article 7 of Chapter 110 of the General Statutes or of this Chapter.

(b) Nothing in this Section shall restrict the Secretary from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this Chapter may be imposed in conjunction with any other administrative activity.

(c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.

(d) Following the substantiation of any abuse or neglect complaint or the issuance of any administrative action against a child care facility, the operator shall:

- (1) maintain copies of documentation of the substantiated complaint investigation or the administrative action issued against the facility for the past three years in a binder, which is accessible to parents;
- (2) within 30 days, notify the parents of the children currently enrolled that a complaint was substantiated or that an administrative action was taken against the facility, including administrative actions that may be stayed pending appeal. The notice shall:
 - (A) be in writing;
 - (B) include information on the nature of the substantiated complaint or the type of administrative action taken; and
 - (C) state where the binder containing copies of the substantiated complaint investigation or administrative action may be found on site for review by the parents; and
- (3) document the date that the written notice was given to all parents and have parents sign an acknowledgement that they have received said notice.

History Note: Authority G.S. 110-85; 110-102.2; 110-103.1; 143B-168.3; 150B-23; Eff. July 1, 1988; Amended Eff. July 1, 2010; January 1, 2006; April 1, 2001; November 1, 1989.

10A NCAC 09 .2318 RETENTION OF FORMS AND REPORTS BY A CHILD CARE OPERATOR

Each child care center operator must retain records as follows:

- (1) All children's records as required in this Chapter, except the Medication Permission Slip as referenced in Rule .0803(13) of this Chapter, shall be maintained on file for at least one year from the date the child is no longer enrolled in the center.

(2) All personnel records as required in this Chapter shall be maintained on file at least one year from the date the employee is no longer employed.

(3) Current program records shall be maintained on file for as long as the license remains valid. Prior versions shall be maintained based on the time frame in the following charts:

(a) A minimum of 30 days from the revision or replacement date:

Record	Rule
Activity Plan	.0508 (a)
Allergy Postings	.0901(e)
Feeding Schedule	.0902
Menu	.0901(b)
SIDS Sleep Chart/Visual Check	.0606(a)(7)

(b) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.0302(d)(3) and .1504
Daily Schedule	.0508(a)
Emergency Medical Care Plan	.0802(a)
Field Trip/Transportation Permission	.2507 and .0512
Fire Drill Log	.0302(d)(4)
Fire Evacuation Procedures	.0604(o)
Incident Log	.0802(e)
Playground Inspection	.0604(q)
Safe Arrival and Departure Procedures	.1003(b)

(4) All building, fire, sanitation and pool inspections as referenced in G.S. 110-91, and Rules .0302 and .1403 of this Chapter shall remain on file at the center for as long as the license remains valid.

(5) Records may be maintained in a paper format or electronically, except that records that require a signature of a staff person or parent shall be maintained in a paper format.

(6) All records required in this Chapter shall be available for review by a representative of the Division.

History Note: Authority G.S. 110-85; 110-91(9); 143B-168.3; Eff. January 1, 1986; Amended Eff. July 1, 2010; July 1, 2008.

10A NCAC 09 .2501 SCOPE

The rules in this Section apply to all child care centers offering care to three or more school-age children exclusively or as a component of any other program. All rules in this Chapter pertaining to care for school-age children apply except as provided in this Section.

History Note: Authority G.S. 110-85; 110-86(3); 110-91; 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; July 1, 2000; September 1, 1990.

10A NCAC 09 .2502 SPECIAL PROVISIONS FOR LICENSURE

A center providing care for school-age children exclusively on a seasonal basis between May 15 and September 15 shall be licensed as a summer day camp. A track-out program that operates all four tracks for more than four hours per day must be licensed.

History Note: Authority G.S. 110-85; 110-88(1); 110-91; 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; July 1, 2000; September 1, 1990.

10A NCAC 09 .2503 BUILDING CODE REQUIREMENTS

(a) Building code requirements adopted by reference in Section .1300 of this Chapter apply for a facility providing care to school-age children except in the following situations:

- (1) Any building which is approved for school occupancy and which houses a public or private school during the school year shall be considered an approved building to house a facility serving school-age children exclusively. The operator shall obtain and submit copies of all applicable inspection reports to the Division.
- (2) For the purpose of carrying out the provisions of G.S. 110-91(4) for summer day camps not covered by Subparagraph (1) of this Rule, the following North Carolina Building Codes apply to the structure described in Rule .2504(b) of this Section:
 - (A) When the authorized capacity of the facility is less than 30 children, the structure shall, meet the requirements for residential occupancy as prescribed in the North Carolina Building Code. Children may use only those floors which have at least one grade level exit.
 - (B) When the authorized capacity of the facility is more than 29 children, but less than 100 children, the structure shall, meet the North Carolina Building Code requirements for business occupancy.

- (C) When the authorized capacity of the facility is more than 99 children, the structure shall, meet the North Carolina Building Code requirements for assembly occupancy, or educational occupancy or institutional occupancy.

(b) A copy of the North Carolina Building Code is on file at the Division of Child Development at the address given in Rule .0102 of this Chapter and is available for public inspection during regular business hours.

History Note: Authority G.S. 110-85; 110-88(2); 110-91(4); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; September 1, 1990.

10A NCAC 09 .2504 SPACE REQUIREMENTS

(a) All space requirements specified in Section .1400 apply when a facility provides care for school-age children and any preschool child is also in care, or when a program which provides care exclusively for school-age children routinely operates indoors in a permanent structure for more than 25 percent of each day. A gymnasium or other single use room may be included in the space measured for licensed capacity when used as primary space.

(b) A facility licensed as a summer day camp shall have a permanent structure located at the home base which is the primary site of the summer day camp activities. The permanent structure may be a building or permanent roofed shelter with overhang. The summer day camp shall meet one of the following space requirements:

- (1) When activities for children are routinely conducted outdoors or off the premises for at least 75 percent of each day, a minimum of 10 square feet per child of indoor space, exclusive of kitchens, hallways, restrooms, closets, and storage areas, shall be provided.
- (2) When the camp's home base does not provide 10 square feet of primary space indoors, the camp shall provide notarized copies of all letters, agreements, or contracts with other facilities to the Division which guarantee that children will be accommodated comfortably indoors in the event of inclement weather.

History Note: Authority G.S. 110-85; 110-91(3),(6); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; September 1, 1990.

10A NCAC 09 .2505 HEALTH REQUIREMENTS FOR CHILDREN

(a) All requirements of Section .0800 of this Chapter apply to school-age child care arrangements with the following exceptions:

- (1) A medical examination report is not required for any child enrolled in a public school or private school as described in G.S. 110-86(2)f.
- (2) Rule .0806 does not apply.
- (3) If a summer day camp maintains its master records for children and staff in a central location, emergency information for each staff person and child shall always be on site. The emergency information on site shall include the name and telephone numbers of the child's parent or other responsible person, the child's or staff person's health care professional or preferred hospital, any chronic illnesses and medication taken for that illness, any allergy and recommended treatment for that allergy, and any other information that has a direct bearing on medical treatment and safe care. The parent's signed permission to obtain medical attention must also be on site with the child.

(b) All requirements specified in Section .0900 of this Chapter apply.

(c) If food is prepared at the summer day camp, the rules regarding sanitary facilities, food preparation and service for summer camps as adopted by the Commission for Public Health and codified in 15A NCAC 18A .1000 apply. If food is prepared at a licensed track-out program, the sanitation requirements of child care centers must be met.

(d) If food is brought from home by children or catered, the following requirements apply:

- (1) Sanitary cold storage shall be provided for perishable snacks or lunches brought from home.
- (2) Safe drinking water shall be available at all times regardless of where activities are provided.

History Note: Authority G.S. 110-85; 110-91(1), (2); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; September 1, 1990.

10A NCAC 09 .2506 GENERAL SAFETY REQUIREMENTS

- (a) First aid equipment shall always be available regardless of where activities are provided.
- (b) All regulations in Rule .1403 regarding swimming pools apply.
- (c) Potentially hazardous items, such as archery equipment, hand and power tools, nails, chemicals, or propane stoves, shall be used by children only when adult supervision is provided. Such potentially hazardous items, whether or not intended for use by the children, shall be stored in locked areas or with other safeguards, or shall be removed from the premises.
- (d) All children shall be adequately supervised. Adequate supervision means staff shall be with the group of children and able to hear and see each child in his/her care, except:

- (1) Children who are developmentally able may be permitted to go to the restroom independently, provided that:
 - (A) Staff members' proximity to children assures immediate intervention to safeguard a child from harm;
 - (B) Individuals who are not staff members may not enter the restroom area while in use by any child; and
 - (C) Children up to nine years of age are supervised by staff members who are able to hear the child. Children nine years of age and older are not required to be directly supervised, however, staff members shall know the whereabouts of children who have left their group to use the restroom.
- (2) Adequate supervision for children ages nine and older means that staff are with the group of children and able to hear or see each child in his/her care. A staff member shall accompany any children that leave the group to go indoors or outdoors.
- (3) When emergencies necessitate that direct supervision is impossible for brief periods of time.
- (e) Children riding bicycles must wear safety helmets.

History Note: Authority G.S. 110-85; 110-91; 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; July 1, 1998; September 1, 1990.

10A NCAC 09 .2508 AGE APPROPRIATE ACTIVITIES

- (a) Child care facilities which provide care to school-age children shall provide a balance of teacher directed and free choice activities appropriate to the age, needs and interests of the children.
- (b) Opportunities must be provided for children to participate in the planning and the implementation of activities.
- (c) Facilities which operate a school-age component for three or fewer hours per day shall make at least three of the following activities available daily; those which operate a school-age component for more than three hours per day shall make at least four of the following activities available daily:
 - (1) Career development activities;
 - (2) Community awareness activities;
 - (3) Creative arts activities;
 - (4) Cultural activities;
 - (5) Games or manipulatives;
 - (6) Hands-on academic enrichment activities including language, math, science, social studies, or foreign language activities;
 - (7) Health education or wellness activities;
 - (8) Homework with assistance available as needed from center personnel;
 - (9) Reading activities;
 - (10) Sand or water play;

- (11) Social skills, life skills or problem-solving activities;
 - (12) Structured or unstructured physical activities; or
 - (13) Technology skill-building activities.
- (d) All equipment and materials used by school-age children shall be appropriate for the age and size of the children using the items.
- (e) When screen time, including, television, videos, video games, and computer usage, is provided, it shall be:
- (1) Offered as a free choice activity;
 - (2) Used to meet a developmental goal;
 - (3) Limited to no more than two and a half hours per week, per child; and
 - (4) When children are in care for four hours or less per day limited to a maximum of 30 minutes per child, per day.

Usage time periods may be extended for specific special events, projects, or occasions such as a current event, homework, on-site computer classes, researching topics, holiday, or birthday celebration.

History Note: Authority G.S. 110-85; 110-91(6),(12); 143B-168.3; Eff. July 1, 1988; Amended Eff. July 1, 2010; October 1, 1991; September 1, 1990.

10A NCAC 09 .2801 SCOPE

- (a) This Section applies to all child care facilities that have achieved a voluntary rated license of two stars or higher or that apply to be assessed for a voluntary rated license of two stars or higher.
- (b) A child care facility is eligible for a voluntary rated license of two through five stars.
- (c) No requirement in any component of a two-star or higher rating shall be less than the requirements for a one-star rating described in G.S. 110-91 and this Chapter. Prior to issuance of an initial two through five-star rating, all requirements in G.S. 110-91 and this Chapter must be in compliance at the time the program is assessed. The requirements for a voluntary rated license of two stars or higher are in addition to the standards found in G.S. 110-91 and this Chapter.
- (d) Nothing in this Section precludes or interferes with issuance of an administrative action as allowed by G.S. 110 and this Chapter.
- (e) As used in this Section a two component license refers to a license issued based on an evaluation of program standards and education standards.

History Note: Authority G.S. 110-85; 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. July 1, 2010; May 1, 2006.

10A NCAC 09 .2802 APPLICATION FOR A VOLUNTARY RATED LICENSE

- (a) After a licensed child care center or home has been in operation for a minimum of six consecutive months, the

procedures in this Rule apply to request an initial two- through five-star rated license or to request that a rating be changed to a two- through five-star rated license.

(b) The operator shall submit a completed application to the Division for a voluntary rated license on the form provided by the Division.

(c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated license. In order to achieve a two- through five-star rating, for a two component license the minimum score achieved must be a least four points as follows:

TOTAL NUMBER OF POINTS	RATING
4 through 6	Two Stars
7 through 9	Three Stars
10 through 12	Four Stars
13 through 15	Five Stars

(d) A Division representative shall assess the facility requesting a voluntary rated license to determine if all applicable requirements have been met to achieve the score for the requested star rating. The assessment may include a review of Division records and site visits.

(e) The Division shall provide for Infant/Toddler Environment Rating Scale Revised Edition, Early Childhood Environment Rating Scale - Revised Edition, School-Age Care Environment Rating Scale, or Family Child Care Environment Rating Scale - Revised Edition assessments to be completed, as appropriate for the program, free of charge to operators requesting an initial three or more points for program standards.

(f) Upon completion of the Division's assessment:

- (1) If the assessment indicates all the applicable requirements to achieve the score for the requested rating have been met, the Division shall issue the rating.
- (2) If the assessment indicates all the applicable requirements to achieve the score for the requested rating are not met, the Division shall notify the operator of the requirements that were not met and the requested voluntary rating shall not be issued. The operator may:
 - (A) Accept the rating for which the Division has found the operator to be eligible;
 - (B) Withdraw the request and reapply when the identified requirements to achieve the score for the requested rating have been met; or
 - (C) Appeal the denial of the requested rating as provided in G.S. 110-94.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. July 1, 2010; May 1, 2006.

10A NCAC 09 .2803 PROGRAM STANDARDS FOR A THREE COMPONENT RATED LICENSE FOR CHILD CARE CENTERS

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3;
 Eff. April 1, 1999;
 Amended Eff. May 1, 2006; January 1, 2006;
 Repealed Eff. July 1, 2010.

10A NCAC 09 .2810 STAFF/CHILD RATIOS FOR A THREE COMPONENT RATED LICENSE
10A NCAC 09 .2811 EDUCATION STANDARDS FOR A RATED LICENSE FOR CHILD CARE CENTERS

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3;
 Eff. April 1, 1999;
 Amended Eff. January 1, 2006; July 1, 2000;
 Prior to amendment of May 1, 2006 this language was located in Rule .1606 and .2803 (Rule .2810);
 Recodified from Rule .2804 Eff. May 1, 2006 (Rule .2811);
 Amended Eff. May 1, 2006;
 Repealed Eff. July 1, 2010.

10A NCAC 09 .2812 EDUCATION STANDARDS FOR CENTERS THAT PROVIDE CARE ONLY TO SCHOOL-AGED CHILDREN

History Note: Authority G.S. 110-88(7); 110-90(4); 110-91; 143B-168;
 Eff. July 1, 2000;
 Recodified from Rule .2811 Eff. May 1, 2006;
 Repealed Eff. July 1, 2010.

10A NCAC 09 .2813 COMPLIANCE HISTORY STANDARDS FOR A RATED LICENSE FOR CHILD CARE CENTERS

10A NCAC 09 .2814 PROGRAM STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

10A NCAC 09 .2815 EDUCATION STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

10A NCAC 09 .2816 COMPLIANCE HISTORY

10A NCAC 09 .2902 LICENSE

- (a) Developmental Day Centers shall maintain a four or five star rated license with an average score of 5.0 on the appropriate environment rating scale in each classroom evaluated.
- (b) A child care center with a temporary license may receive certification status if all rules in this Section are met, except for Paragraph (a) of this Rule, and an application for a two to five star rated licensed has been submitted. At the end of the temporary license period the child care center must receive a four or five star rated license as specified in Paragraph (a) of this Rule. Failure to receive a four or five star rated license shall result in the removal of certification status as a Developmental Day Center.
- (c) The license shall indicate certification as a Developmental Day Center.
- (d) The center shall comply with the staff-child ratio and maximum group size as follows:

AGE	RATIO STAFF/CHILDREN	MAXIMUM GROUP SIZE
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STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3;
 Eff. April 1, 1999;
 Amended Eff. April 1, 2003;
 Recodified from Rule .2805 Eff. May 1, 2006 (Rule .2813);
 Recodified from Rule .2806 Eff. May 1, 2006 (Rule .2814);
 Recodified from Rule .2807 Eff. May 1, 2006 (Rule .2815);
 Recodified from Rule .2808 Eff. May 1, 2006 (Rule .2816);
 Repealed Eff. July 1, 2010.

10A NCAC 09 .2901 SCOPE

(a) The rules in this Section apply to all certified Developmental Day Centers, or to all child care centers requesting to be certified as a Developmental Day Center. A Developmental Day Center offers specialized developmental day services to children who:

- (1) are diagnosed with developmental delays or developmental disabilities, or
- (2) have been identified with a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay as defined in 10A NCAC 43G .0110(c).

(b) The diagnosis or identification shall be completed by a licensed professional through a comprehensive clinical assessment. Developmental day services are designed to meet individualized needs of children in the following skill areas:

- (1) Self-help,
- (2) Physical (gross/fine motor),
- (3) Language and speech, and
- (4) Cognitive and psychosocial skills.

(c) A team of health and education professionals puts a plan of care in place for each child who is diagnosed with, or at risk for, a developmental delay, developmental disabilities or atypical development. The goal is to assist exceptional children in preparing for ongoing growth and learning in less restrictive, inclusive environments. All rules in this Chapter apply except as provided in this Section. Nothing in this Section precludes the enrollment of typically developing children in a Developmental Day Center.

History Note: Authority G.S. 110-85; 110-88(14);
 Eff. July 1, 2010.

0-12 Months	1/4	8
1 to 2 Years	1/5	10
2 Years and Older	1/6	18

(e) A minimum of two staff members shall be on site at all times while children are in attendance at the facility.

(f) A child care center may appeal the removal of certification status in accordance with G.S. 110-94; however, an appeal does not preclude a Local Education Agency from removing contracted children from the program before a final decision on the appeal is reached.

*History Note: Authority G.S. 110-85; 110-88(14);
Eff. July 1, 2010.*

10A NCAC 09 .2903 STAFF QUALIFICATIONS

(a) Each center serving children ages birth to three years shall have a minimum of one staff who holds a Infant Toddler Family Specialist certification issued from the North Carolina Division of Public Health, or Birth-through-Kindergarten (B-K) Standard Professional I licensure or provisional licensure in B-K issued from the Department of Public Instruction. This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) During the 10 month school year (as defined by the State Board of Education), each group of preschool children aged three and older shall have at least one lead teacher who holds Birth-through-Kindergarten (B-K) Standard Professional I licensure or provisional licensure in B-K, or Preschool Add-on licensure issued from the Department of Public Instruction. During the time when school is not in session, each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(c) During the 10 month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. During the time when school is not in session, each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

(d) Center administrators shall have a Level III North Carolina Early Childhood Administration Credential and two years of verifiable work experience with children with developmental delays or disabilities.

*History Note: Authority G.S. 110-85; 110-88(14);
Eff. July 1, 2010.*

10A NCAC 09 .2904 PROGRAM REQUIREMENTS

(a) Children shall participate in daily activities outlined in a plan of care such as an Individualized Family Service Plan (IFSP), Individualized Education Program (IEP), Person Centered Plan (PCP), or for children who are typically developing, an activity plan developed by the center. Activities shall allow children to participate in whole group, as part of a group, or independently.

(b) In addition to the restrictions specified in 10A NCAC 09 .0713 regarding ages and grouping of children, preschool children aged three and older shall not be grouped with school aged children except for special events or activities such as birthday, holiday, or cultural celebrations and special presentations such as puppet or magic shows, a special story teller, or a discussion of safety practices by a fireman or nurse. Children aged birth to five years may be cared for in groups with older children for the first and last operating hour of the day provided the staff/child ratio for the youngest child in the group is maintained.

(c) During the 10 month school year (as defined by the State Board of Education), 75 percent or more of classrooms with preschool children aged three and older, shall maintain an enrollment capacity of 50 percent or more typically developing children.

*History Note: Authority G.S. 110-85; 110-88(14);
Eff. July 1, 2010.*

10A NCAC 09 .2905 FAMILY SERVICES

The center shall facilitate family involvement as evidenced by meeting at least four of the following six activities:

- (1) Providing quarterly parent education sessions;
- (2) Holding parent/teacher conferences at least twice a year;
- (3) Communicating on an individual basis with parents via daily notes, progress reports or surveys;
- (4) Having parents as members of a center advisory board;
- (5) Providing opportunities for parent volunteers to assist with special classroom activities, field trips and other learning experiences for children; or
- (6) Providing parents with referral information about other community programs and resources serving young children.

*History Note: Authority G.S. 110-85; 110-88(14);
Eff. July 1, 2010.*

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 12 .0332 REVIEW/AUDIT OF THIRD PARTY ADMINISTRATORS

(a) Definitions. As used in this rule:

- (1) "Certification" means the certification required by G.S. 58-56-26(c).
- (2) "Insurer" has the same meaning as in G.S. 58-56-2(4).
- (3) "Third party administrator" or "TPA" has the same meaning as in G.S. 58-56-2(5).

(b) For the certification submitted on July 1, 2010, the insurer shall submit a certification signed by an officer of the insurer, which identifies the name and federal tax identification number of the TPA that is the subject of the certification. The certification shall contain the following language:

"I, (name and title of the officer of the insurer), am familiar with the requirements of G.S. 58-56-26(c), and hereby certify that (insurance company full licensed name and federal tax identification number) performed a review, an on-site audit, or both in accordance with G.S. 58-56-26(c) for every third party administrator identified in or attached to this certification for calendar year 2009."

The certification shall contain the names of TPAs to which G.S. 58-56-26(c) does not apply and the reasons for the exception of each TPA.

(c) For certifications submitted on July 1, 2011 and each subsequent year, each insurer shall certify that the insurer's review and on-site audit include:

- (1) An assessment of the TPA's business practices and procedures and evaluations of all of the following:
 - (A) The TPA's compliance with provisions of the written agreement with the insurer;
 - (B) The TPA's compliance and adherence to the TPA's internal policies and procedures for contract management, claims administration, and general administration, if applicable;
 - (C) The TPA's performance of claims adjudication and payment, if applicable;
 - (D) The TPA's performance of underwriting services, if applicable; and
 - (E) The TPA's performance of collecting premiums or other monies; and
- (2) A written summary of the objectives and scope of the review or on-site audit and the results of the review or on-site audit, including a corrective action plan addressing any deficiencies found during the review or on-site audit.

(d) An on-site audit shall include an inspection of the TPA's place of business and shall verify the accuracy, integrity, and completeness of the information received during a review conducted by the insurer under G.S. 58-56-26(c).

(e) In addition to a statement certifying compliance with the requirements of Paragraphs (c) and (d) of this Rule, a certification submitted on or after July 1, 2011 and each subsequent year shall be dated and include:

- (1) The insurer's name as it appears on the insurer's license or certificate of authority and the insurer's federal tax identification number;
- (2) The name and federal tax identification number of every TPA with which the insurer has a written administrative agreement under G.S. 58-56-6;
- (3) Any exceptions to the certification identifying each excepted TPA by name and federal tax identification number and an explanation for the exception of the TPA;
- (4) The year for which the certification is made; and
- (5) The name, title and signature of an officer of the insurer making the certification.

(f) A sample format for the certification is available free of charge from the Life and Health Division at the Department of Insurance Web site at www.ncdoi.com.

(g) An insurer that did not have any written administrative agreements with TPAs during the reporting year for which the certification is required shall submit a report instead of a certification. This report shall include the information required under Paragraph (e) of this Rule; except the information required by Subparagraphs (e)(2) and (e)(3) of this Rule need not be included.

(h) A review may be conducted on the premises of the insurer or at another location designated by the insurer and may be conducted by electronic means. A review or on-site audit may be performed by either the insurer or the insurer's designated representative. The insurer's designated representative shall not be an employee of or independent contractor with the TPA and shall be an independent, disinterested person or entity.

(i) The certification shall be submitted annually to the Life and Health Division through the NAIC system for electronic rate and form filings ("SERFF" or its successor system or program). If an insurer is unable to use the NAIC system or program, the insurer shall submit the certification by way of the U.S. Postal Service or other mail delivery service or by way of electronic mail, compressed in Adobe Acrobat (PDF).

History Note: Authority G.S. 58-2-40; 58-56-26; Eff. July 1, 2010.

11 NCAC 12 .0714 REFUND OF UNEARNED PREMIUM FOR CREDIT INSURANCE

If credit life insurance coverage is sold together with any other credit insurance coverage, such as accident and health, and death occurs, then as of the date of death the credit life insurance premium is deemed to be fully earned, but the other credit insurance coverage(s) shall provide for a refund of unearned premium. Such refund shall be made in accordance with the provisions of G.S. 58-57-50.

History Note: Authority G.S. 58-2-40; 58-57-50;

Eff. July 1, 2010.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 07D .0202 FEES FOR LICENSES AND TRAINEE PERMITS

- (a) Application, license and trainee permit fees are as follows:
(1) one hundred and fifty dollars (\$150.00) non-refundable application fee;
(2) two hundred fifty dollar (\$250.00) annual fee for a new or renewal license...
(3) two hundred fifty dollar (\$250.00) annual trainee permit fee;
(4) fifty dollars (\$50.00) new or renewal fee per year of the license term...
(5) twenty five dollars (\$25.00) duplicate license fee per year of the license term;
(6) one hundred dollars (\$100.00) late renewal fee in addition to the renewal fee;
(7) one hundred dollars (\$100.00) temporary permit fee;
(8) fifty dollars (\$50.00) branch office license fee per year of the license term; and
(9) fifty dollars (\$50.00) special limited guard and patrol licensee fee.

(b) Fees may be paid in the form of a check or money order made payable to the Private Protective Services Board.

History Note: Authority G.S. 74C-9; Eff. June 1, 1984; Amended Eff. July 1, 1987; December 1, 1985; Temporary Amendment Eff. January 1, 1990 for a period of 180 days to expire on July 1, 1990; ARRC Objection Lodged January 18, 1990; Amended Eff. July 1, 2010; June 1, 2009; January 1, 2004; February 1, 1995; July 1, 1990.

12 NCAC 07D .0702 FEES FOR UNARMED SECURITY GUARD REGISTRATION

- (a) Fees for unarmed security guards are as follows:
(1) thirty dollar (\$30.00) non-refundable initial registration fee;
(2) thirty dollar (\$30.00) annual renewal, or reissue fee;
(3) fifteen dollar (\$15.00) transfer fee; and
(4) twenty-five dollars (\$25.00) late renewal fee to be paid within 90 days from the date the registration expires and to be paid in addition to the renewal fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

History Note: Authority G.S. 74C-9; Eff. June 1, 1984; Amended Eff. December 1, 1985; Temporary Amendment Eff. January 1, 1990 for a Period of 180 Days to Expire on July 1, 1990; ARRC Objection Lodged January 18, 1990; Amended Eff. July 1, 2010; May 1, 2010; December 1, 2003; July 1, 1990.

12 NCAC 07D .0802 FEES FOR ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

- (a) Fees for armed security guard firearm registration permits are as follows:
(1) thirty dollars (\$30.00) non-refundable initial registration fee;
(2) thirty dollars (\$30.00) annual renewal, or reissue fee; and
(3) fifteen dollar (\$15.00) application fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

History Note: Authority G.S. 74C-9; Eff. June 1, 1984; Amended Eff. December 1, 1985; Temporary Amendment Eff. January 1, 1990 for a Period of 180 Days to Expire on July 1, 1990; ARRC Objection Lodged January 18, 1990; Amended Eff. July 1, 2010; December 1, 2003; July 1, 1990.

12 NCAC 11 .0204 RENEWAL OR RE-ISSUE OF LICENSE

(a) Each applicant for a license renewal shall complete a renewal form provided by the Board. This form shall be submitted to the administrator not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) two head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size;
(2) statements of the result of a local criminal history records search by the City/County Identification Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months;
(3) the applicant's renewal fee; and
(4) proof of liability insurance pursuant to G.S. Sec. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. In no event shall renewal be granted more than 90 days after the date of expiration of a license. Renewals shall be dated on the next day following expiration of the prior license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by 12 NCAC 11 .0203 and must be submitted not later than 90 days after the expiration date of the license.

(d) The administrator shall approve or deny all applications for renewal. Any denials shall be submitted to the Board for a final board decision.

(e) Members of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed by 12 NCAC 11 .0500. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

History Note: Authority G.S. 74D-2(a); 74D-5; 93B-15; Eff. January 1, 1995; Temporary Adoption Eff. May 18, 1995; Amended Eff. July 1, 2010; May 1, 1999; October 1, 1995.

12 NCAC 11 .0306 RENEWAL OR REREGISTRATION OF REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer, shall complete a form provided by the Board. This form shall be submitted not less than 30 days prior to expiration of the applicant's current card and shall be accompanied by:

- (1) two head and shoulders color photographs of applicant of acceptable quality for identification one inch by one inch in size;
- (2) statements of the result of a local criminal history records search by the City/County Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceding 24 months; and
- (3) the applicant's renewal fee.

(b) Each licensee shall provide each applicant for registration or re-registration an application form provided by the Board. This form shall be submitted to the Board and accompanied by:

- (1) two head and shoulders photographs of applicant of acceptable quality for identification one inch by one inch in size; and
- (2) the applicant's reregistration fee.

(c) The employer of each applicant for a registration renewal or reregistration shall give the applicant a copy of the application which will serve as a record of application for renewal and shall retain a copy of the applicant's renewal application in the individual's personnel file in the employer's office.

(d) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete the continuing education requirements prescribed by 12 NCAC 11 .0500. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

History Note: Authority G.S. 74D-7; 74D-8; 93B-15; Temporary Rule Eff. January 9, 1984, for a Period of 120 Days to Expire on May 7, 1984; Eff. May 1, 1984; Amended Eff. July 1, 2010; March 1, 1993; December 1, 1988; July 1, 1987.

12 NCAC 11 .0503 ACCREDITATION STANDARDS

(a) CE courses may obtain the sanction of the Alarm Systems Licensing Board by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;
- (3) the outline of the course, including the number of training hours for each segment; and
- (4) the identity of each instructor.

(b) To determine if a course will receive sanctioning from the Alarm Systems Licensing Board, the Board shall complete the following review:

- (1) The matter shall be referred to the Education and Training Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least one member of the Education and Training Committee, one member of the Board's staff, and one industry licensee who has no vested interest in the course. Other members of the sub-committee may be appointed at the discretion of the Education and Training Committee Chairman.
- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives.
- (3) When the sub-committee completes its review, it shall report to the Education and Training Committee. The Education and Training Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective. The Education and Training Committee shall then report the findings with a recommendation of acceptance or denial to the Alarm Systems Licensing Board.
- (4) For any online course being reviewed by the Committee, the course sponsor shall allow the Committee to review the online course and any associated test and shall include with the application instructions and an access code for computer login.

(c) Upon receipt of the Education and Training Committee report, the Alarm Systems Licensing Board shall determine by majority vote if the course will be sanctioned for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

(d) Each approved course shall remain an approved course for four years from the date of approval by the Board.

*History Note: Authority G.S. 74D-2; 74D-5;
Eff. May 1, 1999;
Amended Eff. July 1, 2010; July 18, 2002.*

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

**15A NCAC 02D .1205 LARGE MUNICIPAL WASTE
COMBUSTORS**

(a) Applicability. This Rule applies to large municipal waste combustors as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.31b (except administrator means the Director of the Division of Air Quality) apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 25 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (6-minute average).
- (4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall be reduced by at least 75 percent by weight or volume or to no more than 29 parts per million by volume, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and according to Reference Method 19, Section 12.5.4 of 40 CFR Part 60 Appendix A-7. Compliance with either standard is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen (dry basis).
- (5) Nitrogen Oxide. Emissions of nitrogen oxides from each municipal waste combustor shall not exceed the emission limits in Table 1 to Subpart Cb of Part 60 "Nitrogen Oxide Guidelines for Designated Facilities." Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through

(d)(1)(v). If nitrogen oxide emissions averaging is used, the emissions shall not exceed Table 2 to Subpart Cb of Part 60 "Nitrogen Oxides Limits for Existing Designated Facilities Included in an Emission Averaging Plan at a Municipal Waste Combustor Plant."

- (6) Odorous Emissions. Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall be reduced by at least 95 percent (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one-hour); or shall not exceed, as determined by Reference Method 26 or 26A of 40 CFR Part 60 Appendix A-8, more than 29 parts per million volume, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three 1-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen (dry basis).
- (8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions (simultaneously at the inlet and outlet data sets with a minimum of three valid test periods, the length of each test period shall be a minimum of one-hour); or shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8 or ASTM D6784-02 (Ontario Hydro method), more than 50 micrograms per dry standard cubic meter, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three 1-hour test runs corrected to seven percent oxygen (dry basis).
- (9) Lead Emissions. Emissions of lead from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 400 micrograms per dry standard cubic meter and corrected to seven percent oxygen.
- (10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed, as determined by Reference Method 29 of 40 CFR Part 60 Appendix A-8, 35 micrograms per dry standard cubic meter and corrected to seven percent oxygen.
- (11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor:
 - (A) that employs an electrostatic precipitator-based emission control

- system, shall not exceed 35 nanograms per dry standard cubic meter (total mass dioxins and furans).
- (B) that does not employ an electrostatic precipitator-based emission control system, shall not exceed 30 nanograms per dry standard cubic meter (total mass dioxins and furans). Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum of four hour duration per test run, performed in accordance with Reference Method 23 of 40 CFR Part 60 Appendix A-7, and corrected to seven percent oxygen.
- (12) **Fugitive Ash.**
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour block period), as determined by visible emission observations using Reference Method 22 of 40 CFR 60 Appendix A-7, except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three one-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.
- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) **Toxic Emissions.** The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) **Ambient Standards.**
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following are annual average ambient air quality standards in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure:
- (i) arsenic and its compounds 2.3x10-7
 - (ii) beryllium and its compounds 4.1x10-6
 - (iii) cadmium and its compounds 5.5x10-6
 - (iv) chromium (VI) and its compounds 8.3x10-8
- These are increments above background concentrations and apply aggregately to all municipal waste combustors at a facility subject to this Rule.
- (B) The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.
- (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with municipal waste combustors as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
- (15) The emission standards of Subparagraphs (1) through (14) of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.
- (d) **Operational Standards.**
- (1) The operational standards in this Rule do not apply to any municipal waste combustor when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) Each municipal waste combustor shall meet the following operational standards:
- (A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the applicable emissions level contained in Table 3 to Subpart Cb of Part 60 "Municipal Waste Combustor Operating Guidelines."

- (B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor load determined from the highest 4-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
 - (C) The combustor operating temperature measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature from the highest 4-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.
 - (D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test.
 - (E) The owner or operator of a municipal waste combustor is exempted from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:
 - (i) the annual tests for dioxins and furans;
 - (ii) the annual mercury tests for carbon feed requirements only;
 - (iii) the two weeks preceding the annual tests for dioxins and furans;
 - (iv) the two weeks preceding the annual mercury tests (for carbon feed rate requirements only); and
 - (v) any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.
- The municipal waste combustor load limit continues to apply and remains enforceable until and unless the Director grants a waiver in writing.
- (F) The limits on load level for a municipal waste combustor are waived when the Director concludes that the emission control standards would not be exceeded based on test activities to evaluate system performance, test new technology or control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.
- (3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours, with the following exception: For the purpose of compliance with the carbon monoxide emission limits in Subparagraph (2) of this Paragraph, if a loss of boiler water level control (e.g., boiler waterwall tube failure) or a loss of combustion air control (e.g., loss of combustion air fan, induced draft fan, combustion grate bar failure) is determined to be a malfunction according to 15A NCAC 02D .0535, the duration of the malfunction period is limited to 15 hours per occurrence. During such periods of malfunction, monitoring data shall be dismissed or excluded from compliance calculations, but shall be recorded and reported in accordance with the provisions of Paragraph (f) of this Rule.
- (e) Test Methods and Procedures.
 - (1) The test methods and procedures described in Section .2600 of this Subchapter and in Parts (A) through (K) in this Subparagraph shall be used to demonstrate compliance:
 - (A) 40 CFR 60.58b(b) for continuous emissions monitoring of oxygen or carbon monoxide at each location where carbon monoxide, sulfur dioxide, or nitrogen oxides are monitored;
 - (B) 40 CFR 60.58b(c) for determination of compliance with particulate and opacity emission limits. The data from the continuous opacity monitoring system shall not be used to determine compliance with the opacity limit.

- (C) 40 CFR 60.58b(d) for determination of compliance with emission limits for cadmium, lead and mercury;
 - (D) 40 CFR 60.58b(e) for determination of compliance with sulfur dioxide emission limits from continuous emissions monitoring data;
 - (E) 40 CFR 60.58b(f) for determination of compliance with hydrogen chloride emission limits;
 - (F) 40 CFR 60.58b(g) for determination of compliance with dioxin/furan emission limits;
 - (G) 40 CFR 60.58b(h) for determination of compliance with nitrogen oxides limits from continuous emission monitoring data;
 - (H) 40 CFR 60.58b(i) for determination of compliance with operating requirements under Paragraph (d);
 - (I) 40 CFR 60.58b(j) for determination of municipal waste combustor capacity;
 - (J) 40 CFR 60.58b(k) for determination of compliance with the fugitive ash emission limit; and
 - (K) 40 CFR 60.58b(m)(1) to determine parametric monitoring for carbon injection control systems.
- (2) Method 29 of 40 CFR Part 60 Appendix A-8 shall be used to determine emission rates for metals. However, Method 29 shall be used only to collect sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (3) The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than 9 months and no more than 15 months since the previous test and must complete five performance tests in each 5-year calendar period.
- (4) The testing frequency for dioxin and furan may be reduced to the alternative testing schedule specified in 40 CFR 60.58b(g)(5)(iii) if the owner or operator notifies the Director of the intent to begin the reduced dioxin and furan performance testing schedule during the following calendar year.
- (5) The owner or operator of an affected facility may request that compliance with the dioxin and furan emission limit be determined using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established as specified in 40 CFR 60.58b(b)(6). The Director will approve the request after verification of the correct calculations that provides the relationship between oxygen and carbon dioxide levels and of the completeness of stack test data used to establish the relationship between oxygen and carbon dioxide levels.
- (6) The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.
- (f) **Monitoring, Recordkeeping, and Reporting.**
- (1) The owner or operator of a municipal waste combustor shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
 - (2) The owner or operator of a municipal waste combustor that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.
 - (3) The owner or operator of a municipal waste combustor shall:
 - (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine:
 - (i) sulfur dioxide concentration;
 - (ii) nitrogen oxides concentration;
 - (iii) oxygen or carbon dioxide concentration;
 - (iv) opacity according to 40 CFR 60.58b(c); and
 - (v) carbon monoxide at the combustor outlet and record the output of the system and shall follow the procedures and methods specified in 40 CFR 60.58b(i)(3);
 - (B) monitor the load level of each municipal waste combustor according to 40 CFR 60.58b(i)(6);
 - (C) monitor the temperature of each municipal waste combustor flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.58b(i)(7);
 - (D) monitor carbon feed rate of each municipal waste combustor carbon

delivery system and total plant predicted quarterly usage if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.58b(m)(2) and (m)(3);

- (E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for a period of at least five years;
- (F) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for municipal waste combustors no later than February 1 of each year following the calendar year in which the data were collected. Once the municipal waste combustor is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and
- (G) submit a semiannual report specified in 40 CFR 60.59b(h) for each municipal waste combustor for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Certification.

- (1) Each facility operator and shift supervisor shall have completed full certification or scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).
- (2) The requirement to complete full certification or schedule a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994) does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (3) No owner or operator of an affected facility shall allow the facility to be operated at any time unless one of the following persons is on duty and at the affected facility;
 - (A) a fully certified chief facility operator;
 - (B) a provisionally certified chief facility operator who is scheduled to take the

full certification exam within six months;

- (C) a fully certified shift supervisor; or
- (D) a provisionally certified shift supervisor who is scheduled to take the full certification exam within six months.

(4) Operator Substitution

- (A) A provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor if both are off site for 12 hours or less and no other certified operator is on site.
- (B) If the certified chief facility operator and certified shift supervisor are both off site for longer than 12 hours but for two weeks or less, then the owner or operator of the affected facility must record the period when the certified chief facility operator and certified shift supervisor are off site and include that information in the annual report as specified under 60.59b(g)(5).
- (C) If the certified chief facility operator and certified shift supervisor are off site for more than two weeks, and no other certified operator is on site, the provisionally certified control room operator may perform the duties of the certified chief facility operator or certified shift supervisor. However, the owner or operator of the affected facility must notify the Director in writing and state what caused the absence and actions are being taken to ensure that a certified chief facility operator or certified shift supervisor is on site as expeditiously as practicable. The notice shall be delivered within 30 days of the start date of when the provisionally certified control room operator takes over the duties of the certified chief facility operator or certified shift supervisor. A status report and corrective action summary shall be submitted to the Director every four weeks following the initial notification.
- (D) If the Director provides notice that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-

day period such that the Director withdraws the disapproval, municipal waste combustor operation may continue.

- (E) The Director shall disapprove the status report or corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status and corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.
- (5) A provisionally certified operator who is newly promoted or recently transferred to a shift supervisor position or a chief facility operator position at the municipal waste combustion facility may perform the duties of the certified chief facility operator or certified shift supervisor without notice to, or approval by, the Director for up to six months before taking the ASME QRO - Certification for Municipal Solid Waste Combustion Facilities Operators.
- (6) If the certified chief facility operator and certified shift supervisor are both unavailable, a provisionally certified control room operator who is scheduled to take the full certification exam, may fulfill the requirements of this Subparagraph.

The referenced ASME exam (ASME QRO-1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty-nine dollars (\$49.00).

(i) Training.

- (1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall address the elements of municipal waste combustor operation specified in 40 CFR 60.54b(e)(1) through (e)(11). The operating manual shall be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
- (2) The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual

according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:

- (A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and
- (B) Annually, following the initial training required by Part (A) of this Subparagraph.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515;

Eff. October 1, 1991;

Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995;

Temporary Amendment Eff. March 1, 2002;

Amended Eff. August 1, 2002;

Temporary Amendment Eff. March 1, 2003;

Temporary Amendment Expired December 12, 2003;

Amended Eff. July 1, 2010; April 1, 2004.

15A NCAC 02D .1212 SMALL MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to Class I municipal waste combustors, as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.1940 (except administrator means the Director of the Division of Air Quality) apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant applies, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions. The emission limit for opacity from each municipal waste combustor shall not exceed 10 percent average during any six-minute period.
- (4) Sulfur Dioxide. Emissions of sulfur dioxide from each municipal waste combustor shall

- not exceed 31 parts per million by volume, dry basis, or potential sulfur dioxide emissions shall be reduced by at least 75 percent volume, dry basis, whichever is less stringent. Percent reduction shall be determined from continuous emissions monitoring data and in accordance with Reference Method 19, Section 12.5.4 of 40 CFR Part 60, Appendix A-7. Compliance with either standard is based on a 24-hour daily block geometric average of concentration data corrected to seven percent oxygen.
- (5) Nitrogen Oxide. Emissions of nitrogen oxide from each municipal waste combustor shall not exceed the emission limits in Table 3 of 40 CFR Part 60, Subpart BBBB.
- (6) Odorous Emissions. Each municipal waste combustor shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride. Emissions of hydrogen chloride from each municipal waste combustor shall not exceed 31 milligrams per dry standard cubic meter (31 parts per million by weight as determined by Reference Method 26 or 26A of 40 CFR Part 60, Appendix A-8) or potential hydrogen chloride emissions shall be reduced by at least 95 percent of the mass concentration, dry basis, whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.
- (8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall not exceed 0.080 milligrams per dry standard cubic meter (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8) or potential mercury emissions shall be reduced by at least 85 percent of the mass concentration, basis, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over three one-hour test runs, with paired data sets for percent reduction and correction to seven percent oxygen.
- (9) Lead Emissions. Emissions of lead from each municipal waste combustor shall not exceed 0.490 milligrams per dry standard cubic meter and corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8).
- (10) Cadmium Emissions. Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen (as determined by Reference Method 29 of 40 CFR Part 60, Appendix A-8).
- (11) Dioxins and Furans. Emissions of dioxins and furans from each municipal waste combustor shall not exceed:
- (A) 60 nanograms per dry standard cubic meter (total mass) for facilities that employ an electrostatic precipitator-based emission control system, or
- (B) 30 nanograms per dry standard cubic meter (total mass) for facilities that do not employ an electrostatic precipitator-based emission control system.
- Compliance with this Subparagraph shall be determined by averaging emissions over three test runs with a minimum four hour run duration, performed in accordance with Reference Method 23 of 40 CFR Part 60, Appendix A-7, and corrected to seven percent oxygen.
- (12) Fugitive Ash.
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period as determined by Reference Method 22 (40 CFR Part 60, Appendix A-7), except as provided in Part (B) of this Subparagraph. Compliance with this Part shall be determined from at least three 1-hour observation periods when the facility transfers ash from the municipal waste combustor to the area where the ash is stored or loaded into containers or trucks.
- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 02Q .0700.
- (14) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following annual average ambient air quality standards in milligrams per cubic meter (77 degrees Fahrenheit, 25 degrees

Celsius, and 29.92 inches, 760 millimeters of mercury pressure) are arsenic and its compounds (2.3×10^{-7}), beryllium and its compounds (4.1×10^{-6}), cadmium and its compounds (5.5×10^{-6}), and chromium (VI) and its compounds (8.3×10^{-8}). These are increments above background concentrations and apply aggregately to all municipal waste combustors at a facility.

(B) The owner or operator of a facility with municipal waste combustors shall demonstrate compliance with the ambient standards in Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the good engineering practice stack height requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with municipal waste combustors as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(15) The emission standards of Subparagraphs (1) through (14) of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any municipal waste combustors subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

(2) Each municipal waste combustor shall meet the following operational standards:

(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in Table 5 of 40 CFR Part 60, Subpart BBBB for each municipal waste combustor. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.

(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste

combustor load determined from the highest four-hour block arithmetic average achieved during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.

(C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F (17 degrees C) above the maximum demonstrated particulate matter control device temperature determined from the highest 4-hour block arithmetic average measured at the inlet of the particulate matter control device during four consecutive hours in the course of the most recent dioxins and furans stack test that demonstrates compliance with the emission limits of Paragraph (c) of this Rule.

(D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an eight-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test. The owner or operator of a municipal waste combustor shall calculate the required quarterly usage of carbon using the equation in 40 CFR 60.1935(f).

(E) The owner or operator of a municipal waste combustor is exempted from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during the annual tests for dioxins and furans, the annual mercury tests (for carbon feed requirements only), the two weeks preceding the annual tests for dioxins and furans, and the two weeks preceding the annual mercury tests (for carbon feed rate requirements only).

(F) The limits on load level for a municipal waste combustor are waived when the Director concludes that the emission control standards would not be exceeded based on test activities to evaluate system performance, test new technology or

control technology, perform diagnostic testing, perform other activities to improve the performance; or perform other activities to advance the state of the art for emissions controls.

- (3) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours. For periods of municipal waste combustor startup, shutdown, or malfunction that last more than three hours emission data shall not be discarded from compliance calculations and all provisions of 40 CFR 60.11(d) apply. During all periods of municipal waste combustor startup, shutdown, or malfunction, data shall be recorded and reported in accordance with the provisions of Paragraphs (f) and (g) of this Rule.

(e) Test Methods and Procedures.

- (1) References contained in Table 8 of 40 CFR Part 60, Subpart BBBBB shall be used to determine the sampling location, pollutant concentrations, number of traverse points, individual test methods, and other testing requirements for the different pollutants.
- (2) Stack tests for all the pollutants shall consist of at least three test runs, as specified in 40 CFR 60.8 and use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits of Paragraph (c).
- (3) An oxygen (or carbon dioxide) measurement shall be obtained at the same time as pollutant measurements to determine diluent gas levels, as specified in 40 CFR 60.1720.
- (4) The equations in 40 CFR 60.1935 shall be used to calculate emission levels at seven percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. Other required equations are contained in individual test methods specified in Table 6 of 40 CFR Part 60, Subpart BBBBB.
- (5) The owner or operator may apply to the Director for approval under 40 CFR 60.8(b) to use a reference method with minor changes in methodology, use an equivalent method, use an alternative method the results of which the Director has determined are adequate for demonstrating compliance, waive the requirement for a performance test because the owner or operator have demonstrated compliance by other means, or use a shorter sampling time or smaller sampling volume.

- (6) The test methods and procedures described in Section 15A NCAC 02D .2600 of this Subchapter, 40 CFR Part 60, Appendix A and 40 CFR Part 61, Appendix B shall be used to determine compliance with emission standards in Paragraph (c) according to table 8 of 40 CFR Part 60, Subpart BBBBB.

- (7) Method 29 of 40 CFR Part 60, Appendix A-8 shall be used to determine emission rates for metals for toxic evaluations except for chromium (VI). Method 29 shall be used only to collect samples and SW 846 Method 0060 shall be used to analyze the samples of chromium (VI).

- (8) The owner or operator shall conduct initial stack tests to measure the emission levels of dioxins and furans, cadmium, lead, mercury, beryllium, arsenic, chromium (VI), particulate matter, opacity, hydrogen chloride, and fugitive ash. Annual stack tests for the same pollutants except beryllium, arsenic, and chromium (VI) shall be conducted no less than 9 months and no more than 15 months since the previous test and must complete five performance tests in each five-year calendar period.

- (9) The owner or operator must use results of stack tests for dioxins and furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in this rule except for carbon monoxide, nitrogen oxides, and sulfur dioxide.

- (10) The owner or operator must use results of continuous emissions monitoring of carbon monoxide, nitrogen oxides, and sulfur dioxide to demonstrate compliance with the applicable emission limits in this rule. The data from the continuous opacity monitoring system shall not be used to determine compliance with the opacity limit.

- (11) The testing frequency for dioxin and furan may be reduced if the conditions under 40 CFR 60.1795(b) are met.

- (12) The Director may require the owner or operator of any municipal waste combustor subject to this Rule to test his municipal waste combustor to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator shall comply with the monitoring, recordkeeping, and reporting requirements developed pursuant to Section .0600 of this Subchapter.

- (2) The owner or operator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install,

operate, and maintain continuous parametric monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

- (3) The owner or operator shall:
 - (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine opacity, sulfur dioxide emissions, nitrogen oxides emissions, carbon monoxide, and oxygen (or carbon dioxide) according to 40 CFR 60.1715 through 60.1770;
 - (B) monitor load level of each municipal waste combustor according to 40 CFR 60.1810 and 60.1825;
 - (C) monitor temperature of the flue gases at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815 and 60.1825;
 - (D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820 and 60.1825;
 - (E) maintain records of the information listed in 40 CFR 60.1830 through 60.1855 for a period of at least five years;
 - (F) submit a semiannual report specified in 40 CFR 60.1885, no later than February 1 and August 1 each year; and
 - (G) submit semiannual reports specified in 40 CFR 60.1900 of any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section using the schedule specified in 40 CFR 60.1895.

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Certification.

- (1) Each chief facility operator and shift supervisor shall obtain and keep a current provisional certification within six months after he transfers to the municipal waste combustion facility or six months after he is hired to work at the municipal waste combustor facility.
- (2) Each chief facility operator and shift supervisor shall have obtained a full certification or have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994) after he transfers to the municipal waste

combustor facility or six months after he is hired to work at the municipal waste combustor facility.

- (3) The owner or operator of a municipal waste combustor facility shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:
 - (A) a fully certified chief facility operator;
 - (B) a provisionally certified chief facility operator who is scheduled to take the full certification exam;
 - (C) a fully certified shift supervisor; or
 - (D) a provisionally certified shift supervisor who is scheduled to take the full certification exam.
- (4) If the certified chief facility operator and certified shift supervisor both are unavailable, a provisionally certified control room operator at the municipal waste combustor may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, one of three criteria shall be met:
 - (A) When the certified chief facility operator and certified shift supervisor are both offsite for 12 hours or less and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director.
 - (B) When the certified chief facility operator and certified shift supervisor are offsite for more than 12 hours, but for two weeks or less, and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include the information in the annual report as specified under 40 CFR 60.1885(l).
 - (C) When the certified chief facility operator and certified shift supervisor are offsite for more than two weeks and no other certified operator is on-site, the provisionally certified control room operator may perform those duties without notice to or approval by the Director. However, the owner or operator shall notify the Director in writing and submit a

status report and corrective action summary to the Director every four weeks. In the notice, the owner or operator shall state what caused the absence and what is being done to ensure that a certified chief facility operator or certified shift supervisor is on-site. If the Director notifies the owner or operator that the status report or corrective action summary is disapproved, the municipal waste combustor may continue operation for 90 days, but then shall cease operation. If corrective actions are taken in the 90-day period such that the Director withdraws the disapproval, municipal waste combustor operations may continue.

- (D) The Director shall disapprove the status report and corrective action summary report, described in Part (C) of this Subparagraph, if operating permit requirements are not being met, the status or corrective action reports indicate that the effort to have a certified chief facility operator or certified shift supervisor on site as expeditiously as practicable is not being met, or the reports are not delivered in a timely manner.

The referenced ASME exam (ASME QRO-1-1994), "Standard for the Qualification and Certification of Resource Recovery Facility Operators," in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty-nine dollars (\$49.00).

(i) Training.

- (1) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall address:
 - (A) a summary of all applicable requirements in this Rule;
 - (B) a description of the basic combustion principles that apply to municipal waste combustors;
 - (C) procedures for receiving, handling, and feeding municipal solid waste;

- (D) procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustor;
- (E) procedures for maintaining a proper level of combustion air supply;
- (F) procedures for operating the municipal waste combustor in compliance with the requirements contained in 40 CFR 60 Subpart JJJ;
- (G) procedures for responding to periodic upset or off-specification conditions;
- (H) procedures for minimizing carryover of particulate matter;
- (I) procedures for handling ash;
- (J) procedures for monitoring emissions from the municipal waste combustor; and
- (K) procedures for recordkeeping and reporting.

The operating manual shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Subparagraph (2) of this Paragraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

- (2) The owner or operator of the municipal waste combustor plant shall establish a training program to review the operating manual according to the schedule specified in Parts (A) and (B) of this Subparagraph with each person who has responsibilities affecting the operation of the facility including chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane and load handlers:
 - (A) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor operation; and
 - (B) Annually, following the initial training required by Part (A) of this Subparagraph.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515; Eff. July 1, 2010.

15A NCAC 12B .1206 FEES AND CHARGES

The following fee schedule applies to all state park areas. Payment of the appropriate fee is a prerequisite for the use of the public service facility or convenience provided. Unless otherwise provided in this Rule, the number of persons camping at a particular campsite may be limited by the park superintendent depending upon the size of the camping group and the size and nature of the campsite. Any senior citizen (person 62 or older) registering for a campsite shall receive the discounted senior citizens rate. A reservation service charge per day-use facility rental or overnight facility rental (on a per night rate) for use of the Central Reservation

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System in the amount of three dollars (\$3.00) is required and shall be added to the fees identified in this Rule for those facilities and facilities rented through the Central Reservation System.

(1)	TYPE OF FACILITY OR CONVENIENCE	FEE	
	CAMPING		
(a)	Campsites with electrical hookups, picnic table, and grill. Water, restrooms, and shower facilities also available.	\$ 22.00 (per campsite daily)	
		\$ 16.00 (senior citizens daily, 62 or older)	
(b)	Campsites with picnic table and grill. Water, restrooms, and shower facilities also available.	\$ 17.00 (per campsite daily)	
		\$ 12.00 (senior citizens daily, 62 or older)	
(c)	Primitive, unimproved campsites with pit privies. Fresh water also available.	\$ 10.00 (per campsite, daily)	
(d)	Primitive group tent camping, unimproved campsites with pit privies.	\$ 2.00 (per person, with \$10.00 minimum)	
(e)	Improved Group Camping (water, restrooms and shower facilities available.	\$ 45.00 (per day/maximum capacity 35)	
		\$ 55.00 (per day/maximum capacity 50)	
		\$ 115.00 (per day/maximum capacity 100)	
(f)	Group Lodge William B. Umstead State Park	\$ 35.00 (per day/maximum 25 people)	
(g)	Group Camps		
	(i) William B. Umstead State Park	Daily	April, May, Sept., Oct.
		\$ 35.00	One Unit per day
		\$ 85.00	Mess Hall per day
		Weekly Only	June thru August
		\$ 400.00	Camp Crabtree
		\$ 400.00	Camp Whispering Pines
		\$ 450.00	Camp Lapihio
	(ii) Singletary Lake State Park	Daily	April, May, Sept. Oct.
		\$ 110.00	Camp Ipecac, Camp Loblolly
		\$ 45.00	Cabin Unit per day
		\$ 85.00	Mess Hall per day
		Weekly Only	June thru August
		\$ 425.00	Camp Ipecac Camp Loblolly
			Nov. - March Camp Loblolly available at Weekly or daily rates.
(h)	Equestrian Facilities	Daily	January - Dec. Per Campsite
	(i) Campsite with picnic table and grill	\$ 22.00	
	(ii) Horse Stalls	\$ 10.00	5' X 10' Per Day
		\$ 15.00	10' X 10' Per Day
(2)	CABINS (by reservation only at Hanging Rock State Park and Morrow State Park) (Cabin rentals are restricted to seven consecutive nights in a calendar year at an individual park).	\$ 425.00 (per week from June 1st until Labor Day)	

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		\$ 450.00 (per week from June 1st to Labor Day, with swimming privileges).
		\$ 85.00 Labor Day to May 31st per day with up to a maximum weekly rate of \$425.00).
(3)	SWIMMING/BATHHOUSE	\$ 5.00 (per adult, age 13 and over)
		\$ 4.00 (per child, ages 3-12)
(4)	ROWBOAT/CANOE RENTAL	\$ 5.00 (for first hour)
		\$ 3.00 (for each additional hour)
(5)	PADDLE BOAT RENTAL	\$ 5.00 (for first hour)
		\$ 3.00 (for additional hour)
(6)	PICNIC SHELTER RENTAL (By reservation only)	\$ 30.00 (1-2 tables)
		\$ 45.00 (3-4 tables)
		\$ 70.00 (5-8 tables)
		\$ 95.00 (9-12 tables)
(7)	PARKING FEE (Kerr Lake, Jordan and Falls only)	\$ 6.00 (per car)
		\$ 4.00 (per car-senior citizens 62 or older)
		\$ 15.00 (per bus)
		\$ 40.00 (for 10 daily passes)
		\$ 50.00 (for annual pass)
(8)	HAMMOCKS BEACH FERRY	\$ 5.00 (per adult, age 13 and over)
		\$ 3.00 (Sr. Citizen and per child, ages 6-12)
	Annual Ferry Pass	\$ 50.00
(9)	COMMUNITY BUILDINGS	\$ 185.00
(10)	SPECIAL ACTIVITY PERMIT	\$ 35.00
(11)	CATCH AND RELEASE FISHING (Stone Mountain State Park)	\$ 22.00 per day per section
(12)	SLIP RENTAL AND OTHER FEES FOR THE CAROLINA BEACH STATE PARK MARINA (All slip rental fees shall be paid in full at the time the lease is executed.)	
	(a) Transient, overnight dockage (no longer than 14 days in any 30 day period.)	\$ 30.00
	(b) Slip Rental (Fees charged according to term of lease and vessel size.) One month lease	
	25 feet and smaller	\$ 310.00
	26 feet to 30 feet	\$ 335.00
	31 feet to 35 feet	\$ 390.00
	36 feet to 40 feet	\$ 495.00
	(c) Six month lease (runs 183 days from date executed)	
	25 feet and smaller	\$ 1670.00
	26 feet to 30 feet	\$ 1900.00
	31 feet to 35 feet	\$ 2100.00
	36 feet to 40 feet	\$ 2675.00
	(d) Twelve month lease (runs 365 days from date executed)	
	25 feet and smaller	\$ 3275.00
	26 feet to 30 feet	\$ 3535.00
	31 feet to 35 feet	\$ 4120.00
	36 feet to 40 feet	\$ 5225.00
	(e) Boat Launching Fee	\$ 6.00
	(f) Holding Tank Pump Out	\$ 20.00
	(g) Battery Charging Service	\$ 5.00
(13)	Fort Fisher 4WD Beach Access Annual Permit	
	(a) Daily Permit	\$ 12.00

(b) Annual Permit \$ 50.00

*History Note: Authority G.S. 113-35(b);
Eff. April 1, 1997;
Amended Eff. July 1, 2010; May 1, 2010; February 1, 2004.*

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 03D .0517 DEFINITIONS

For purposes of this Section, these words and phrases shall have the following meanings, except in those instances where the context clearly indicates a different meaning:

- (1) Abbreviations: Abbreviations used in these Rules shall have the following meanings:
 - (a) CO - Carbon Monoxide,
 - (b) G.V.W.R. - Gross Vehicle Weight Rating,
 - (c) HC - Hydrocarbons,
 - (d) PSI - Pounds Per Square Inch,
 - (e) NOx - Nitrogen Oxides,
 - (f) PPM - Parts Per Million,
- (2) Ambient Air: That portion of the atmosphere surrounding human, animal and plant life.
- (3) Authorized Station: An established place of business licensed by the North Carolina Division of Motor Vehicles to conduct inspection of safety equipment, emissions, and air pollution control devices as required by the inspection laws.
- (4) Base: The place where a vehicle is most frequently dispatched from, garaged, serviced, maintained, operated or otherwise controlled. If any vehicle is located in or operated from a county participating in the safety emission program continuously for a period of 30 days, said vehicle shall be considered based within said county.
- (5) Certified Inspection Mechanic: A person who has completed the course(s) required by G.S. 183.4(c) and 183.4A(c), who has passed a written examination approved by the North Carolina Division of Motor Vehicles, and who has been issued an inspection mechanic license by the Division of Motor Vehicles.
- (6) Crankcase Emissions: Air contaminants emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.
- (7) Current Year Model: The production period of new motor vehicles as designated by the manufacturer in the calendar year in which the period ends. If the manufacturer does not designate a production period, the model year

- (8) Diagnostic Equipment: Tools or machines used to diagnose engine performance.
- (9) Emission: The act of a motor vehicle emitting into the atmosphere any air contaminants which may include carbon monoxide, hydrocarbons, or nitrogen oxides.
- (10) Emissions Analyzer: An approved device used to fully evaluate the vehicle emission control system for proper operation and electronically record and transmit emissions and safety inspection data to the state. An approved device is considered a device that meets the certification requirements as defined by the Environmental Management Commission Specifications for the North Carolina Analyzer System.
- (11) Established Place of Business for Safety/Emissions Inspection: A permanent structure owned either in fee or leased by a licensee, which has sufficient space to test and inspect one or more motor vehicles for which an inspection is being sought and to accommodate the office or offices of an authorized station to provide a safe place for maintaining the records of such authorized station, and at which location the business shall be open during normal business hours to conduct safety inspections and emissions tests and make available to authorized agents of the Division of Motor Vehicles all records and required equipment for examination and testing.
- (12) Exhaust Emissions: Air contaminants emitted into the atmosphere from any opening downstream from the exhaust parts of a motor vehicle engine.
- (13) Heavy Duty Motor Vehicle: A motor vehicle which is designed primarily for:
 - (a) The transportation of property and which is rated at more than 8,500 GVWR.
 - (b) The transportation of persons and which has a capacity of more than 12 persons.
 - (c) Use as a recreational motor vehicle which is rated at more than 8,500 GVWR.
 - (d) Use as an off-road utility vehicle.

- (14) Inspection: The safety equipment or emissions inspection of motor vehicles required by G.S. 20, Part 2, Article 3A.
- (15) Inspection Laws: G.S. 20, Part 2, Article 3A and rules adopted by the Commissioner of Motor Vehicles.
- (16) Inspection/Maintenance (I/M): A strategy to reduce emissions from in-use motor vehicles by identifying vehicles that need emission related maintenance and requiring that such maintenance be performed.
- (17) Inspection Period: The period of time a motor vehicle is required to be inspected. To be a current inspection, a motor vehicle may be inspected up to ninety days prior to the last day of the month in which the registration on the vehicle expires pursuant to G.S. 20-183.4C. For motor vehicles not previously registered in this State, the inspection period shall be a period of 12 months prior to the application for registration pursuant to G.S. 20, Part 3, Article 3 and G.S. 20-183.4C.
- (18) License: Notwithstanding G.S. 20-4.01(17), the license issued by the Commissioner of Motor Vehicles which is required for a person to operate a safety equipment emission inspection station.
- (19) Light Duty Motor Vehicle: A motor vehicle which is designed primarily for:
 - (a) Transportation of property and which is rated at or less than 8,500 GVWR by the manufacturer; or
 - (b) Use in the transportation of persons and which has a capacity of 12 persons or fewer.
- (20) Light Transmittance Measuring Device or Light Meter or Unit or Device: A photometer capable of measuring the net transmittance of a window or windshield for light at 560 nm with a variance of no more than 20 nm.
- (21) Motorcycle: A motor vehicle as defined under G.S. 20-4.01(22).
- (22) Multipiece Photometer: A photometer in which the light source and light detector are mechanically separate units that can be positioned on opposite sides of a fixed window or windshield.
- (23) Net Transmittance: The luminous transmittance over the 560 nm with a variance of 20 nm wavelength range, including the effects of Fresnel (surface) reflections.
- (24) Recreational Motor Vehicle: A vehicle which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use.
- (25) Registered Owner of a Vehicle: The individual, group of individuals, partnership, firm, company, corporation, association, trust, estate, political subdivision, administrative agency, public or quasi-public corporation, or any other legal entity in whose name the license has been issued and whose name appears on the registration for such vehicle.
- (26) Revocation: Notwithstanding G.S. 20-4.01(36), the termination of a license issued by the Division of Motor Vehicles to a safety equipment emission inspection station.
- (27) Safety Inspection Analyzer: An approved device used to evaluate and electronically record and transmit safety inspection data to the state. An approved device is considered a device that meets the certification requirements as defined by the Environmental Management Commission Specifications for the North Carolina Analyzer System.
- (28) Section: The License and Theft Bureau of the Division of Motor Vehicles.
- (29) Self-Inspector: A person, firm or corporation so designated by the Commissioner for the purpose of inspecting only those vehicles owned or operated by such person, firm or corporation.
- (30) Standard: A standard of performance adopted in these Rules.
- (31) Station: A place of business licensed by the Commissioner of Motor Vehicles to conduct inspections of motor vehicles as required by the inspection laws.
- (32) Suspension of Safety/Emission License: The temporary withdrawal of a license issued by the Division of Motor Vehicles to a safety equipment emission inspection station for a definite period of time.
- (33) Tampering: Rendering inoperative, or the intentional maladjustment of any device installed on a motor vehicle designed or intended to control the amount of emissions from a vehicle.
- (34) Waiver: A document issued by the Commissioner of Motor Vehicles or his designated agent exempting a particular motor vehicle from the requirements of the emission inspection.

*History Note: Authority G.S. 20-2; 20-39; 20-127; 20-183.2; 20-183.6(a); 20-183.7(a);
 Temporary Adoption Eff. November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. October 1, 1994;
 Amended Eff. July 1, 2010; February 1, 1996.*

19A NCAC 03D .0518 LICENSING OF SAFETY OR EMISSIONS INSPECTION STATIONS

- (a) An application for licensing as a Safety Equipment or Safety Equipment Emissions Inspection Station shall be made on forms

furnished by the Division of Motor Vehicles and filed with the License and Theft Bureau.

(b) An applicant for licensing for a Safety Equipment or Safety Equipment Emissions Inspection Station shall have:

- (1) A specified area used primarily for repair of motor vehicles.
- (2) At least 45 lineal feet of approximately level floor surface at least 10 feet wide when using a light chart for testing lights, or at least 25 lineal feet of approximately level floor surface at least 10 feet wide when using a light testing machine. Dirt floors are not acceptable.
- (3) Sufficient area enclosed to permit an inspection at all times regardless of weather conditions. Trailers may be inspected outside of the enclosed area as long as attached to prime mover.
- (4) If a light chart is used to check lights, parallel lines at least 3 feet long painted on floor surface 25 feet from the chart.

(c) An applicant for licensing for a Safety Equipment Inspection Station inspecting only motorcycles shall have:

- (1) A specified area used primarily for repair of motorcycles.
- (2) Sufficient area enclosed to permit an inspection at all times regardless of weather conditions. Dirt floors are not acceptable.
- (3) If a light chart is used to check lights, parallel lines at least 3 feet long painted on floor surface 25 feet from the chart.

History Note: Authority G.S. 20-2; 20-39; 20-183.4; Eff. October 1, 1994; Amended Eff. July 1, 2010.

19A NCAC 03D .0519 STATIONS

(a) Licensed stations shall keep the area where vehicles are inspected and the area where inspection records are kept as required by G.S. 20-183.6A(b) free of spills, debris, hazardous materials or obstructions that inhibit proper inspection of vehicles or present a safety hazard for auditors or inspectors of the Division. All vehicles shall remain in the inspection area during the entire inspection.

(b) Stations with only a 25 foot lineal inspection lane shall not inspect trucks or other vehicles exceeding that length.

(c) Stations with mechanical aimers shall not inspect vehicles with headlamps that were not manufactured to be aimed with this device. These headlamps were manufactured to be aimed with photoelectric eyes, wall charts, computerized headlight test equipment, or on-board headlight aiming devices.

(d) Stations not equipped with an emission analyzer shall not inspect vehicles which are 1996 or newer gasoline powered motor vehicles registered or based in counties designated as non-attainment for air quality standards by either the North Carolina Department of Environment & Natural Resources or U.S. Environmental Protection Agency. However, they are permitted to perform the original safety equipment inspections on vehicles

1995 model year or older, diesel powered vehicles, motorcycles, trailers, and new vehicles.

(e) Each station shall have equipment and tools for carrying out inspections, which include but are not limited to the following:

- (1) 1 jack or lift with minimum capacity of 2 tons,
- (2) 1 headlight tester, wall chart, or aiming kit adapters to fit all headlights,
- (3) 1 workbench,
- (4) 1 creeper,
- (5) 1 tire tread depth gauge (calibrated in 32nds of an inch),
- (6) Emission Control System Application Manual (current edition),
- (7) 1 Emission Analyzer with approved software or 1 Safety Inspection Analyzer with approved software,
- (8) 1 Active telephone line with jack.

(f) Each station inspecting only motorcycles shall have equipment and tools for carrying out inspections, which include but are not limited to the following:

- (1) 1 jack or lift with minimum capacity of 2 tons,
- (2) 1 headlight tester or aiming kit adapters to fit all headlights,
- (3) 1 workbench,
- (4) 1 tire tread depth gauge (calibrated in 32nds of an inch),
- (5) 1 Safety Inspection Analyzer with approved software,
- (6) Active telephone line with jack.

History Note: Authority G.S. 20-2; 20-39; 20-183.4; Eff. October 1, 1994; Amended Eff. July 1, 2010.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08H .0105 USE OF CPA TITLE

History Note: Authority G.S. 93-1; Eff. August 1, 1988; Amended Eff. January 1, 2006; April 1, 1991; May 1, 1989; Repealed Eff. July 1, 2010.

21 NCAC 08H .0106 NON-RESIDENT NOTIFICATION

History Note: Authority G.S. 93-10; Eff. April 1, 2003; Repealed Eff. July 1, 2010.

21 NCAC 08J .0106 FORFEITURE OR INACTIVATION OF CERTIFICATE AND REISSUANCE OR REINSTATEMENT

- (a) A certificate holder who determines that the certificate of qualification issued by the Board is no longer needed or desired may request inactive status by application to the Board.
- (b) A person who is inactive or has forfeited a certificate is no longer a CPA and thus is not subject to the renewal fee or CPE requirements contained in these Rules.
- (c) A person who desires to reinstate an inactive certificate or reissue a forfeited certificate shall make application and provide the following to the Board:
 - (1) payment of the current certificate application fee;
 - (2) three certificates of moral character and endorsements as to eligibility signed by CPAs holding valid certificates granted by any state or territory of the United States or the District of Columbia; and
 - (3) evidence of satisfactory completion of the CPE requirement described in 21 NCAC 08J .0105(c)(2).
- (d) The certificate may be reinstated or reissued if determined by the Board that the person meets the requirements as listed in Paragraph (c) of this Rule.

History Note: Authority G.S. 93-12(5); 93-12(8a); 93-12(8b); Eff. October 1, 1984; Amended Eff. July 1, 2010; August 1, 1998; February 1, 1996; April 1, 1994; May 1, 1989.

21 NCAC 08K .0104 REGISTRATION AND RENEWAL

- (a) Domestic CPA professional corporations or professional limited liability companies must be formed and all CPA professional corporations or professional limited liability companies must be operated in accordance with the requirements set out in G.S. 55B and 57C. Before any CPA professional corporation or professional limited liability company can offer to perform or perform any professional services in this state, it must register with the Board.
- (b) Initial registration.

- (1) Domestic CPA Corporation or Professional Limited Liability Company. In order to register initially with this Board, the incorporators of a domestic CPA corporation or professional limited liability company, prior to incorporation of the CPA firm, must:
 - (A) prepare and file with the Board the articles of incorporation along with any supporting documents and appropriate checks for fees payable to the Secretary of State;
 - (B) complete and file with the Board the application for professional corporation or professional limited liability company registration form

along with any supporting documents; and

- (C) pay to the Board an initial registration fee of fifty dollars (\$50.00).
- (2) Foreign CPA Corporation or Foreign Limited Liability Company. To register initially with the Board, the officers of a foreign corporation or foreign limited liability company, prior to performing services or offering to perform services in North Carolina, must submit to the Board:
 - (A) on an application for registration form provided by the Board, a list of its present shareholders or members and the state or territory issuing the CPA certificate, or the equivalent, of each shareholder or member and the number of each certificate or equivalent; and
 - (B) the documents required by G.S. 55-15-01(a) and 57C-7.

(c) In addition to its initial registration, every CPA corporation or professional limited liability company, whether domestic or foreign, must register annually pursuant to 21 NCAC 08J .0108.

(d) The application for registration by a CPA corporation or professional limited liability company shall provide the following information:

- (1) the name and address of the professional corporation or professional limited liability company;
- (2) the address of each office operated or maintained by the corporation or professional limited liability company;
- (3) the names and addresses of all the officers, directors, shareholders, or members; and
- (4) the names and addresses of all the employees and managers of the corporation or professional limited liability company licensed by the Board under the provisions of G.S. 93.

History Note: Authority G.S. 55B-11; 57C-1; 57C-2; 59-84.2; 93-8; 93-12(7b); 93-12(8c); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. July 1, 2010; April 1, 1999; April 1, 1994; April 1, 1991; May 1, 1989; August 1, 1988.

21 NCAC 08N .0209 ACCOUNTING PRINCIPLES

- (a) Generally Accepted Accounting Principles. A CPA shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from an accounting principle which has a material effect on the statements taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading.
- (b) Financial Accounting Standards Board Accounting Standards Codification. The Financial Accounting Standards

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

(c) Departures. In such cases the CPA's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement.

(d) Copies of Standards. Copies of the Financial Accounting Standards Board Accounting Standards Codification may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the FASB, Post Office Box 30816, Stamford, CT 06150 as part of the "FASB Accounting Standards." They are available at cost, which is one hundred ninety-five dollars (\$195.00) in paperback form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9);
Eff. April 1, 1994;
Amended Eff. July 1, 2010.

21 NCAC 08N .0210 FORECASTS

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9);
Eff. April 1, 1994;
Amended Eff. February 1, 2006;
Repealed Eff. July 1, 2010.

21 NCAC 08N .0211 RESPONSIBILITIES IN TAX PRACTICE

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

(b) Statements on Standards for Tax Services. The Statements on Standards for Tax Services issued by the AICPA, including subsequent amendments and editions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered as the standards for tax services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Standards. Copies of the Statements on Standards for Tax Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC, 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in looseleaf subscription form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9);
Eff. April 1, 1994;
Amended Eff. July 1, 2010; February 1, 2006; April 1, 2003.

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

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

(b) A CPA shall provide annual disclosure in a written statement of the services to be rendered by the third-party provider as well as the third-party provider's name, address, and phone number. The written statement shall be dated, signed by both the CPA and client in advance of the outsourcing, and a copy provided to the client.

(c) A CPA outsourcing professional services to a third-party provider is responsible for ensuring a third-party provider is in compliance with all rules of Professional of Conduct and Ethics in 21 NCAC 08N.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9);
Eff. January 1, 2006;
Amended Eff. July 1, 2010.

21 NCAC 08N .0304 CONSULTING SERVICES STANDARDS

(a) Standards for Consulting Services. A CPA shall not render consulting services unless the CPA has complied with the standards for consulting services.

(b) Statements on Standards for Consulting Services. The Statements on Standards for Consulting Services (including the definition of such services) issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for consulting services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Statements. Copies of the Statements on Standards for Consulting Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in looseleaf subscription form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9);
Eff. April 1, 1994;
Amended Eff. July 1, 2010; January 1, 2006.

21 NCAC 08N .0308 VALUATION SERVICES STANDARDS

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

(b) Statements on Standards for Valuation Services. The Statements on Standards for Valuation Services (including the definition of such services) issued by the AICPA, including

amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for valuation services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the standards listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Statements. Copies of the statements on standards for valuation services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in looseleaf subscription form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. January 1, 2006; Amended Eff. July 1, 2010.

21 NCAC 08N .0403 AUDITING STANDARDS

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

(b) Statements on Auditing Standards. The Statements on Auditing Standards issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered generally accepted auditing standards for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Statements. Copies of the Statements on Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in looseleaf subscription form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006.

21 NCAC 08N .0404 ACCOUNTING AND REVIEW SERVICES STANDARDS

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

(b) Statements on Standards for Accounting and Review Services. The Statements on Standards for Accounting and Review Services issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as

provided by G.S. 150B-21.6, and shall be considered as the approved standards for accounting and review services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Statements. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in looseleaf subscription form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006.

21 NCAC 08N .0405 GOVERNMENTAL ACCOUNTING STANDARDS

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

(b) Statements on Governmental Accounting and Financial Reporting Services. The Statements on Governmental Accounting and Financial Reporting Services issued by the GASB, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6, and shall be considered as the approved standards for governmental accounting for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Statements. Copies of the Statements on Governmental Accounting and Financial Reporting Standards, including technical bulletins and interpretations, may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the GASB, Post Office Box 30784, Stamford, CT 06150. They are available at cost, which is two hundred twenty eight dollars (\$228.00). In addition to the basic set, an updating subscription service is available for two hundred five dollars (\$205.00) annually as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006.

21 NCAC 08N .0406 ATTESTATION STANDARDS

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

(b) Statements on Standards for Attestation Engagements. The Statements on Standards for Attestation Engagements issued by the AICPA, including subsequent amendments and editions, are hereby adopted by reference, as provided by G.S. 150B-21.6,

and shall be considered attestation standards for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the statements.

(d) Copies of Statements. Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 220 Leigh Farm Road, Durham, NC 27707 as part of the "AICPA Professional Standards." They are available at cost, which is one hundred sixty-nine dollars (\$169.00) in paperback form or four hundred eighty-six dollars (\$486.00) in looseleaf subscription form as of the effective date of the last amendment to this Rule.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. July 1, 2010; February 1, 2006.

21 NCAC 10 .0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

(a) In order to be certified competent pursuant to G.S. 90-143.2, a person employed in a chiropractic office whose duties include the production of x-rays or other diagnostic images must:

- (1) Complete a Board-approved course in radiologic technology. To be approved by the Board, a radiologic technology course shall be at least 50 hours in length and provide sufficient instruction in the five subjects set forth in G.S. 90-143.2 to enable its graduates to satisfy the standards of acceptable care governing the production of X-rays; and
- (2) Pass a proficiency examination administered by or under the authority of the Board of Examiners.

(b) Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists is deemed to have satisfied the educational requirements of Paragraph (a) of this Rule.

(c) A certificate of competency issued pursuant to G.S. 90-143.2 expires at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. Any person whose initial certificate expires less than 12 months after issuance is not required to obtain continuing education until entering the second year of certification.

(d) Any person seeking to renew a certificate of competency shall complete and submit the renewal application form provided by the Board of Examiners and pay to the Board a renewal fee in the amount of twenty dollars (\$20.00).

(e) The holder of a certificate issued pursuant to this Rule must display the certificate in the x-ray room of the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

(f) Other than licensed doctors of chiropractic, only those persons maintaining current certifications of competency in conformity with this Rule may produce x-rays or other

diagnostic images in chiropractic offices. A chiropractor who permits the production of x-rays or other diagnostic images by a non-certified employee or an employee whose certification has expired shall be deemed in violation of G.S. 90-154.3.

(g) If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 12 months, the certificate holder may obtain reinstatement by demonstrating completion of six hours of Board-approved continuing education during or attributed to the preceding calendar year. If the lapse is greater than 12 months, no make-up continuing education is required, but the certificate holder shall re-take and pass the proficiency examination described in Paragraph (a)(2) of this Rule. Regardless of the length of lapse, any person seeking reinstatement of a lapsed certificate shall comply with Paragraph (d) of this Rule.

History Note: Authority G.S. 90-143.2; 90-154.3 Eff. February 1, 1993; Temporary Amendment Eff. January 1, 2003; Temporary Amendment Expired October 31, 2003; Amended Eff. July 1, 2010; January 1, 2004.

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic art of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70 %, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic art of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O .0102.
- (9) "Licensing cycle" for cosmetologists is a three-year period beginning on the first day of October and ending on the third following first

day of October and continuing thereafter in three year intervals. For estheticians, natural hair care specialists and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the next first day of October. For teachers, the licensing cycle is a two-year period beginning on the first day of October of an even-numbered year and ending on the next first day of October of the next even-numbered year.

History Note: Authority G.S. 88B-2; 88B-4;
Eff. February 1, 1976;
Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991;
January 1, 1989;
Temporary Amendment Eff. January 1, 1999;
Amended Eff. July 1, 2010; December 1, 2008; May 1, 2005;
December 1, 2004; May 1, 2004; February 1, 2004; April 1,
2001; August 1, 2000.

21 NCAC 14A .0103 OFFICE HOURS

History Note: Authority G.S. 88B-4
Eff. February 1, 1976;
Amended Eff. August 1, 2000; January 1, 1989;
Repealed Eff. July 1, 2010.

21 NCAC 14F .0107 DIMENSIONS OF BEAUTY SALON

A cosmetic art shop shall maintain at least five feet of space between each styling chair from the center to the center of each chair, and shall have at least two feet of space from each chair to the wall of the salon, front and back. Shampoo bowls must be at least 40 inches apart center of bowl to center of bowl.

History Note: Authority G.S. 88B-4(a)(9);
Eff. February 1, 1976;
Amended Eff. July 1, 2010; April 1, 1995; January 1, 1989;
April 1, 1988.

21 NCAC 14G .0112 CONDITION OF EQUIPMENT

All equipment in the school must be in good, workable, clean, safe condition.

History Note: Authority G.S. 88B-4(a)(9);
Eff. February 1, 1976;
Amended Eff. July 1, 2010; January 1, 1989; April 1, 1988.

21 NCAC 14H .0110 BATHROOM FACILITIES

- (a) Toilet and hand washing facilities consisting of at least one commode and one lavatory with hot and cold running water, liquid soap and individual towels shall be provided.
- (b) A residential beauty salon shall furnish bathroom facilities separate and apart from the residence.

History Note: Authority G.S. 88B-4(a)(9);
Eff. February 1, 1976;

Amended Eff. July 1, 2010; June 1, 1994; January 1, 1989; April 1, 1988.

21 NCAC 14H .0117 ANIMALS

Animals or birds shall not be in a beauty establishment. Trained animals accompanying disabled persons are exempt.

History Note: Authority G.S. 88B-4; 88B-17; 88B-23;
Eff. February 1, 1976;
Amended Eff. July 1, 2010; December 1, 2008.

21 NCAC 14I .0101 PERMANENT FILES

(a) A section of a cosmetic art school shall contain at least a desk, chair and a permanent file suitable for permanent records of matriculations of all students enrolled.

(b) Permanent files shall be kept under lock and key, in the beauty establishment, subject to inspection by the Board or its authorized agents.

(c) Included in this file shall be permanent records of the matriculations of all students enrolled including the following:

- (1) names and addresses of students;
- (2) places and dates of birth;
- (3) Social Security number;
- (4) date students entered school;
- (5) number of hours earned;
- (6) breakdown of practical work performed by the student;
- (7) grades on all examinations taken by the student; and
- (8) date of graduation.

(d) The original copy of all enrollment forms is to be filed with the Board, and the duplicate is to be held by the school.

History Note: Authority G.S. 88B-4;
Eff. February 1, 1976;
Amended Eff. July 1, 2010; April 1, 1991; January 1, 1989;
April 1, 1988.

21 NCAC 14I .0103 INSPECTION REPORTS AND REPORTS OF STUDENTS HOURS

(a) In addition to such other reports as may be required by the Board, cosmetic art schools shall report to the Board or its authorized agent, upon inspection of the cosmetic art school and at other times upon specific request, the names of all students currently enrolled and the hours completed by each.

(b) The owner or manager of the cosmetic art school shall read each inspection report made of the school by an authorized agent of the Board to determine that the information on the inspection report is correct and shall sign the report. If any part of the information on the report is incorrect, it shall be corrected by the authorized agent of the Board or an exception to the report signed by the owner or manager shall be attached to the report.

(c) The Board shall be notified by written correspondence prior to demonstrators, lecturers or observers being in the school.

History Note: Authority G.S. 88B-4;
Eff. February 1, 1976;

Amended Eff. July 1, 2010; April 1, 1995; May 1, 1991; January 1, 1989; April 1, 1988.

21 NCAC 14J .0203 STORING AND LABELING OF COSMETICS

All bottles and jars in the advanced department containing supplies and cosmetics shall be kept securely covered and labeled, stating contents and instructions for use.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. July 1, 2010; January 1, 1989.

21 NCAC 14K .0107 LIVE MODEL PERFORMANCES

(a) In completing the 40 hours of live model performances required by 21 NCAC 14K .0102(b), all manicurist students shall complete the following minimum number of live model performances during the manicurist course under the supervision of a licensed cosmetic art teacher before taking the manicurist examination and submission of the license registration documentation:

- (1) 15 manicures, including trimming, filing, and shaping; decorating; and arm and hand massage;
- (2) 100 applications or repair of sculptured or other artificial nails; and
- (3) 4 pedicures.

(b) No manicurist student may perform any live model performances until he or she has completed 16 hours of classroom work.

(c) Live model performances are the rendering of the required service on a live person other than himself or herself and which does not include performing the service on a mannequin.

History Note: Authority G.S. 88B-4; 88B-10; Eff. July 1, 1990; Amended Eff. April 1, 1991; December 1, 1990; Temporary Amendment Eff. January 1, 1999; Amended Eff. July 1, 2010; December 1, 2008; April 1, 2001; August 1, 2000.

21 NCAC 14N .0110 PASSING GRADES FOR EXAMINATION

Candidates shall make the following grades on both the practical and theory sections of the examination:

- (1) For licensure as a cosmetologist, 75 percent;
- (2) For licensure as an apprentice cosmetologist, 70 percent;
- (3) for licensure as a cosmetology teacher, 85 percent;
- (4) For licensure as a manicurist teacher, 85 percent;
- (5) For licensure as a manicurist, 75 percent;
- (6) For licensure as an esthetician, 75 percent;
- (7) For licensure as an esthetician teacher, 85 percent; and
- (8) For licensure as a natural hair care specialist, 75 percent.

History Note: Authority G.S. 88B-4; 88B-7(2); 88B-8(2); 88B-9(2); 88B-10(2); 88B-10.1; 88B-11(b)(3); 88B-11(c)(3); 88B-11(d)(3); Eff. June 1, 1992; Temporary Amendment Eff. January 1, 1999; Amended Eff. July 1, 2010; August 1, 2000.

21 NCAC 14N .0113 RE-EXAMINATION

(a) Notwithstanding any other provision of the rules in this Subchapter, pursuant to G.S. 88B-18(d) a cosmetologist, esthetician, manicurist, natural hair care specialist or teacher candidate who has failed either section of the examination three times, shall complete the following amounts of study at an approved cosmetic art school before reapplication for examination shall be accepted by the Board:

- (1) Cosmetologist 200 hours,
- (2) Esthetician 80 hours,
- (3) Manicurist 40 hours,
- (4) Natural Hair Care Specialist 40 hours, and
- (5) Teacher:
 - (A) cosmetology 100 hours,
 - (B) esthetician 80 hours, and
 - (C) manicurist 40 hours.

(b) Teacher candidates with no prior cosmetic art teacher training program experience shall provide a written affidavit documenting a minimum of required work experience as outlined in 21 NCAC 14N .0115 or complete a minimum of the hours required for the teacher curriculum in the discipline in which they hold a license. The required minimums for teacher curriculums are 800 hours of a cosmetology teacher curriculum, 650 hours of an esthetician teacher curriculum, 320 hours of a natural hair care teacher curriculum or 320 hours of a manicurist teacher curriculum.

(c) The school in which the student has enrolled pursuant to G.S. 88B-18(d) shall design a course of study for that student in order to correct the student's deficiencies.

History Note: Authority G.S. 88B-4; 88B-18; Eff. June 1, 1992; Amended Eff. August 1, 1998; June 1, 1993; Temporary Amendment Eff. January 1, 1999; Amended Eff. July 1, 2010; May 1, 2007; January 1, 2006; February 1, 2004; August 1, 2000.

21 NCAC 14N .0115 FULL TIME AND PART TIME EQUIVALENCY

This Rule applies to teacher candidates who have not completed a teacher training course but submit proof of practice in the cosmetic arts industry. Candidates shall be approved for cosmetology teacher exams upon providing a signed affidavit documenting a minimum of 10,400 hours in the cosmetic arts industry to be eligible for Board examination. Candidates shall be approved for manicurist upon providing a signed affidavit documenting a minimum of 4,160 hours in the cosmetic arts industry to be eligible for Board examination. Candidates shall be approved for esthetician teacher exams upon providing a signed affidavit documenting a minimum of 6,240 hours in the cosmetic art industry. Applicants shall not receive credit for

more than 2,080 hours per year for full-time work or less than 1,040 per year for part-time work.

*History Note: Authority G.S. 88B-11;
Eff. June 1, 2007;
Amended Eff. July 1, 2010.*

21 NCAC 14P .0106 LICENSES REQUIRED

(a) The presumptive civil penalty for practicing cosmetic art without a license is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

*History Note: Authority G.S. 88B-4; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. July 1, 2010; December 1, 2008; August 1, 2002.*

21 NCAC 14P .0111 ESTABLISHMENT OF COSMETIC ART SCHOOLS

(a) The presumptive civil penalty for failure to provide minimum floor space or equipment and supplies as required by Subchapters 14G, 14I, 14J, 14K, 14O and 14S is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$350.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for failure to provide instruction at a ratio of one teacher for every 20 students is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for failure to report a change in the teaching staff is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to submit an application for the approval of a school in the case of a change of location or ownership is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$200.00
- (3) 3rd offense \$500.00

*History Note: Authority G.S. 88B-4(2); 88B-16; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. July 1, 2010; February 1, 2004.*

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

(a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours

of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle.

(b) Courses completed prior to an individual's being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board. Apprentices shall not earn continuing education credit for any class.

(c) All licensees must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.

(d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.

(e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.

(f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.

(g) Licensees shall be exempt from 8 hours of continuing education requirements until the licensing period commencing after their initial licensure.

(h) CE Course instructors shall receive credit for any approved CE class taught once during the renewal period.

(i) Licensees may take internet and correspondence courses not to exceed 12 hours per renewal period for cosmetologists, four hours per renewal period for natural hair care specialists, manicurists and estheticians and eight hours per renewal period for teachers.

*History Note: Authority G.S. 88B-4; 88B-21(e);
Eff. May 1, 2004;
Amended Eff. July 1, 2010; December 1, 2008; January 1, 2006;
December 1, 2004.*

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:

- (1) Submitting the form to the Board's office at least 30 days prior to the proposed initial date of the course offering.
- (2) Proposing a course offering that must include at least 50% of subject matter in the cosmetic arts or cosmetic art teacher training techniques;
- (3) Providing a resume for all course instructors.

(b) The following offerings shall not be approved by the Board for continuing education credit:

- (1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other refreshments;
- (2) Any application that fails to meet the standards of Rule .0103.

(c) A continuing education number shall be assigned to each approved course.

(d) Approved courses may be conducted as often as desired during the calendar year.

History Note: Authority G.S. 88-B 4; 88B-21(e); Eff. May 1, 2004; Amended Eff. July 1, 2010; December 1, 2008; May 1, 2007.

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

(a) Programs shall not be approved by the Board in segments of less than two hours.

(b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied. Course monitors will be required at the rate of one monitor per 20 students with a maximum of 10 monitors at any course. Instructors may serve as the course monitor for courses with fewer than 20 students.

(c) No provider shall certify the attendance of a person who was not physically present during at least ninety percent of the course time.

(d) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description;
- (4) Hours of attendance;
- (5) Date of course;
- (6) Name and signature of instructor/monitor in employ of provider;

The provider shall certify the items above and furnish a copy to the attendee upon completion of the course.

(e) Course attendance may be restricted to licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.

(f) Minimum attendance of a course for credit purposes is four attendees.

(g) Each provider shall notify the Board; at least one day in advance, of any additional course dates, or any changes including floor plan and changes of course within 10 days.

(h) Each provider shall submit to the Board, within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:

- (1) Course title;
- (2) Date conducted;
- (3) Address location where the course was conducted;

- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number;
- (7) Continuing education hours earned.

(i) The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.

(j) Audits of CE course providers may be conducted and complete records must be provided to the Board upon request.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. May 1, 2004; Amended Eff. July 1, 2010; December 1, 2008; January 1, 2006.

21 NCAC 14S .0101 UNIFORM

All students enrolled in only a natural hair care curriculum must wear a clean washable uniform and nametag, pin or something similar identifying academic status and "natural hair care."

History Note: Authority G.S. 88B-4-7a; Eff. July 1, 2010.

21 NCAC 14S .0102 TIME REQUIREMENTS ACCORDING TO HOURS

(a) The maximum time a student may earn in a natural hair care school in any one day is eight clock hours. The maximum time a student may earn in a natural hair care school in any one week is 40 clock hours.

(b) Hours earned on one day shall not be credited to another day.

(c) Each student must complete 300 hours in a natural hair care school before applying to the Board for the natural hair care specialist's examination.

History Note: Authority G.S. 88-4(7a); Eff. July 1, 2010.

21 NCAC 14S .0103 APPROVED FIELD TRIPS

(a) Cosmetology Educational Field Trips include the following activities:

- (1) Beauty Shops;
- (2) Cosmetic Art Conventions;
- (3) Competition Training;
- (4) Other Schools;
- (5) State Board Office and Archives Museum;
- (6) Supply Houses;
- (7) College or Career Day at School;
- (8) Fashion Shows;
- (9) Rest Homes/Nursing Homes;
- (10) Hospitals; and
- (11) Funeral Homes.

(b) An instructor must be present during these educational field trips, for credit to be given to student, with a ratio of one instructor per 20 students present. The maximum number of hours a student may earn for field trips is 40 credit hours for cosmetology students, 20 credit hours for esthetician students and 10 credit hours for natural hair care or manicurist students.

*History Note: Authority G.S. 88B-4(7a);
Eff. July 1, 2010.*

21 NCAC 14S .0104 EQUIPMENT FOR BEGINNER DEPARTMENT

The beginner department shall be equipped with the following minimum equipment for every 20 students in the department:

- (1) two shampoo bowls and chairs;
- (2) styling equipment for the purpose of natural hair care;
- (3) visual aids;
- (4) one mannequin practice table to accommodate at least 10 students.

*History Note: Authority G.S. 88B-4(a)(9);
Eff. July 1, 2010.*

21 NCAC 14S .0105 STORING AND LABELING OF COSMETICS

All bottles and jars in the advanced department containing supplies shall be kept securely covered and labeled, stating contents and instructions for use.

*History Note: Authority G.S. 88B-4(a)(9);
Eff. July 1, 2010.*

21 NCAC 14S .0107 PERFORMANCES

(a) All natural hair care students shall complete the following minimum number of live model performances during the natural hair care course under the supervision of a licensed cosmetologist or natural hair care teacher before taking the natural hair care examination:

Requirement Description	Hours	-	Services	
			Mannequin	Live Model
Beginners: Sanitation, bacteriology, disinfection, shampooing, draping, anatomy, disorders of the hair and scalp	80	-	-	-
Styles and techniques of natural hair styling including twisting, wrapping, extending, locking	220	-	-	-
Performance Requirements	-	-		
Braids	-	-	5	5
Twists	-	-	5	5
Knots	-	-	3	2
Corn rows	-	-	3	2
Hairlocking	-	-	5	5
Artificial hair and decorations	-	-	5	5
Braid Removal	-	-	5	5

(b) A minimum of 80 hours of technical and practical instruction in application areas are required prior to conducting performances on the public. A live model may be substituted for a mannequin for any mannequin service. All mannequin services may be performed using a simulated product. A performance consists of 10 or more lengths of hair.

*History Note: Authority G.S. 88B-4(a)(10);
Eff. July 1, 2010.*

21 NCAC 14S .0106 EQUIPMENT

(a) Each natural hair care school must be equipped with the following equipment:

- (1) for departments with 10 to 29 stations, five dryers and chairs;
- (2) for departments with 30 or more stations, eight dryers and chairs;
- (3) five shampoo bowls and chairs;
- (4) 10 dressing tables and styling chairs;
- (5) styling equipment for natural hair care.

(b) Each natural hair care school shall provide training in the decontamination methods used to prevent the growth of germs and bacteria. Each natural hair care school shall provide the following equipment or supplies for use in the training and teaching of all students:

- (1) containers of sufficient size for the purpose of disinfecting implements by the immersion of implements in an EPA recommended, hospital grade disinfectant solution;
- (2) covered containers for storage of disinfected implements to prevent contamination until they are needed to prevent contamination.

*History Note: Authority G.S. 88B-4(9);
Eff. July 1, 2010.*

21 NCAC 14S .0108 STUDENTS' PERSONAL SUPPLIES

Each student shall have the following minimum supplies:

- (1) six combs;
- (2) six brushes;
- (3) 10 clips;
- (4) mannequin;
- (5) cape;
- (6) one copy of "North Carolina Cosmetic Art Act" and a copy of the course curriculum requirements, both of which shall be at no charge to the student for the first copy.

History Note: Authority G.S. 88B-4(a)(9); Eff. July 1, 2010.

21 NCAC 14S .0109 TESTS

Written tests and examinations shall be given in all subjects.

History Note: Authority G.S. 88B-4(a)(7a); 88B-4(10); Eff. July 1, 2010.

21 NCAC 14S .0110 APPROVAL OF CREDIT FOR NATURAL HAIR CARE INSTRUCTION/ANOTHER STATE

- (a) An applicant shall receive credit for instruction taken in another state if the conditions set forth in this Rule are met.
- (b) The applicant's record shall be certified by the state agency or department that issues licenses to practice natural hair care. If this agency or department does not maintain any student records or if the state does not give license to practice natural hair care, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.
- (c) If the requirements of Paragraph (b) of this Rule are met, then the Board shall give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, this Board shall not give any credit for performances completed as part of the out-of-state instruction.

History Note: Authority G.S. 88B-13; Eff. July 1, 2010.

21 NCAC 14S .0111 SERVICES PERFORMED

No student enrolled in a course for natural hair care only, shall perform any service of cosmetic art except those directly related to the prescribed course in natural hair care unless otherwise licensed to do so.

History Note: Authority G.S. 88B-4(7a); Eff. July 1, 2010.

21 NCAC 14S .0112 LICENSING OF NATURAL HAIR CARE SPECIALISTS

- (a) Any individual applying for a natural hair care specialist license between July 1, 2010 and June 30, 2011 must pass both the Board's written and practical examinations for natural hair care and shall pay the required fees to be granted a North Carolina Natural Hair Care Specialist license.
- (b) Any individual applying for a natural hair care specialist license after June 30, 2011 must attend an approved school, earn 300 hours, complete the required services, pass the Board's written and practical examinations and shall pay the required fees to be granted a North Carolina Natural Hair Care Specialist license.

History Note: Authority G.S. 88B-4; 88B-10.1; S.L. 2009-521; Eff. July 1, 2010

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

21 NCAC 16C .0405 BOARD CONDUCTED REEXAMINATION

- (a) A complete application, except for official proof of graduation as required by G.S. 90-224(a) and National Board score, is required in case of reexamination.
- (b) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination conducted by the Board must also re-take the written examination unless the applicant successfully passes the clinical examination within one year of passing the written examination.
- (c) Any applicant who has passed the clinical portion of the examination conducted by the Board but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination upon the second reexamination, the applicant must retake both the written and clinical portions of the examination upon subsequent reexamination.
- (d) Any applicant who has failed the written or clinical portions of the examination three times shall successfully complete an additional Board approved course of study in the area(s) of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before admitted for reexamination.

History Note: Authority G.S. 90-223; 90-224; Eff. June 1, 2006; Amended Eff. July 1, 2010.

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE CONSCIOUS SEDATION, MODERATE PEDIATRIC CONSCIOUS SEDATION AND MODERATE CONSCIOUS SEDATION LIMITED TO ORAL ROUTES OF ADMINISTRATION AND NITROUS OXIDE

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist (CRNA) to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes of administration and nitrous oxide to dental patients on an outpatient basis, the dentist shall obtain a permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the facility of the permit holder.

(b) For a dentist to employ a certified registered nurse anesthetist to administer moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide or moderate pediatric conscious sedation, the dentist must demonstrate through the permitting process that he or she is capable of performing all duties and procedures to be delegated to the CRNA. The dentist must not delegate said CRNA to perform procedures outside of the scope of the technique and purpose of moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes and nitrous oxide as defined in Rule .0101 of this Subchapter.

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

- (1) Satisfactory completion of a minimum of 60 hours of didactic training, including PALS (Pediatric Advanced Life Support), and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of a pre-doctoral dental or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule.

(d) Notwithstanding the foregoing, a dentist may also qualify for a permit to administer moderate pediatric conscious sedation by documenting, with patient names and dates of completion, at least 100 cases of moderate pediatric sedation procedures successfully completed between July 3, 2006 and July 3, 2009. A dentist who obtains a pediatric conscious sedation permit pursuant to this Paragraph may not administer sedation intravenously and such limitation shall be noted on the dentist's permit.

(e) A dentist may modify his or her moderate conscious sedation permit to include the privilege of moderate pediatric conscious sedation by completing a Board approved pediatric dental degree or pediatric dental residency program or obtaining the equivalent hours of continuing education program in pediatric dental anesthesia. If said qualifications are satisfied, it shall be so designated on the dentist's moderate conscious sedation permit and will be subject to the renewal requirements stated in Rule .0501(d) of this Subchapter.

(f) To be eligible for a moderate conscious sedation permit, moderate conscious sedation limited to oral routes and nitrous oxide inhalation permit or moderate pediatric conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, and is staffed with supervised auxiliary personnel for each procedure performed. The dentist shall ensure that auxiliary personnel document annual, successful completion of basic life support (BLS) training and are capable of assisting with procedures, problems and emergencies incident thereto.

(g) Prior to issuance of a moderate conscious sedation permit, moderate conscious pediatric sedation permit or moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation permit, the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

(h) The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.

(i) A dentist who holds a moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide inhalation or moderate pediatric conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly and unintentionally.

(j) A dentist may obtain a moderate conscious sedation permit limited to oral routes of administration and nitrous oxide inhalation, including the ability to add supplemental dosing to the techniques set out in Rule .0101(23) of this Subchapter upon compliance with the following requirements:

- (1) successfully complete 24 hours of didactic training and manage at least 10 adult case experiences, including at least three live clinical dental experiences. The live clinical cases shall not be handled by groups with more than five student participants. The remaining cases may include simulations, video presentations or both, but must include

- one experience in returning/rescuing a patient from deep to moderate sedation; or
- (2) document, with patient names and dates of completion, at least 100 cases of oral moderate conscious sedation procedures successfully completed within one year preceding June 3, 2008; and fulfill all the requirements listed in Rule .0401 of this Subchapter for minimal conscious sedation.

(k) A dentist who is qualified to administer general anesthesia, moderate conscious sedation or moderate pediatric conscious sedation and holds a general anesthesia, moderate conscious sedation permit or a moderate pediatric conscious sedation permit may administer minimal conscious sedation without obtaining a separate minimal conscious sedation permit.

(l) Any dentist who holds an active parenteral conscious sedation permit as of October 1, 2007 shall be deemed to hold an active moderate conscious sedation permit. Such permits shall be subject to the renewal requirements set out in Rule .0501 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994; Temporary Amendment Eff. December 11, 2002; Amended Eff. July 1, 2010, July 3, 2008; August 1, 2004.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation or supervising the administration of moderate conscious sedation or moderate pediatric conscious sedation by a certified registered nurse anesthetist shall ensure that the facility in which the sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
 - (B) A CPR Board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) Lighting as necessary for specific procedures; and
 - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction.
- (2) The following equipment is maintained:
 - (A) Positive oxygen delivery system, including full face mask for adults and pediatric patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device;

- (D) Pulse oximeter; and
- (E) Automatic External Defibrillator (AED).
- (3) The following emergency equipment is maintained:
 - (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
 - (B) Syringes as necessary for specific procedures; and
 - (C) Tourniquet and tape.
- (4) The following drugs are maintained with a current shelf life and within easy access from the operatory and recovery area:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Narcotic antagonist;
 - (D) Antihistamine;
 - (E) Corticosteroid;
 - (F) Nitroglycerine;
 - (G) Bronchial dilator;
 - (H) Antiemetic;
 - (I) Benzodiazepine antagonist; and
 - (J) 50% Dextrose.
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and
- (6) The following records are maintained for at least 10 years:
 - (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;
 - (C) A sedation record which shall include:
 - (i) blood pressure;
 - (ii) pulse rate;
 - (iii) respiration;
 - (iv) duration of procedure;
 - (v) documentation of complications or morbidity; and
 - (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, or where applicable, moderate pediatric conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. Practices limited to pediatric dentistry will not be required to demonstrate the deployment of an intravenous delivery system. Instead, they will orally describe to the evaluator the technique of their training in intravenous and intraosseous deployment. During the demonstration, the

applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression, if applicable;
- (4) Sterile technique;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation shall ensure that the facility is staffed with sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of a moderate pediatric conscious sedation or moderate conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide sedation services at the level for which the traveling dentist holds a valid permit, as well as minimal sedation or moderate conscious sedation limited to oral routes for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the facility in which the sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(f) Holders of moderate conscious sedation permits limited to oral routes and nitrous oxide inhalation may not provide sedation at the office of a licensed dentist who does not hold an appropriate sedation permit.

History Note: Authority G.S. 90-28; 90-30.1; 90-48;

Eff. February 1, 1990;
Amended Eff. August 1, 2002; August 1, 2000;
Temporary Amendment Eff. December 11, 2002;
Amended Eff. July 1, 2010; July 3, 2008; August 1, 2004.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0404 LISTING AND RENEWAL

(a) All nurse aide IIs, as defined in Rule .0403(b) of this Section, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Nurse Aide II Registry and shall meet the following requirements:

- (1) successful completion of a nurse aide II program or its Board approved equivalent;
- (2) GED or high school diploma;
- (3) listed as a Level I nurse aide on the DHSR Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (4) submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 business days of completion of the nurse aide II program. Application for initial listing received in the Board office shall show an expiration day of the last day of the birth month of the following year.

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a nurse aide II shall submit:

- (1) An application fee; and
- (2) A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses to practice in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who do not have any findings as cited in G.S. 131E-256(a)(1) may make application as a nurse aide II.

(d) An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete an entire nurse aide II program.

(e) Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for

review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nurse aide I personnel without the nurse aide I completing the entire nurse aide II program. These tasks are individual activities which may be performed after the nurse aide has received the approved training and competency evaluation as defined in Rule .0403(b) of this Section.

- (1) The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing.
- (2) The Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.
- (3) Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.

(g) Each nurse aide II shall renew listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.

- (1) To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
- (2) Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation shall successfully complete the competency evaluation portion of the nurse aide II program and submit application in order to be placed on the Board of Nursing Nurse Aide II Registry.
- (3) A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
- (4) A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds on the DHSR Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

History Note: Authority G.S. 90-171.19; 90-171.20(2)(4)(7)d,e,g; 90-171.37; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987); Eff. March 1, 1989;

Amended Eff. July 1, 2010; November 1, 2008; August 1, 2005; August 1, 2002; July 1, 2000; December 1, 1995; April 1, 1990.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1418 SUPERVISION OF UNIT DOSE MEDICATION SYSTEMS

(a) The purpose of this Section is to set out requirements in the event that pharmacists elect to supervise designated pharmacy technicians' validation of stocking and prepackaging functions in acute care hospital pharmacy practice settings as a means of facilitating pharmacists' delivery of clinical services.

(b) A Hospital's pharmacist-manager is responsible for the oversight of all validation of floor stock and unit dose distribution systems, and that responsibility may not be delegated pursuant to 21 NCAC 46 .1411. In the event that the Hospital's pharmacist-manager elects to utilize Validating Technicians in the filling of floor stock and unit dose distribution systems, the pharmacist-manager shall develop written policies and procedures that:

- (1) permit a Validating Technician to validate only the following functions of other registered pharmacy technicians in filling floor stock and unit dose distribution systems for inpatients in a Hospital:
 - (A) stocking of patient care unit medication inventories;
 - (B) stocking of ancillary drug cabinet inventories;
 - (C) stocking of automated dispensing or drug supply devices;
 - (D) stocking of emergency kits; and
 - (E) prepackaging of prescription drugs within the Hospital pharmacy.
- (2) establish the parameters for pharmacist supervision of pharmacy technician validation functions;
- (3) establish facility-specific training for pharmacy technician validation functions;
- (4) establish an ongoing evaluation and assessment program to ensure that pharmacy technician validation functions are performed safely and accurately; and
- (5) establish a recordkeeping system that shall permit the identification of the Validating Technician who performs activities authorized by this Rule. Readily retrievable records generated by this system shall be maintained for the period of time specified in 21 NCAC 46 .1414(j)(1) and (2).

(c) With respect to compounded or admixed prescription drugs (whether sterile or non-sterile), a Validating Technician may validate the filling of floor stock and unit dose distribution systems only after a pharmacist has verified that the compounded or admixed prescription drugs have been prepared correctly.

(d) This Rule does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(e) Validating Technician. For the purposes of this Rule, a Validating Technician shall be a pharmacy technician who:

- (1) is registered with the Board and trained as specified in G.S. 90-85.15A;
- (2) is a certified technician;
- (3) holds either:
 - (A) an associate's degree in pharmacy technology conferred by either an institution within the North Carolina Community College System or System;
 - (B) an associate's degree in pharmacy technology conferred by an institution accredited by one of the regional accrediting agencies recognized by the United States Department of Education; or
 - (C) an associate's degree in pharmacy technology conferred by a program accredited by the American Society of Health System Pharmacists; and
- (4) assists pharmacists with the preparation, dispensing and distribution of prescription medications that will be administered by a licensed health care provider to an inpatient in a Hospital under this Rule.

(f) Hospital. For the purposes of this Rule, a Hospital is either:

- (1) a hospital licensed by the North Carolina Medical Care Commission; or
- (2) a psychiatric hospital operated by the Secretary of the Department of Health and Human Services.

(g) Pursuant to G.S. 90-85.15A(c), the Board approves a pharmacist's supervision of more than two pharmacy technicians where the additional technicians are Validating Technicians. This Rule does not relieve the pharmacist-manager of the obligation to request and receive written Board approval for a pharmacist's supervision of more than two pharmacy technicians where the additional technicians are certified pharmacy technicians but are not Validating Technicians.

(h) A pharmacy technician performing validation functions described in this Rule as part of a Board-approved 21 NCAC 46 .2510 pilot project at Broughton State Hospital or Wake Forest University Baptist Medical Center may continue to perform such functions for a period of three years from this Rule's original effective date, after which time the pharmacy technician must meet all of the requirements specified in Paragraph (e) of this Rule to continue performing such functions.

History Note: Authority G.S. 90-85.6; 90-85.15A; 90-85.21; 90-85.26; 90-85.32; 90-85.33; 90-85.34; Eff. Pending Legislative Review.

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

21 NCAC 56 .0505 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Engineer Licensure. An annual renewal fee of seventy-five dollars (\$75.00) for certificates of licensure for Professional Engineers shall be payable to the Board. The Board shall send to each licensed Professional Engineer a form which requires the licensee to provide the Board with both the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Engineering Intern Certificate. The Engineering Intern certificate does not expire and, therefore, does not have to be renewed.

History Note: Authority G.S. 89C-10; 89C-17; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2010; July 1, 2009; December 4, 2002; August 1, 2000; August 1, 1998; May 1, 1994.

21 NCAC 56 .0606 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Land Surveyor Licensure. An annual renewal fee of seventy-five dollars (\$75.00) for certificates of licensure for Professional Land Surveyors is payable to the Board. The Board shall provide each Professional Land Surveyor a form which requires the licensee to provide to the Board the business and residential addresses, and the professional development hours (PDH) obtained during the previous year. The licensee shall give notice to the Board of a change of business or residential address within 30 days of the change.

(b) Surveyor Intern Certificate. The surveyor intern certificate does not expire and, therefore, does not have to be renewed.

History Note: Authority G.S. 89C-17; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2010; July 1, 2009; December 4, 2002; August 1, 2000; August 1, 1998; May 1, 1994.

21 NCAC 56 .0804 ANNUAL RENEWAL

(a) Renewal. The certificate of licensure for a business entity, including a professional corporation, limited liability company, Chapter 87 corporation, or business firm shall be renewed annually.

(b) Expiration. The certificate of licensure expires on the last day of June following its issuance by the Board and becomes invalid on that date unless renewed.

(c) Written Application. Upon written application on a renewal form prescribed by the Board accompanied by the prescribed fee of seventy-five dollars (\$75.00) the Board shall renew the certificate of licensure providing that the firm has complied with all Rules of the Board and applicable General Statutes of North Carolina. The form shall be mailed to all licensees in good

standing no later than June 1st. The licensed entity shall give notice to the Board of a change of business address within 30 days of the change.

(d) If a firm fails to renew its certificate of licensure within one year of the expiration date, the firm shall submit a new application for a new certificate of licensure in accordance with all requirements of 21 NCAC 56 .0802.

History Note: Authority G.S. 55B-11; 57C-2-01; 89C-10; 89C-14; 89C-17; 89C-24; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 2010; July 1, 2009; December 4, 2002; April 1, 2001; February 1, 1996; May 1, 1994.

CHAPTER 58 – REAL ESTATE COMMISSION

21 NCAC 58E .0602 COURSE DESCRIPTION

The Broker-In-Charge Annual Review Course is a four-hour special continuing education course for brokers-in-charge that must be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and must subsequently be taken each license year thereafter in order for the broker-in-charge to maintain broker-in-charge eligibility. The subject matter of this course shall be determined by the Commission, which shall produce course materials for use by course sponsors. The Commission shall modify the subject matter from year to year as it deems appropriate. Sponsors and instructors shall use course materials developed by the Commission for the Broker-In-Charge Annual Review Course only. Course sponsors and instructors shall not alter abbreviate or add to Commission developed course materials without express permission of the Commission. The Commission shall approve alterations in materials when a different formatting will facilitate instruction to persons with special needs, to aid the use of technology in the classroom, to correct errors discovered in the material, or to reflect differences or changes in practice, industry trends, or the law.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2; Eff. July 1, 2010.

CHAPTER 62 – STATE BOARD OF ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS

21 NCAC 62 .0104 SECRETARY-TREASURER

History Note: Authority G.S. 90A-57; Eff. February 1, 1976; Readopted Eff. December 22, 1978; Amended Eff. November 1, 1994; April 1, 1989; February 1, 1983;

Repealed Eff. July 1, 2010.

21 NCAC 62 .0201 PETITION FOR RULEMAKING

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Board shall submit the petition in writing to: Chair, State Board of Environmental Health Specialist Examiners, c/o Division of Environmental Health, 1630 Mail Service Center, Raleigh, North Carolina 27699-1630.

(b) The petition shall be filed in accordance with G.S. 150B-20 and shall also contain the following:

- (1) reason for proposal;
(2) any data supporting the proposal;
(3) effect of the proposed rule on existing practices in the area involved, including cost factors;
(4) names and addresses of those individual and groups most likely to be affected by the proposed rule change; and
(5) name and address of each petitioner.

(c) The Board shall determine, based on the information contained in the petition, or any other information obtained regarding the petition whether the public interest will be served by granting the petition. All contents of the submitted petition, and any additional information deemed relevant, shall be considered.

History Note: Authority G.S. 90A-57; 150B-20; Eff. February 1, 1976; Readopted Eff. December 22, 1978; Amended Eff. July 1, 2010; November 1, 1994; April 1, 1989.

- 21 NCAC 62 .0202 NOTICE
21 NCAC 62 .0203 HEARINGS
21 NCAC 62 .0204 JUSTIFICATION OF RULEMAKING DECISION
21 NCAC 62 .0205 RECORD OF RULEMAKING PROCEEDINGS
21 NCAC 62 .0206 FEES

History Note: Authority G.S. 12-3.1; 90A-57; Eff. February 1, 1976; Readopted Eff. December 22, 1978; Amended Eff. November 1, 1994; April 1, 1989; Repealed Eff. July 1, 2010.

21 NCAC 62 .0208 DECLARATORY RULINGS

History Note: Authority G.S. 90A-57; 150B-4; Eff. February 1, 1976; Readopted Eff. December 22, 1978; Amended Eff. November 1, 1994; April 1, 1989; Repealed Eff. July 1, 2010.

SECTION .0300 - CONTESTED CASES

21 NCAC 62 .0301 OPPORTUNITY FOR AN ADMINISTRATIVE HEARING
21 NCAC 62 .0302 REQUEST FOR A HEARING

History Note: Authority G.S. 90A-57;
 Eff. February 1, 1976;
 Readopted Eff. December 22, 1978;
 Amended Eff. November 1, 1994; April 1, 1989;
 Repealed Eff. July 1, 2010.

21 NCAC 62 .0305 NOTICE
21 NCAC 62 .0306 INTERVENTION
21 NCAC 62 .0307 CHANGE OF VENUE
21 NCAC 62 .0308 DISQUALIFICATION OF BOARD MEMBERS
21 NCAC 62 .0309 FAILURE TO APPEAR
21 NCAC 62 .0310 CONTINUANCES

History Note: Authority G.S. 90A-4; 90A-57; 150B-38; 150B-40(a);
 Eff. February 1, 1976;
 Readopted Eff. December 22, 1978;
 Amended Eff. November 1, 1994; April 1, 1989;
 Repealed Eff. July 1, 2010.

21 NCAC 62 .0314 PRE-HEARING CONFERENCE
21 NCAC 62 .0315 SIMPLIFICATION OF ISSUES
21 NCAC 62 .0316 SUBPOENAS
21 NCAC 62 .0317 TRANSCRIPTS

History Note: Authority G.S. 90A-57;
 Eff. February 1, 1976;
 Readopted Eff. December 22, 1978;
 Amended Eff. November 1, 1994; January 1, 1990; April 1, 1989;
 Repealed Eff. July 1, 2010.

21 NCAC 62 .0319 RECORD OF CONTESTED CASES

History Note: Authority G.S. 90A-57;
 Eff. February 1, 1976;
 Readopted Eff. December 22, 1978;
 Amended Eff. November 1, 1994; January 1, 1990; April 1, 1989;
 Repealed Eff. July 1, 2010.

21 NCAC 62 .0401 STATUTORY AUTHORITY AND DEFINITIONS

The definitions in G.S. 90A-51 apply to rules in this Chapter.

History Note: Authority G.S. 90A-51; 90A-57;
 Eff. February 1, 1976;
 Readopted Eff. December 22, 1978;
 Amended Eff. July 1, 2010; April 1, 1989; February 1, 1983.

21 NCAC 62 .0402 APPLICATIONS

(a) Applications for registration as an environmental health specialist or environmental health specialist intern shall be filed with the Board on a form provided by the Board and available on the Board website at: www.rsboard.com or from the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630.

(b) The application form shall be signed by the applicant and shall contain biographical data on the applicant including education, experience, duties, and prior registration necessary to determine the applicant's qualifications for registration. The application shall also be accompanied by the following:

- (1) a certified transcript sent directly to the Board from the educational institution from which the applicant has received a degree;
- (2) certified transcripts from all other educational institutions from which the applicant has earned science credits used to comply with G.S. 90A-53;
- (3) the job description signed by the applicant's supervisor;
- (4) statement from the applicant's employer verifying dates of employment, and
- (5) a signed Code of Ethics.

History Note: Authority G.S. 90A-53; 90A-57; 90A-59; 90A-62;
 Eff. February 1, 1976;
 Readopted Eff. December 22, 1978;
 Amended Eff. July 1, 2010; November 1, 1994; April 1, 1989;
 February 1, 1983.

21 NCAC 62 .0403 EXAMINATION

(a) The Board shall schedule an examination at least two times annually. An applicant for a certificate as a registered environmental health specialist shall pass the examination which consists of the following:

- (1) an objective written examination, designed to test the applicant's competence in the subject of environmental health;
- (2) an oral examination prepared, administered and evaluated by the Board; and
- (3) a written question prepared, administered and evaluated by the Board.

(b) Applicants taking or retaking the examination shall submit a written application to the Board. The request shall indicate which portions of the exam the applicant intends to take. The exam application shall be postmarked no later than 30 days prior to the advertised date of the examination.

(c) Every applicant shall pass the examination with a grade of at least 70 percent, with the objective written examination to count 50 percent of the total score, the oral examination to count 25 percent of the total score, and the written question to count 25 percent of the total score. An applicant shall score a minimum of 60 percent on each individual portion of the examination. All scores of any portion of the exam shall be retained by the Board and the highest score for each portion shall be applied in meeting the requirements of this Section.

(d) Applicants shall not cheat or attempt to cheat on the examination by any means, including giving or receiving assistance, and shall not communicate in any manner with any person during the examination, other than the person(s) administering the examination. Violation of this Paragraph is cause for dismissal from the examination, invalidation of the examination score, and revocation or denial of registration.

History Note: Authority G.S. 90A-53; 90A-57; 90A-59; 90A-64; Eff. February 1, 1976; Readopted Eff. December 22, 1978; Amended Eff. July 1, 2010; November 1, 1994; January 1, 1990; April 1, 1989; February 1, 1983.

21 NCAC 62 .0405 AUTHORIZED EXPENDITURES AND FEES

- (a) The following fees apply:
- (1) application for registration of environmental health specialist--\$50.00;
 - (2) examination--actual cost of the environmental health specialist exam purchased by the Board. The cost of the examination on July 1, 2010 is one hundred fifteen dollars (\$115.00) or one hundred twenty-five dollars (\$125.00) depending on the number of applicants for the examination;
 - (3) an administration fee of fifty dollars (\$50.00) for each examination application received;
 - (4) issuance of a certificate as provided in G.S. 90A-62--\$50.00; and
 - (5) annual renewal postmarked prior to January 1 of the year--\$50.00; postmarked January 1 or later--\$75.00.
- (b) Applications for registration, renewal, and examinations shall be accompanied by the payment of the appropriate fees.
- (c) An additional fee of twenty dollars (\$20.00) plus the actual cost charged by the bank shall be charged for all returned checks.
- (d) Fees for copies shall be in accordance with G.S. 12-3.1 and G.S. 132-6.2(b).

History Note: Authority G.S. 12-3.1; 25-3-506; 90A-53; 90A-62; 90A-63; 132-6.2(b); Eff. February 1, 1976; Readopted Eff. December 22, 1978; Amended Eff. July 1, 2010; November 1, 1994; January 1, 1990; April 1, 1989; February 1, 1983.

21 NCAC 62 .0407 RENEWAL

(a) Applications for renewal shall be filed with the Board on a form provided by the Board and available from the Board website at: www.rsboard.com or from the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630. The renewal form may also be generated by the Registered Sanitarian Training and Authorization (RSTAS) computer system at: <http://apps.bluelizard.com/RSTAS/>.

(b) The renewal application shall be completed and signed by the applicant.

(c) Renewal fees shall be paid in accordance with Rule .0405(a)(5) of this Section. The renewal application shall be posted on the Board's website at www.rsboard.com by October 1 of each year. The individual shall download and submit the application for renewal to the Board. Individuals may also contact the Board at the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630 for a copy.

(d) Registered environmental health specialists or registered environmental health specialists interns who fail to renew by December 31 shall be notified by the Board that their registration has expired and that they may not practice as a registered environmental health specialist or a registered environmental health specialists intern until they have met the requirements for renewal.

(e) An environmental health law course based on North Carolina laws and rules with at least 15 contact hours approved by the Board shall be completed within the first four years of the date of most recent registration by the Board.

(f) Registered environmental health specialists or registered environmental health specialists interns shall complete a minimum of 15 instructional clock hours of continuing education acceptable to the Board each year. Continuing education acceptable to the Board includes:

- (1) the specialized training course required in Rule .0411 of this Section;
- (2) District Environmental Health Section Educational meetings;
- (3) professional association courses and educational meetings;
- (4) seminars or courses offered by the North Carolina State of Practice Committee;
- (5) completion of a job related course offered by a college or university accredited by the Council of Higher Education Accreditation with the hours credited for the year that the course is completed;
- (6) successful completion of a job related course offered by the Centers for Disease Control and Prevention, the Food and Drug Administration, or the Environmental Protection Agency;
- (7) other practice-related training which:
 - (A) is technical in nature, related to the environment, environmental health or improving the practice of environmental health;
 - (B) is relevant to the actual job being performed by the participants or applicant;
 - (C) includes a method for determining the number of hours spent;
 - (D) includes a method of documentation for verification of completion;
 - (E) is available to all registered environmental health specialists and

environmental health specialist interns; and

- (F) has been granted approval by the Board based on the above standards; and

(g) Registrations that have expired may be renewed within 12 months after expiration upon submittal of application and payment of the renewal fee. The applicant shall provide verification to the Board that continuing education clock hours were obtained during the year since the expiration to comply with the requirements of this Section. Registrations that have expired for more than 12 months may not be renewed.

(h) Interns that are no longer employed in the field of environmental health in North Carolina may not renew.

(i) A registered environmental health specialist or a registered environmental health specialist intern in good standing whose active military service has impaired their ability to obtain the continuing education requirements in Paragraph (f) of this Rule are exempt from the continuing education requirement if written orders from their military unit are provided to the Board. In addition, the renewal fee is waived for each calendar year the environmental health specialist is on active duty.

(j) A registered environmental health specialist or registered environmental health specialist intern who is disabled may request a variance in continuing education hours during the period of the disability. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its effect on the registered environmental health specialist or registered environmental health specialist's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

(k) A maximum of five clock hours of approved continuing education, that is in excess of the required 15 clock hours, may be applied toward the continuing education requirements for the following year.

History Note: Authority G.S. 90A-57; 90A-63; 90A-67; 93B-15;

Eff. February 1, 1976;

Readopted Eff. December 22, 1978;

Amended Eff. July 1, 2010; November 1, 1994; May 1, 1990; April 1, 1989; February 1, 1983.

21 NCAC 62 .0408 PUBLIC INSPECTION

History Note: Authority G.S. 90A-57;

Eff. February 1, 1976;

Readopted Eff. December 22, 1978;

Amended Eff. November 1, 1994; April 1, 1989;

Repealed Eff. July 1, 2010.

21 NCAC 62 .0411 SPECIALIZED TRAINING

Every applicant for registration as a registered environmental health specialist intern shall complete the course entitled "Orientation and Initial Internship Training for Environmental Health Interns" offered by the Division of Environmental Health at the centralized training site within 12 months of registration as a registered environmental health specialist intern.

History Note: Authority G.S. 90A-50; 90A-51; 90A-53; 90A-57;

Eff. February 1, 1983;

Amended Eff. July 1, 2010; November 1, 1994; May 1, 1990.

21 NCAC 62 .0414 ENVIRONMENTAL HEALTH SPECIALIST INTERN EXPERIENCE

Every applicant for registration as an environmental health specialist intern shall be under the direction of a registered environmental health specialist in order to obtain acceptable environmental health field experience required to be a registered environmental health specialist.

History Note: Authority G.S. 90A-50; 90A-51; 90A-52; 90A-53; 90A-63;

Eff. November 1, 1994;

Amended Eff. July 1, 2010.

21 NCAC 62 .0415 CODE OF ETHICS

The Board hereby incorporates by reference the code of ethics adopted by the Environmental Health Section of the North Carolina Public Health Association on September 30, 2009 as the professional code to be followed by registered environmental health specialists and environmental health specialist interns. This incorporation does include subsequent amendments and editions. Copies may be obtained from the Board at no charge. The canons in the code of ethics are part of the registration application.

History Note: Authority G.S. 90A-53; 90A-67;

Eff. July 1, 2010.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, June 17, 2010 9:00 a.m. 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 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburk - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Ralph A. Walker
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn
Curtis Venable

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

August 19, 2010 September 16, 2010
October 21, 2010 November 18, 2010

AGENDA

RULES REVIEW COMMISSION

Thursday, August 19, 2010 9:00 A.M.

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
 - A. Structural Pest Control Committee – 02 NCAC 34 .0331, .1103 (Bryan)
 - B. Commission for Mental Health – 10A NCAC 27E .0301, .0302, .0303, .0304 (Bryan)
 - C. Commission for Public Health – 15A NCAC 18A .2633 (DeLuca)
 - D. Board of Cosmetic Art Examiners – 21 NCAC 14I .0401 (Bryan)
 - E. Board of Registration for Foresters – 21 NCAC 20 .0115, .0125 (Bryan)
 - F. Board of Funeral Service – 21 NCAC 34A .0203 (DeLuca)
 - G. Board of Funeral Service – 21 NCAC 34B .0311 (DeLuca)
 - H. Board of Funeral Service – 21 NCAC 34D .0203 (DeLuca)
 - I. Board of Examiners for Speech and Language Pathologists and Audiologists – 21 NCAC 64 .0219 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between June 22, 2010 and July 20, 2010
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Commission Business
 - Next meeting: September 16, 2010

Commission Review
Log of Permanent Rule Filings
June 22, 2010 through July 20, 2010

* Approval Recommended, ** Objection Recommended, *** Other

INSURANCE, DEPARTMENT OF

The rules in Chapter 5 deal with fire and rescue services division.

The rules in Subchapter 5A include general provisions (.0100); state volunteer fire department (.0200); firemen's relief fund (.0300); administration of other funds (.0400); initial certification/re-inspection fire departments (.0500); volunteer fire department fund (.0600); volunteer rescue/EMS fund (.0700); and cigarette fire-safety standards (.0800).

<u>Definitions</u>	11	NCAC 05A .0101
Amend/*		
<u>Eligible Members</u>	11	NCAC 05A .0301
Amend/*		
<u>Certification of Eligibility</u>	11	NCAC 05A .0302
Amend/*		
<u>Administration of Firefighters' Relief Fund</u>	11	NCAC 05A .0303
Amend/*		
<u>Establishment of Fire Department</u>	11	NCAC 05A .0503
Amend/*		
<u>Drills and Meeting Requirements</u>	11	NCAC 05A .0505
Amend/*		
<u>Records and Documents</u>	11	NCAC 05A .0507
Amend/*		
<u>Requirements</u>	11	NCAC 05A .0603
Amend/*		
<u>Requirements for Units Required to Match Grants</u>	11	NCAC 05A .0703
Amend/*		

LABOR, DEPARTMENT OF

The rules in Chapter 7 are from the Commissioner of Labor and cover the Occupational and Safety Health Act (OSHA).

The rules in Subchapter 7F cover specific OSHA standards for various industries: general (.0100); construction (.0200); agriculture (.0300); shops fabricating structural steel and steel plate (.0400); maritime (.0500); communication towers (.0600); blasting and use of explosives (.0700); and cranes and derricks standards (.0900).

<u>Scope</u>	13	NCAC 07F .0901
Adopt/*		

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 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

<u>Nutrient Offset Payments</u>	15A	NCAC 02B .0240
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Amend/*	
<u>Nutrient Offset Payment Rates for the NC Ecosystem Enhanc...</u>	15A NCAC 02B .0274
Adopt/*	
<u>Catawba River Basin</u>	15A NCAC 02B .0308
Amend/*	
<p>The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); clean air interstate rules (.2400); mercury rules for electric generators (.2500); and source testing (.2600).</p>	
<u>Prevention of Significant Deterioration</u>	15A NCAC 02D .0530
Amend/*	
<u>Sources In Nonattainment Areas</u>	15A NCAC 02D .0531
Amend/*	
<u>Applicability</u>	15A NCAC 02D .0902
Amend/*	
<u>Compliance Schedules for Sources In Nonattainment Areas</u>	15A NCAC 02D .0909
Amend/*	
<u>Automobile and Light Duty Truck Manufacturing</u>	15A NCAC 02D .0917
Repeal/*	
<u>Paper Coatings</u>	15A NCAC 02D .0920
Repeal/*	
<u>Fabric and Vinyl Coating</u>	15A NCAC 02D .0921
Repeal/*	
<u>Metal Furniture Coatings</u>	15A NCAC 02D .0922
Amend/*	
<u>Surface Coating of Large Appliance Parts</u>	15A NCAC 02D .0923
Amend/*	
<u>Coating of Miscellaneous Metal Parts and Products</u>	15A NCAC 02D .0934
Repeal/*	
<u>Factory Surface Coating of Flat Wood Paneling</u>	15A NCAC 02D .0935
Amend/*	
<u>Graphic Arts</u>	15A NCAC 02D .0936
Repeal/*	
<u>Miscellaneous Volatile Organic Compound Emissions</u>	15A NCAC 02D .0951
Amend/*	
<u>Petition for Alternative Controls for RACT</u>	15A NCAC 02D .0952
Amend/*	
<u>Offset Lithographic Printing and Letterpress Printing</u>	15A NCAC 02D .0961
Adopt/*	
<u>Industrial Cleaning Solvents</u>	15A NCAC 02D .0962
Adopt/*	
<u>Fiberglass Boat Manufacturing Materials</u>	15A NCAC 02D .0963
Adopt/*	
<u>Miscellaneous Industrial Adhesives</u>	15A NCAC 02D .0964
Adopt/*	
<u>Flexible Package Printing</u>	15A NCAC 02D .0965

Adopt/*	
<u>Paper, Film and Foil Coatings</u>	15A NCAC 02D .0966
Adopt/*	
<u>Miscellaneous Metal and Plastic Parts Coatings</u>	15A NCAC 02D .0967
Adopt/*	
<u>Automobile and Light Duty Truck Assembly Coatings</u>	15A NCAC 02D .0968
Adopt/*	

The rules in Subchapter 2Q are from the EMC and relate to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); establishment of an air quality permitting program (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); exempt categories (.0800); and permit exemptions (.0900).

<u>Permits Requiring Public Participation</u>	15A NCAC 02Q .0306
Amend/*	

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Beaufort County</u>	15A NCAC 10F .0303
Amend/*	
<u>Carteret County</u>	15A NCAC 10F .0330
Amend/*	
<u>Pitt County</u>	15A NCAC 10F .0354
Amend/*	

ELECTROLYSIS EXAMINERS, BOARD OF

The rules in Chapter 19 are from the Board of Electrolysis Examiners and include application procedures (.0100); application procedures (.0200); administrative law procedures (.0300); sanitation, equipment and supplies (.0400); schools (.0600); and continuing education (.0700).

<u>Address</u>	21 NCAC 19 .0101
Amend/*	
<u>Definitions</u>	21 NCAC 19 .0103
Amend/*	
<u>Advertising</u>	21 NCAC 19 .0104
Amend/*	
<u>Fees</u>	21 NCAC 19 .0201
Amend/*	
<u>Application for Licensure</u>	21 NCAC 19 .0202
Amend/*	
<u>Application for Renewal Reinstatement or Reactivation of ...</u>	21 NCAC 19 .0204
Adopt/*	
<u>Electrologist and Laser Hair Practitioner Offices</u>	21 NCAC 19 .0403
Amend/*	
<u>Supervising Physician</u>	21 NCAC 19 .0501
Adopt/*	

RESPIRATORY CARE BOARD

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); miscellaneous provisions (.0500); rules (.0600); and administrative hearing procedures (.0700).

<u>Definitions</u>	21	NCAC 61	.0103
Amend/*			
<u>License Renewal</u>	21	NCAC 61	.0302
Amend/*			
<u>Continuing Duty to Report</u>	21	NCAC 61	.0308
Amend/*			
<u>Continuing Education Requirements</u>	21	NCAC 61	.0401
Amend/*			

BUILDING CODE COUNCIL

<u>NC Fire Code - Financial Responsibility</u>	3301.2.4
Amend/*	
<u>NC Fire Code - Corridor Installations</u>	3405.5.1
Amend/*	
<u>NC Plumbing Code - Shower Waste Outlet</u>	417.3
Amend/*	
<u>NC Residential Code - Ceiling Joist Rafter Connections</u>	R802.3.1
Amend/*	

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)	09 ABC 5422	May	06/09/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
<u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u>				
Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board	10 BSW 2454	Overby	06/25/10	
<u>CRIME VICTIMS COMPENSATION</u>				
Christine G. Mroskey v. Crime Victims Compensation	09 CPS 0451	Gray	06/24/10	
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
Jose H. Geronimo Ramirez v. Victims and Justice Services	09 CPS 6454	May	06/23/10	
Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV	10 CPS 0419	Elkins	06/29/10	
AD Gustafson, Inc., Andrew Gustafson v. Secretary of Crime Control	10 CPS 2072	Gray	06/15/10	
A list of Child Support Decisions may be obtained by accessing the OAH Website: http://www.ncoah.com/hearings/decisions/				
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS	09 DHR 3377	Brooks	06/16/10	
Ward Drug Co. of Nashville Gary Glisson v. DHHS	09 DHR 3830	Webster	04/29/10	
Mekre Francis v. DHHS, Div. of Health Service Regulation	09 DHR 3935	Gray	05/27/10	
Kid Ventures Inc., d/b/a Health Park Child Development Center v. Div. of Child Development DHHS	09 DHR 4887	Overby	06/22/10	
A+ Child Development Center LLC, v. DHHS, Division of Child Development	09 DHR 5443	May	04/27/10	
Gail N. Highsmith v. DHHS	09 DHR 5513	Brooks	05/13/10	
Sarah J. Bridges v. DHHS	09 DHR 5583	Brooks	05/27/10	
June Rae Crittenden v. Health Care Registry Section, DHHS	09 DHR 6166	Overby	03/29/10	
Kelvin Donelle Lewis v. Health Care Personnel Registry , Nurse Aide Registry	09 DHR 6196	Webster	04/05/10	
Elizabeth Ann Holt v. DHHS, Division of Health Service Regulation	09 DHR 6347	Brooks	03/31/10	
Estate of Nora L. Edwards, Wanda Harrington v. DHHS, Div. of Medical Assistance	09 DHR 6836	Overby	03/16/10	
Teresa Dargan Williams v. DHHS, Division of Health Service Regulation	10 DHR 0246	Gray	05/21/10	
Samuel and Nita Gaskin v. DHHS	10 DHR 0420	Overby	06/09/10	
TLC Adult Group Home, Sonja Hazelwood v. DHHS, Div. of Health Service Regulation	10 DHR 0485	Lassiter	06/11/10	

CONTESTED CASE DECISIONS

Tamekia Cain v. DHHS, Division of Health Service	10 DHR 0488	Gray	05/20/10	
Elizabeth Locke v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry	10 DHR 0678	Webster	06/17/10	
Timothy S. Wilson v. DHHS	10 DHR 1252	Brooks	06/18/10	
Felicia J. Stewart v. DHHS, Div. of Health Service Regulation	10 DHR 1348	Lassiter	06/21/10	
Phillip D. Hollifield, Administrator of the Estate of Phillip W. Hollifield v. DHHS	10 DHR 1448	Brooks	06/16/10	

DEPARTMENT OF JUSTICE

Tony Blaine Drake v. Criminal Justice Education and Training Standards Commission	09 DOJ 4151	Lassiter	04/14/10	
Daniel Brannon Gray v. Sheriff's Education and Training Standards Commission	09 DOJ 4364	May	03/15/10	
Phyllis Ann Johnson v. DOJ, Company Police Program	09 DOJ 5295	Elkins	05/03/10	25:01 NCR 111
Joseph Thomas DePrisco v. Criminal Justice Education and Training Standards Commission	09 DOJ 5354	Lassiter	06/01/10	
Kenneth Maidene, Jr v. Sheriff's Education and Training Standards Commission	09 DOJ 5650	Overby	04/19/10	
Dustin Matthew James v. Sheriffs' Education and Training Standards Commission	09 DOJ 6254	Gray	05/07/10	
Charles Lovelace Williams v. Sheriffs' Education and Training Standards Commission	10 DOJ 0066	Gray	05/26/10	
Anthony Paul Britt v. Sheriffs' Education and Training Standards Commission	10 DOJ 0157	Gray	06/02/10	
Wayne Keith Timmons v. Sheriffs' Education and Training Standards Commission	10 DOJ 0158	Gray	05/26/10	
Jeffrey Edward Byrd v. Sheriffs' Education and Training Standards Commission	10 DOJ 0389	May	05/26/10	
William Lee Walter v. Private Protective Services Board	10 DOJ 0528	Webster	04/22/10	

DEPARTMENT OF STATE TREASURER

Michael L. Bost Sr., v. Retirement System	09 DST 3781	May	04/15/10	
Jane C. Brocius v. State Treasurer Retirement System Division	09 DST 4066	Gray	03/25/10	25:03 NCR 354

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Windy Woods, LLC v. DENR, Division of Water Quality	09 EHR 4621	Gray	06/04/10	
Bradford M. Kimzey v. DENR, Division of Environmental Health	10 EHR 0876	Overby	06/23/10	

DEPARTMENT OF INSURANCE

Tammy A. Lee v. Blue Cross Blue Shield of NC	09 INS 6817	Overby	05/03/10	
Benton E. Miles, Jr., State Health Plan	10 INS 0720	Brooks	06/08/10	

OFFICE OF STATE PERSONNEL

Gwendolyn E. White v. DHHS, Department of Information Resource Management (DIRM) Privacy and Security Office	08 OSP 0991	Webster	06/14/10	
Spencer Batchelor v. NCSU Campus Police	09 OSP 0059	Lassiter	03/29/10	25:03 NCR 464
Nedra T. Rollins v. NC State University	09 OSP 1536	Overby	06/07/10	
Mekre Francis v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Murdoch Developmental Center	09 OSP 2813	Gray	05/27/10	
Willie Hubbs v. Broughton Hospital	09 OSP 3326	Brooks	04/19/10	25:03 NCR 478
Pamela D. Shoffner v. Agricultural and Technical State University, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources	09 OSP 4432	Brooks	05/19/10	
Charolettee Hope v. Cumberland County Department of Social Services	09 OSP 4436	Gray	04/15/10	
Robert L. Hamm v. Department of Correction	09 OSP 5320	May	04/15/10	
Quintino Brooks v. NCCU	09 OSP 5567	Webster	04/28/10	25:03 NCR 486
Dwight Steven Murphy v. DHHS, Div. of Services for the Blind	09 OSP 5924	Webster	05/13/10	
LaCinda L. McKenzie v. O'Berry Center	09 OSP 6785	Lassiter	06/21/10	
Glenn Hodge v. DOT	10 OSP 0229	Lassiter	06/14/10	
Alvin L. Bess v. The County of Cumberland	10 OSP 2517	Overby	06/25/10	
John Anthony McDonald, II v. DHHS, Division of Information Resource Management	10 OSP 2786	Gray	06/24/10	
Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center	10 OSP 2909	Lassiter	06/29/10	

OFFICE OF SECRETARY OF STATE

Jenny S. Thompson v. Department of SOS	09 SOS 2342	Lassiter	03/17/10	
James D. Harrison v. Notary Public Commission	10 SOS 1515	May	06/15/10	

EXHIBITS

The following exhibits offered by Petitioner were received into evidence:

1. NCSU Offer Letter (January 31, 2005)
2. NCSU Offer Letter (June 28, 2006)
3. NCSU Offer Letter (August 1, 2007)
4. NCSU Offer Letter (June 23, 2008)
5. NCSU Offer Letter (July 16, 2009)
6. Mr. Joe Williams Letter to Retirement System (April 7, 2009)
7. Mr. Garry H. Austin Letter to Petitioner Brocious (June 9, 2009)
8. Mr. Wingo Letter (October 14, 2009)
9. Dean Gerald Ponder Memorandum (November 19, 2009)
10. Professor Vasu Memorandum (October 14, 2009)

The following exhibits offered by Respondent were received into evidence:

3. Affidavit of Mr. Garry Austin dated November 3, 2009 with e-mail attachments
4. Affidavit of Mr. Bradford L. Wingo dated November 12, 2009 and attached letter dated October 14, 2009
7. Letter from Mr. Gerald Ponder, Associate Dean for Academic Affairs dated February 18, 2010
10. Petitioner's Production in Response to Respondent's First Request for Production of Documents

WITNESSES

Petitioner called as witnesses:

1. Petitioner Mrs. Jane C. Brocious
2. Mr. Joe Williams
3. Mr. Bradford L. Wingo
4. Dean Gerald Ponder

Respondent called as witnesses:

1. Mr. Garry Austin
2. Ms. Natalie Worth

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire Record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interest, 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. Wherefore, the undersigned makes the following Findings of Fact, Conclusions of Law and Decision, which is tendered to the Board of Trustees of the Teachers' and State Employees' Retirement System for a final decision.

FINDINGS OF FACT

1. Petitioner began employment as a teacher with the Wake County Public School System on or about August 1973.
2. In 2003, Petitioner retired from the Wake County Public School System with approximately 30 years of service.
3. Throughout Petitioner's employment, she was a member of the Teachers' and State Employees' Retirement System ("TSERS") and was employed as a teacher until her retirement in 2003.
4. After Petitioner retired from teaching in the Wake County Public School System, she became employed part-time by North Carolina State University (NCSU) in the College of Education during the 2005 Spring Semester, and the 2006-2007, 2007-2008 and 2008-2009 academic years. Petitioner currently is employed at NCSU during the current academic year, 2009-2010.
5. Petitioner's NCSU employment contracts were in each instance non-renewing contracts.
6. Petitioner worked less than thirty (30) hours per week each week at her part-time positions at NCSU.
7. On or about June 23, 2008, Dr. Gerald Ponder, Associate Dean for Academic Affairs, offered, and Ms. Brocious accepted, an employment contract for the 2008-09 academic year ("the 2008 Contract").
8. The 2008 Contract states: "This is an 'at will' appointment that carries a .75 FTE service obligation on an 12-month basis, with continuation or discontinuation at the discretion of the Chancellor."
9. The 2008 Contract contains a clerical error. The 2008 Position, in fact, carried a .60 FTE service obligation. Hence, the 2008 Contract should read "This is an 'at will' appointment that carries a .60 FTE service obligation..."
10. During the 2008-2009 academic year, which is the 2008 Contract year, Petitioner worked less than thirty (30) hours per week each week at her part-time position at NCSU.

11. Mr. Joe Williams, Assistant Director of Benefits in NCSU's Human Resources Department stated in an April 7, 2009 letter addressed to Respondent that the 2008 Contract contained an "administrative error" which he confirmed in his Hearing testimony.

12. Mr. Garry H. Austin, Special Assistant to the Senior Deputy Director, in the Retirement Systems Division of the North Carolina State Treasurer wrote a June 9, 2009 letter addressed to Petitioner in which he stated that the "suspension of [her] monthly retirement benefit . . . was the result of [her return] to covered employment." (Petitioner's Ex. 7)

13. Mr. Austin also quoted the following language from N.C. Gen. Stat. § 135-1(10):

Employees of State agencies, departments, institutions, boards, and commissions who are employed in permanent job positions on a recurring basis and who work 30 or more hours per week for nine or more months per calendar year are covered by the provisions of this subdivision.

(Petitioner's Ex. 7)

14. Mr. Austin also quoted the following language from N.C. Gen. Stat. § 135-3(8)d:

Should a beneficiary who retired on an early or service retirement allowance under this Chapter be restored to service as an employee or teacher, then the retirement allowance shall cease as of the first of the month following the month in which the beneficiary is restored to service and the beneficiary shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

(Petitioner's Ex. 7)

15. Mr. Austin then came to the following conclusion:

Based on the fact that you accepted a .75 FTE position, which was a benefits eligible position, and the fact that you met the definition of employee as stated in [N.C. Gen. Stat.] § 135-1(10) it is our decision that NCSU acted properly when it [began] deducting retirement contributions. It is also our decision that you were not eligible to receive monthly retirement benefits from August 1, 2008 through February 28, 2009 as a result of . . . being restored to service as an employee. *This has resulted in an overpayment in the amount of \$22,451.31.*

(Petitioner's Ex. 7)

16. Mr. Austin further stated that Respondent "will continue the deduction of \$623.65 from your monthly [TSERS retirement] benefit each month until the overpayment has been satisfied."

17. As a result of Mr. Austin's decision, Respondent has been deducting \$623.65 each month from Petitioner's TSERS retirement benefit.

18. As a result of being identified as a .75 FTE position, Petitioner's employer began to make monthly retirement contributions to Respondent from her 2008 Contract salary.

19. Dean Ponder in a letter dated February 18, 2010 addressed to Mr. Robert M. Curran, counsel for Respondent, stated that "the contract in question would have been approximately 0.60 FTE [full-time equivalent] rather than the erroneous .75 FTE that appeared incorrectly and without intention in the original contract." Dean Ponder's Hearing testimony confirmed the accuracy of the statement in his letter. Dean Ponder established at the hearing that the 2008-2009 contract represented an amalgam contract put together with parts accomplished by various people, none of whom caught the FTE error.

20. The undersigned Administrative Law Judge accords significant weight to the testimony of Dean Ponder.

21. Dean Ponder's letter and testimony were corroborated, in essence, by the affidavit and Hearing testimony of Mr. Bradford L. Wingo, Petitioner's direct supervisor.

CONCLUSIONS OF LAW

1. The statute quoted by Mr. Austin (N.C. Gen. Stat. § 135-1(10)) in his June 9, 2009 letter does not apply to Ms. Brocious, for the following reasons:

- a. Ms. Brocious did not hold a "permanent job position" under the terms of the 2008 Contract;
- b. Ms. Brocious did not, in fact, work 30 hours per week under the terms of the 2008 Contract; and
- c. the 2008 Position, in fact, carries a .60 FTE service obligation.

2. The statute quoted by Mr. Austin (N.C. Gen. Stat. § 135-3(8)d) in his June 9, 2009 letter (**Petitioner's Ex. 7**) also does not apply to Petitioner because she was not "restored to service as an employee or teacher."

3. Respondent should not have deducted \$623.65 from Petitioner's monthly TSERS service retirement benefits each month, and Respondent should not continue to deduct any amounts from Petitioner's monthly TSERS service retirement benefits as a means of satisfying the overpayment of benefits alleged in Respondent's June 9, 2009 letter.

4. Because Petitioner's position was not, in fact, a permanent full-time position, her employer was not required to make retirement contributions on her behalf.

5. Petitioner is entitled to a refund of all funds which Respondent has deducted from Petitioner's monthly TSERS service retirement benefits on account of the overpayment of benefits which was alleged to have occurred between August 1, 2008 and February 28, 2009 and the monthly contributions to Respondent for this same period.

6. Petitioner is entitled to the **accumulated regular interest** on the amount of the contributions being refunded to her, in accordance with N.C. Gen. Stat. § 135-5(f).

DECISION

Because of the error of her employer in categorizing Petitioner's position as .75 FTE and subsequently making retirement contributions, and the finding herein that Petitioner was not, in fact, employed in a .75 FTE position for the 2008-09 academic year, Petitioner was not "restored to service as an employee or teacher" within the meaning of N.C. Gen. Stat. § 135-3(8)d and, therefore, was not overpaid retirement benefits for this period of time.

ORDER

Respondent is to cease recovering any funds from Petitioner's benefits in order to satisfy this erroneous overpayment and is to restore to Petitioner all funds which it s previously has so recovered, together with the employee contributions which were made on her behalf from August 2008 through February 2009, with interest on the contributions as provided in N.C. Gen. Stat. § 135-5(f).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency that will make the final decision in this contested case is the Board of Trustees of the Teachers' and State Employees' Retirement System. The Board is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties, furnish a copy to the parties' attorneys of record, and furnish a copy to the Office of Administrative Hearings.

This the 25 day of March, 2010.


Beecher R. Gray
Administrative Law Judge

A copy of the foregoing was mailed to:

David G. Schiller
Marvin Schiller
Schiller & Schiller
5540 Munford Road, Suite 101
Raleigh, NC 27612
ATTORNEYS FOR PETITIONER

Robert M Curran
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001
ATTORNEY FOR RESPONDENT

This the 26th day of March, 2010.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 431 3000
Fax: (919) 431-3100

STATE OF NORTH CAROLINA

Filed

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

2010 MAR 29 PM 4:33

09 OSP 0059

SPENCER BATCHELOR,

Office of
Administrative Hearings

Petitioner,

DECISION

v.

NORTH CAROLINA STATE
UNIVERSITY CAMPUS POLICE,

Respondent.

On November 16, 2009, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina. On January 12, 2010, Respondent filed its proposed Decision, and on January 21, 2010, Petitioner filed its proposed Decision. On March 5, 2010, Chief Administrative Law Judge extended the time to file the Decision until March 29, 2010.

APPEARANCES

For Petitioner: Michael C. Byrne
Law Offices of Michael C. Byrne, PC
Wachovia Capitol Center, Suite 1130
150 Fayetteville Street
Raleigh, N.C. 27604

For Respondent: Brian R. Berman
John P. Scherer II
Assistant Attorneys General
North Carolina Department of Justice
P.O. Box 629
Raleigh, N.C. 27602

ISSUE

Did Respondent have just cause to discharge Petitioner from employment for unacceptable personal conduct?

EXHIBITS ADMITTED INTO EVIDENCE

Admitted for Petitioner:

<u>Exhibit</u>	<u>Date</u>	<u>Document</u>
1	05/09/08	Revised Notice of Dismissal—Unacceptable Personal Conduct [three pages]
2	12/02/08	Dismissal Letter Following Grievance Hearing [two pages]
7	04/16/08	Written Warning for Unacceptable Personal Conduct [one page]
14		Cell Phone and Dispatch Records [three pages]

Admitted for Respondent:

<u>Exhibit</u>	<u>Date</u>	<u>Document</u>
A	04/16/08	Written Warning for Unacceptable Personal Conduct [one page]
B	04/23/08	North Carolina State University Campus Police Department Internal Affairs Investigative Report, investigation of Spencer Batchelor performed by Internal Affairs Investigator Tim Johnson [30 pages]
C	05/09/08	Revised Notice of Dismissal—Unacceptable Personal Conduct [three pages]
D	12/02/08	Final Agency Decision—dismissal for Unacceptable Personal Conduct [one page]

WITNESSES

For Petitioner: Spencer Batchelor

For Respondent: Jon Barnwell
 John W. Seay
 Tim Johnson
 John Dailey

FINDINGS OF FACT

A. Procedural Facts

1. At all times relevant to this case, Petitioner was a permanent State employee subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act), and was a citizen of Wake County, North Carolina.

2. Respondent is subject to Chapter 126 of the North Carolina General Statutes, and was Petitioner's employer.

3. On May 9, 2009, Respondent's Assistant Chief of Police discharged Petitioner from employment for unacceptable personal conduct for (1) engaging in an ongoing pattern of untruthfulness during an internal investigation, and (2) disobeying a lawful order from a superior officer.

4. Petitioner filed an internal appeal of his dismissal. After an internal grievance hearing, on December 2, 2009, Respondent's Vice Chancellor for Finance and Business, Charles D. Leffler, issued a final agency decision upholding Petitioner's dismissal from employment. Leffler revised Petitioner's dismissal, and excluded failure to obey General Order 200-15 as a basis for his decision.

5. On January 8, 2010, Petitioner appealed Respondent's December 2, 2009 decision by filing a petition for a contested case hearing with the Office of Administrative Hearings. On February 23, 2010, Petitioner amended his petition.

B. Events leading to Dismissal – Written Warning

6. The issue in this case focuses on Petitioner's actions and behaviors after Captain Barnwell advised Petitioner that he would receive disciplinary action for making an inappropriate comment to Officer Mary Teller on April 8, 2008. The events causing the issuance of the April 8, 2008 written warning to Petitioner are found merely as background for the issue to be determined in this case, the issue of just cause.

7. In 2002, Petitioner began his employment with Respondent's Campus Police. At the time of his discharge in 2009, Petitioner was a patrol officer for Respondent's Campus Police Department. T p. 146; Resp. Ex. C

8. On April 17, 2008, Petitioner's direct supervisor, Sergeant John Seay issued a written warning to Petitioner for engaging in the unacceptable personal conduct of using inappropriate language and inappropriate touching towards a female officer on April 8, 2008. Resp Ex. A

9. The preponderance of evidence at the contested case hearing showed that at lunch time on April 8, 2008, Captain Jon Barnwell, Captain Jack Moorman, and Officer Mary Teller were finishing lunch in the break room of the police station.

Petitioner entered the break room, and asked if they had any food for the hungry. Captain Burwell replied, "I got plenty of crackers and some tuna if you want any." Petitioner declined. Petitioner then looked at Officer Teller, leaned down and touched her knee, and said, "Got your knee pads on? You're in here with two captains." T pp. 12-15; Resp. Ex. A

10. After leaving the break room, Petitioner informed his direct supervisor, Sergeant John Seay, that Seay might be writing Petitioner up, and told Seay what he had said to Teller in the break room.

11. Captain Barnwell consulted with Captain Moorman, Assistant Chief of Police John Dailey, and Respondent's legal affairs and human resources personnel to determine whether Petitioner should be disciplined for his statement to Officer Teller. Collectively, they decided to issue Petitioner a written warning for unacceptable personal conduct for using inappropriate language and inappropriate touching of Officer Teller. T pp. 15-16; Resp. Ex. A

12. During the afternoon of Wednesday, April 16, 2008, Captain Barnwell called Petitioner into his office, and advised Petitioner that he would receive a written warning for his conduct on April 8, 2008. Captain Barnwell explained that he was the complainant of the written warning, not Officer Teller, and that she [Teller] "had nothing to do with it." T pp. 19-20, 43, 55, 58; Resp. Ex. B p. 19 ¶ 3

13. On April 17, 2008, Petitioner approached Mary Teller, and asked her if she would write a statement regarding her input into the April 8, 2008 incident. Resp. Ex. B p. 19 ¶ 3.

14. Later that morning, Sergeant John Seay, Petitioner's direct supervisor, issued a written warning to Petitioner for engaging in unacceptable personal conduct to Officer Teller on April 8, 2008. Resp. Ex. A. Petitioner told Seay he had requested a written statement from Teller that morning. Seay ordered Petitioner to leave Officer Teller alone, and not have any more conversations with her. T. p. 65

15. Officer Mary Teller moved to Florida after the incidents described in this contested case, and was not called as a witness by either party. T pp. 22, 82; Resp. Ex. B p. 19 ¶ 3.

16. On April 18, 2008, Captain Barnwell suspended Petitioner with pay, based on Petitioner's contact with Officer Teller after Barnwell's alleged order. Barnwell ordered an Internal Affairs investigation. T pp. 23, 106; Resp. Ex. B

C. Internal Affairs Investigation

17. Internal Affairs Investigator Tim Johnson conducted the investigation. Johnson had conducted more than 30 Internal Affairs investigations while at NC State, and at a previous job as an internal affairs investigator for the Wilson Police Department

in Wilson, North Carolina. During his investigation of Petitioner, Johnson interviewed Officer Teller, Sergeant Seay, Captain Barnwell, and Petitioner. At the conclusion of his investigation Johnson produced a 30-page report detailing his investigation. T pp. 75-76, 79, 80; Resp. Ex. B

18. Johnson concluded that Petitioner, (1) disobeyed the order given by Captain Barnwell, and (2) lied on multiple occasions during the internal affairs investigation. T pp. 80, 86, 87; Resp. Ex. B pp. 19, 21, 22

a. Regarding the allegation that Petitioner disobeyed Captain Barnwell's order, Johnson determined that Petitioner contacted Officer Teller after being ordered not to do so. Johnson concluded:

Officer Batchelor admitted he contacted Officer Teller at least two times after his meeting with Captain Barnwell. . . . Officer Batchelor failed to follow Captain Barnwell's instructions and contacted Officer Teller to discuss the incident at least twice.

T p. 84, Resp. Ex. B, p. 21, Resp. Ex. C, ¶ 2. During the investigation, Petitioner admitted that he contacted Officer Teller in the squad room on April 16, 2008 after his conversation with Captain Barnwell. T p. 84, Resp. Ex. B, p. 21, Resp. Ex. C, ¶ 2.

b. Regarding the allegation that Petitioner lied during the internal affairs investigation, Johnson determined that Petitioner falsely claimed that Captain Barnwell had not told him to leave Officer Teller alone. Johnson noted that during the internal affairs investigation, Petitioner confirmed his meeting with Captain Barnwell took place, confirmed they discussed disciplinary action, and confirmed he was told Officer Teller did not initiate the disciplinary action. However, Petitioner claimed Captain Barnwell never told Petitioner to leave Officer Teller alone. Johnson noted that Captain Barnwell "was certain that he told Officer Batchelor during this meeting that Officer Teller was to be left out of it." T pp. 83, 84, 86; Resp. Ex. B p. 21 ¶ 3. In his report, Johnson noted that:

This clearly is an integrity issue regarding the instructions Captain Barnwell gave Officer Batchelor. Since Officer Batchelor confirms the meeting took place, confirms nearly all the conversation during the meeting, we are of the opinion Captain Barnwell most likely told Officer Batchelor that Officer Teller was to be left out of the situation.

T pp. 83, 84, 86; Resp. Ex. B p. 21 ¶ 3. In other words, Johnson determined that Petitioner did not tell the truth when he claimed Barnwell never told him to leave Officer Teller out of it.

c. Johnson also determined that Petitioner falsely stated Sergeant Seay was present during a conversation between Petitioner and Officer Teller on April 16, 2008, and falsely stated that Sergeant Seay approached Petitioner after that conversation and

told him that he overheard Officer Teller defending him. During the internal affairs investigation, both Officer Teller and Sergeant Seay directly contradicted Petitioner's story by stating that Sergeant Seay was not present during the April 16, 2008 conversation between Petitioner and Teller. Sergeant Seay was adamant that he did not approach Petitioner after that conversation, and did not overhear Officer Teller defending Petitioner. When Johnson advised Seay of Petitioner's claim, Seay stated, "That's an outright fabrication. That never happened. That's a lie." T p. 87. Based on that information, Johnson determined that Petitioner was untruthful during the internal affairs investigation by claiming Seay was present during Petitioner's April 16, 2008 conversation with Teller. T pp. 54-55, 87-89; Resp. Ex. B p. 22 ¶¶ 2-4

19. After receiving the internal affairs investigation report from Johnson, Assistant Chief of Police John Dailey, in conjunction with the NC State Chief of Police and NC State's human resources and legal affairs offices, decided to discharge Petitioner.

20. Assistant Chief Dailey held a pre-dismissal conference for Petitioner on May 2, 2008. T pp. 106-107; Resp. Ex. C p. 2 Dailey claimed that during the May 2, 2008 conference, Petitioner admitted that after Sergeant Seay issued his written warning to Petitioner, Seay ordered Petitioner to leave Officer Teller alone, but Petitioner initiated contact with Teller a few minutes later. T pp. 113-114, 115; Resp. Ex. C p. 2

21. Respondent discharged Petitioner on May 9, 2008, for unacceptable personal conduct arising from (a) insubordination, (b) willful violation of known or written work rules, and (c) conduct unbecoming a State employee. Resp. Ex. C pp. 1-2

D. First Basis for Termination – Failure to Obey Order

22. Respondent's General Orders provide rules for the conduct of its officers. General Order 100-1(a), Rule 19, states: "Officers will obey any lawful order of a superior officer." T p. 120; Resp. Ex. C p. 2; Resp. Ex. D.

23. In this case, as Investigator Johnson noted, whether Petitioner disobeyed a superior officer's order was clearly an integrity issue between Petitioner and Captain Barnwell. Since Officer Mary Teller did not testify at the hearing, the Court declines to give any weight to statements by Teller, during the internal affairs investigation, that were uncorroborated by other witnesses.

24. Petitioner admitted that he contacted Officer Teller at least two times, including the April 17, 2008 contact, and in the squad room after the April 16, 2008 meeting with Captain Barnwell. T p. 84; Resp. Ex. B p. 21 ¶ 3

25. A preponderance of evidence from the internal affairs investigation showed that Captain Barnwell told Petitioner, "She [Teller] is to be left out of it." However, during the contested case hearing, Captain Barnwell made several

statements that contradicted his statements from the internal affairs investigation, and were inconsistent with a preponderance of the evidence produced at hearing.

a. First, at the contested case hearing, Barnwell described Petitioner's touching of Mary Teller's knee as he "was caressing her knee," and it was "more of an up-down motion. . . I interpreted it that it had sexual undertones." Yet, no other witness described Petitioner's touching of Teller's knee as "caressing" or "with sexual undertones," during either the internal affairs investigation, or during the contested case hearing. In contrast, during the internal affairs investigations, Barnwell never described Petitioner's touching of Teller's knee as "caressing" or "sexual" in nature.

b. Assistant Chief of Police, John Dailey, issued the May 9, 2008 Notice of Dismissal to Petitioner. At hearing, Dailey confirmed that Captain Barnwell never told him that, (1) Petitioner "caressed" Teller's leg, or (2) Barnwell considered Petitioner's touching of Teller's knee to be sexual in nature, as Barnwell claimed during his testimony at hearing. Additionally, the written warning failed to reference any sexual nature or conduct on Petitioner's part during the April 8, 2008 incident.

c. Barnwell did not personally witness the April 8, 2008 incident. T. pp. 30, 32. In later testimony, Barnwell acknowledged that the nature of Petitioner's touching of Teller's knee, sexual or not, did not matter in terms of the discipline imposed on Petitioner. T. p. 27. Petitioner's "kneepad" comment was inappropriate, regardless of "what gender it was made to. . . and regardless of whether I took it as sexual in nature or not." T p 27.

26. Second, Captain Barnwell explained at hearing, that by telling Petitioner, "She is to be left out of it," he was ordering Petitioner to have no contact with Officer Teller about the April 8, 2008 incident, and to come see Barnwell if he had any questions, or concerns. However, Captain Barnwell's "order" to Petitioner was vague and ambiguous. Barnwell neither explained to Petitioner what he specifically meant by "She is to be left out of it," nor did he ask Petitioner if he understood the "order." Neither did Sgt. Seay's April 16, 2008 written warning to Petitioner reiterate Barnwell's order that, "She [Teller] is to left out of it," or include any similar instruction that Petitioner avoid contact with Office Teller. T. p. 136.

27. Sgt. Seay and Asst. Police Chief Daily stressed the importance of clarity in issuing orders. Seay explained that if he issues an order, and it is not followed, he will clarify that they understood it. If it's still not followed, then he will take the appropriate action. T. pp. 70-71. Dailey conceded that in this case, it was Captain Barnwell's job, not Petitioner's job, to ensure that orders he issued, including orders to Petitioner, were clear, correct, cogent, and understandable. T. p. 134. The evidence proved that even if Barnwell told Petitioner that Teller should be left out of it, Barnwell's "order" was not sufficiently clear that a reasonable person would have understood that Barnwell was ordering Petitioner to have no contact with Teller about the April 8, 2008 incident.

28. Third, on direct-examination, Barwell explained, that if Petitioner had wanted a statement from Teller, then Petitioner should have come to Barnwell for permission to get that statement. Yet, on cross-examination, Barnwell admitted that, "I wouldn't have allowed that based on trying to leave her out of the whole incident." T. p. 22

29. Lastly, Captain Barnwell admitted that he knew Sergeant Seay gave Petitioner a subsequent order, not to talk to Teller. T pp. 31-32. Captain Barnwell acknowledged that there would be no subsequent need to give Petitioner a second order to leave Teller out of it, if Barnwell had already given Petitioner that order.

30. In contrast to Barnwell, during the internal affairs investigation, Petitioner told Johnson five different times, during three separate interview sessions, that Barnwell "did not tell him that Officer Teller was to be left out of it." (See Resp Ex B, p. 6, para. 4; Resp. Ex 6, p. 7, para. 1; Resp Ex 6, p. 11, para. 1; Resp Ex 6, p 12, para. 8; Resp Ex 6, pp. 16-17) Yet, during the contested case hearing, Petitioner explained that he did not hear Captain Barnwell say, "She is to be left out of it." At hearing, Petitioner finally explained, "Honestly, I never heard him give that order that she's to be left out of it." T p. 160. On cross-examination, Petitioner admitted he provided another explanation of his talk with Capt. Barnwell. In Petitioner's November 5, 2008 written statement, Petitioner wrote:

I did not understand Captain Barnwell asking me to leave Officer Teller out of it to mean that I should not have any interaction with Officer Teller. I worked with Officer Teller so that would have been impossible.

By definition, for Petitioner to "understand" the statement, the statement must have been made and it must have been heard by Petitioner.

32. In comparing Petitioner's testimony and Capt. Barnwell's testimony on this issue, neither witness' testimony seems more credible than the other, nor does one witness' testimony disprove the other. Petitioner's motivation, in not wanting to admit he violated an "order" at least twice, is also a consideration in determining his credibility. Without competent and reliable evidence to support either witness' story, one cannot make a reasonable determination as to the truth of this issue. Neither can one can conclude that Petitioner was insubordinate, and violated a reasonable order from his superior officer, Capt. Barnwell.

33. At hearing, Respondent argued that Petitioner was insubordinate in failing to obey Sgt. Seay's order to leave Officer Teller alone. In the May 9, 2008 Notice of Dismissal, Chief Dailey wrote that Petitioner admitted, during the pre-disciplinary conference, that he initiated contact with Officer Teller shortly after Sgt. Seay ordered Petitioner leave Teller alone. Yet, Petitioner's alleged failure to obey Sgt. Seay's order, to leave Officer Teller alone, was not listed as a basis for dismissing Petitioner from employment. At hearing, Asst. Police Chief Dailey conceded that in the May 9, 2008 dismissal letter, he did not allege Petitioner's dealings with Sgt. Seay constituted

insubordination. Nor did he use the term "insubordination" in describing Petitioner's dealings with Sgt. Seay, in the May 9, 2008 dismissal letter. T. pp. 131-132. As such, Petitioner had no notice that Respondent was firing him for disobeying an order from Sgt. Seay. Since Respondent failed to dismiss Petitioner from employment for that reason, that reason cannot be now used to bolster Respondent's reasons for firing Petitioner.

E. Second Basis for Termination – Lying during internal investigation

34. Respondent's Campus Police General Order 100-1(a), Rule 47, states: "Officers will answer all questions truthfully." T p. 122; Resp. Ex. C p. 1; Resp. Ex. D

35. Asst. Police Chief Dailey cited Petitioner's lying during the internal affairs investigation as the second basis for discharging Petitioner from employment. He explained that an officer's honesty is important, because he might testify in court, or in a campus proceeding, and prosecutors and judges rely on the truthfulness of police officers. Insurance companies also rely on an officer's truthfulness for accident reports. T pp. 121-122.

36. Dailey contended that Petitioner lied multiple times during the internal affairs investigation when he claimed Barnwell never told him, "She [Teller] is to left out of it" or "leave her out of it." During the internal affairs investigation, Petitioner told Johnson five different times, during three separate interview sessions, that Barnwell "did not tell him that Officer Teller was to be left out of it." (See Resp Ex B, p. 6, para. 4; Resp. Ex 6, p. 7, para. 1; Resp Ex 6, p. 11, para. 1; Resp Ex 6, p 12, para. 8; Resp Ex 6, pp. 16-17)

37. Investigator Johnson agreed, at hearing, that Petitioner consistently stated, during the investigation, that he "never heard that statement [Barnwell's, 'She is to left out of it,']" in Barnwell's discussions with Petitioner.

38. However, during the contested case hearing, Petitioner changed his testimony, by explaining that he did not hear Captain Barnwell say, "She is to be left out of it." Petitioner finally conceded that, "Honestly, I never heard him give that order that she's to be left out of it." T p. 160. On cross-examination, Petitioner admitted that, in his November 5, 2008 written statement to Respondent, Petitioner wrote:

I did not understand Captain Barnwell asking me to leave Officer Teller out of it to mean that I should not have any interaction with Officer Teller. I worked with Officer Teller so that would have been impossible.

T. pp. 160-161.

39. The inconsistencies between Petitioner's statements during the internal investigation, and his hearing testimony raised serious questions as to Petitioner's credibility in all aspects of this case.

40. Dailey also alleged that Petitioner was untruthful in saying that (a) Sgt. Seay was present during Petitioner and Teller's April 16, 2008 conversation in the squad room, and that (b) Seay told Petitioner he overheard Teller defending Petitioner. During the internal investigation, Petitioner told Investigator Johnson that Sgt. Seay was present in the squad room during Petitioner's talk with Officer Teller. In Petitioner's April 23, 2008 internal interview, Petitioner claimed that Sgt. Seay was at the computer next to him during Petitioner's conversation with Officer Teller. During the contested case hearing, Petitioner described this scenario as:

She says, 'I can't believe that.' Seay walks in and he's on his cell and he's on the cell phone, and I tell him about the conversation, and he says that 'It sounds like I overheard her defending you.' And that was the gist of the conversation.

T. p. 154. Petitioner also claimed Seay told him he overheard Teller defending him.

41. In contrast to Petitioner, Sgt. Seay denied being in the squad room, and overhearing Petitioner and Teller's April 16, 2008 conversation. Officer Teller corroborated Seay's version of this event in her interview with Investigator Johnson. She indicated that Sgt. Seay was in his office, and was not part of their conversation. Resp. Exh B, p. 17.

42. The preponderance of the evidence established that Petitioner was not truthful in claiming Sgt. Seay overheard his and Teller's April 16, 2008 conversation in the squad room, and was untruthful in saying Sgt. Seay told Petitioner he overheard Teller defending him.

CONCLUSIONS OF LAW

Based on the sworn testimony of witnesses, including assessment of each witnesses' credibility, demeanor, interest, bias, and prejudice, assessment of the reasonableness, and consistency of each witness' testimony, consideration of documents admitted into evidence, and the entire record in this proceeding, the undersigned finds as follows:

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the just cause issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.

2. Petitioner was a career state employee at the time of his dismissal, and as such, was entitled to the protections in the North Carolina State Personnel Act, N.C. Gen. Stat. §§ 126-1 *et seq.*, 126-35, 126-37(a) (2007).

3. N.C. Gen. Stat. § 126-35(a) provides that “No career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.”

4. N.C. Gen. Stat. § 126-35(d) provides that in contested cases under Chapter 150B, the department or agency employer has the burden of showing that a career State employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause.

5. 25 NCAC 11.2301(b) enumerates two grounds for disciplinary action, including dismissal, based upon just cause: (1) unsatisfactory job performance, including grossly inefficient job performance; and (2) unacceptable personal conduct.

6. To demonstrate just cause, a State employer may show “unacceptable personal conduct.” 25 N.C.A.C. 1J.0604(b). Unacceptable personal conduct includes: “conduct for which no reasonable person should expect to receive prior warning”; “the willful violation of known or written work rules;” and “conduct unbecoming a state employee that is detrimental to state service.” 25 N.C.A.C. 1J.0614(i).

7. “Insubordination” also constitutes unacceptable personal conduct. 25 N.C.A.C. 1J.0614(h). Insubordination is “the willful failure or refusal to carry out a reasonable order from an authorized supervisor.” *Id.*

8. The employee’s action(s) constituting unacceptable personal conduct “may be intentional or unintentional.” 25 N.C.A.C. 1J.0610(a). The action (or actions) also “may be work-related or non-work-related.” *Id.*

9. A sole instance of unacceptable personal conduct, by itself, constitutes just cause for discharge. *Hilliard v. N.C. Dep’t of Corr.*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

10. For “conduct unbecoming a state employee that is detrimental to state service,” 25 N.C.A.C. 1J.0614(i)(5), the State employer does not have to show actual harm, but rather “only a potential detrimental impact (whether conduct like the employee’s could potentially adversely affect the mission or legitimate interests of the State employer).” *Hilliard*, 173 N.C. App. at 597, 620 S.E.2d at 17.

First Ground for Termination – Failure to Obey

11. Respondent’s General Orders provide rules for the conduct of its officers. General Order 100-1(a), Rule 19, states: “Officers will obey any lawful order of a superior officer.” T p. 120; Resp. Ex. C p. 2; Resp. Ex. D12.

12. In this case, a preponderance of the evidence established that neither Capt. Barnwell nor Petitioner was more credible than the other on the issue whether Barnwell “ordered” Petitioner, “She [Officer Teller] is to left out of it. Neither Barnwell

nor Petitioner's testimony disproved the other. Additionally, Barnwell's statement, "She is to left out of it," was not sufficiently clear so that a reasonable person would have, or should have, known that Barnwell was ordering Petitioner to stay away from Officer Teller, and not have any contact with her about the April 8, 2008 incident. Since Barnwell and Petitioner were the only ones present during Barnwell's April 16, 2008 conference with Petitioner, Respondent failed to prove by a preponderance of the evidence that Petitioner was insubordinate and failed to obey an order by his superior officer, Capt. Barnwell.

13. Since Respondent did not list failure to obey an order by Sgt. Seay as a basis for discharging Petitioner, Respondent cannot now use that reason as grounds for Petitioner's dismissal, or use that reason to bolster its case. As a result, any failure by Petitioner to obey Sgt. Seay's order is not before this Court.

14. Based on the foregoing, Respondent failed to prove by a preponderance of the evidence that it had just cause to dismiss Petitioner from employment for engaging in the unacceptable personal conduct of insubordination.

Second Ground for Termination – Lying During Investigation

15. Respondent's General Order 100-1(a), Rule 47, states: "Officers will answer all questions truthfully." T p. 122; Resp. Ex. C p. 1; Resp. Ex. D

16. Respondent demonstrated by a preponderance of the evidence that Petitioner lied during the Internal Affairs investigation. Petitioner told Investigator Johnson that Captain Barnwell did not tell him to "leave her [i.e., Officer Teller] out of it." Yet, under oath, Petitioner claimed he did not hear Captain Barnwell's statement to leave Teller out of it. Petitioner's own written statement to the NC State grievance committee also conflicts with his testimony.

17. The preponderance of the evidence established that Petitioner was not truthful in claiming Sgt. Seay overheard his and Teller's April 16, 2008 conversation in the squad room, and was untruthful in saying Sgt. Seay told Petitioner he overheard Teller defending him.

18. Respondent followed all the required procedures to dismiss Petitioner for unacceptable personal conduct.

19. Respondent proved by a preponderance of the evidence that Petitioner was untruthful during the internal investigation. By lying during the internal affairs investigation, Petitioner willfully violated a known or written work rule, specifically, General Order 100-1(a), Rule 47. For a police officer, lying during an Internal Affairs investigation constitutes conduct unbecoming a state employee that is detrimental to state service.

20. Based on the foregoing, Respondent had just cause to discharge Petitioner from employment for the unacceptable personal conduct of being untruthful during an internal affairs investigation.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that Respondent's decision to terminate Petitioner's employment should be **REVERSED** as to the insubordination reason, but **AFFIRMED** for the unacceptable personal conduct of lying during an internal affairs investigation.

ORDER AND NOTICE

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 29th day of March, 2010.



Melissa Owens Lassiter
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **DECISION** was served upon the following persons by depositing same in the U.S. Mail, prepaid postage and addressed as follows:

Michael C. Byrne
Law Offices of Michael C. Byrne, PC
Wachovia Capitol Center, Suite 1130
150 Fayetteville Street
Raleigh, N.C. 27604
Attorney for Petitioner

Brian R. Berman
John P. Scherer II
Assistant Attorneys General
North Carolina Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Attorneys for Respondent

This the 30th day of March, 2010.



Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Phone: (919) 431 3000
Fax: (919) 431-3100

For Respondent: Willie Langton Hubbs
Barbara Mary Davenport, MD
Jacob Keith McCurry
Gary Lee Cooke
Christopher Terrell Chapman
John James Fortna
Jennifer Ann Terry
Helen Robert Haynes
Robin Gregg Rudisill, RN

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing 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 all of the witnesses by taking into account the appropriate factors for weighing credibility, including but not limited to the demeanor of the witness, any interest, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know, or remember facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with other evidence in the case. From all of the testimony and admitted documentary evidence, the Undersigned makes the following:

FINDINGS OF FACT:

1. At all times relevant to this matter the Petitioner Willie Hubbs was employed as a Health Care Technician I ("HCT"), also called a Certified Nursing Assistant ("CNA") at Broughton Hospital ("Broughton") at 1000 S. Sterling Street in Morganton, North Carolina, a state operated facility for mental health patients subject to N.C.G.S. Ch. 126. (R. Ex. 1)
2. Petitioner started working at Broughton on or about August 1, 2005 and had attained career status as defined by N.C.G.S. § 126-1.1 prior to his dismissal. He received training related to his employment and the issues which arose in the termination and this hearing. (R. Exs. 2, 3, 4, 16 and 17)
3. On September 29, 2008, Petitioner was working on the second floor of the hospital wing on Ward 6. He stayed on the ward in a day room to eat his lunch. A number of other employees also remained on the ward during the lunch period.
4. Employees were allowed to remain on the ward during their lunch break, and this was not a violation of any employer policy. Employees can leave the hospital grounds or eat elsewhere on grounds as well.
5. There was a nurse's station at one end of the hallway and the day room was at the other end of the hallway about halfway down the length of the building. (R. Exs. 21-25)

6. Inside the nurse's station was a refrigerator where employees stored their lunches or other refreshments they brought to work. There was also a sink for employee use in the nurse's station.

7. There was a patient, herein referred to as "DS", on the second floor of Ward 6 on that day. DS was an aggressive patient who was known to the employer and employees to "target" employees. This targeting behavior was a result of DS's mental health conditions and not as a result of anything these employees would do to DS.

8. DS had been targeting staff recently and, in fact, had attacked another employee during the previous day. On that prior shift, staff on duty noted that DS put on his shoes immediately prior to attacking the employee. At the morning briefing on September 29, 2008, this warning sign was discussed but not shared with all of the HCTs or the medical staff because not all were present.

9. HCT McCurry attended the morning briefing and knew that DS putting on his shoes was the sign of an impending attack.

10. Petitioner was not at the morning briefing and was not aware that DS putting on his shoes was the sign of any impending attack.

11. While all of the other patients on the second floor of Ward 6 were at lunch elsewhere in the building, DS was brought back to his room because he had caused a disturbance in the lunchroom. DS was in his room with his one on one worker, HCT McCurry. HCT McCurry had been told to keep DS in his room to the extent possible, although it was not allowed for him to lock DS in his room or physically restrain him.

12. During his lunch break, Petitioner walked from the day room to the nurse's station, passing DS's room at least twice to retrieve his lunch and, then later, some paper towels.

13. There were differing descriptions of the nonverbal interactions between DS and Petitioner on the two occasions during Petitioner's lunch break when he walked past DS's door.

14. Dr. Davenport, Nurse Rudisill, HCT McCurry and HCT Fortna, were already present on the hall from the beginning of the incident. HCT Cooke and HCT Chapman came onto the hall during the incident. All were Broughton employees who were in the hallway, close by, and saw part or all of this incident

15. All of these persons testified that Petitioner and DS looked at each other for a period of time and that there was no show of aggression by Petitioner towards DS. (R. Exs. 5, 6, 8, 11, 12, 13 and 14) All of the witnesses testified, including Petitioner, that they recognized that DS was targeting Petitioner and that the best thing to do when a patient is targeting a staff member is to leave the situation.

16. Dr. Davenport observed DS targeting Hubbs in a delusional way and trying to engage Petitioner, but Petitioner never responded. She saw DS putting on his shoes, but she had not been informed that the ward staff thought such behavior was a clue of any type of impending attack. She would not have used his shoes as some kind of signal. (R. Ex. 6)

17. Nurse Rudisill and Dr. Davenport testified that when DS became as agitated as he did that day, he should have been removed from the area. Nurse Rudisill and Dr. Davenport could not explain why this was not done.

18. Nurse Rudisill testified that she thought it was her responsibility that day to direct the removal of one or the other person, but she was new to her job at that time and unsure what to do. She was later disciplined for this lack of action.

19. Dr. Davenport at one point said to Nurse Rudisill, "we need to get him out of here", but Dr. Davenport took no action to remove anyone. Nurse Rudisill was not even sure whether Dr. Davenport was referring to the patient DS or the Petitioner.

20. Dr. Davenport described seeing Petitioner "stare down" DS in a threatening manner after she came out of the treatment room, but she also testified that at the beginning of the incident, she was in a treatment room adjacent to the nurse's station. She could not have observed DS from the treatment room.

21. Nurse Rudisill observed DS repeatedly calling out to Petitioner, and Petitioner and the patient looking at each other for "a minute or so" one time when Petitioner was walking past the patient's room.

22. The second time Petitioner walked by DS's room on his return to the day room, HCT McCurry left DS long enough to walk to the day room and inform Petitioner that DS had put on his sneakers.

23. DS yelled out to Petitioner not to walk away, and then charged out of his room and down the hall after Petitioner. DS was stopped by staff before he could reach Petitioner, taken down to the floor face down, then turned over onto his back and restrained by staff holding him down with their hands.

24. Nurse Rudisill pushed the ET button to summon assistance. Staff responded and a group of 10-20 employees immediately gathered around DS and Petitioner. Some of the employees were members of Broughton's Mediation Team.

25. HCT McCurry held DS's right arm and HCT Chapman held DS's legs. Petitioner held DS's head to prevent the patient from striking his head on the concrete floor, and from biting or spitting at anyone.

26. Petitioner's act of holding the patient's head in this matter, for these reasons, was consistent with Broughton policy and protocol to prevent patient injury.

27. After about 90 seconds, DS quit struggling and was escorted to time out by HCT Cooke and HCT Chapman.

28. Nurse Rudisill stated in the incident report that attempts to redirect DS were unsuccessful. (R. Ex. 9)

29. No witnesses, including Nurse Rudisill, described any steps taken by anyone to redirect or de-escalate DS.

30. Dr. Davenport testified that she was "the only one that was right by his head. The nurse who was the only other credible – was by the nursing station, and I do not think she could have seen what I saw. I don't think there was anybody else that could see what I saw." She claims that she was "one foot" away from the patient when he was on the floor and that she saw Petitioner repeatedly strike DS's head with his knee three or four times. Dr. Davenport testified that as Petitioner did this he made eye contact with her. (T. 93-94)

31. Dr. Davenport's testimony and description of the events in question is not supported by any other witness and, in fact, is directly contradicted by much of the other hearing testimony.

32. All of the other witnesses testified that Dr. Davenport was not near DS, and certainly not right beside his head.

33. DS was struggling on the floor and was surrounded by staff who were holding him down. While these employees were on the floor with DS, DS was lying with his head pointed towards the day room and his feet pointing towards the nurse's station.

34. From the nurse's station, Dr. Davenport could not have had a clear view of Petitioner or the patient's head.

35. No one else reported seeing Petitioner strike DS's head with his knee. (R. Exs. 8, 9, 11, 12, 13 and 14)

36. While the court finds that Dr. Davenport is certain of what she thinks she saw and that her concern for patient safety was genuine, her observations were not and are not corroborated by any evidence and, therefore, should not have formed a basis for Petitioner's termination by the employer.

37. Dr. Davenport's observations were relied upon by the employer in the decision to terminate Petitioner (R. Exs. 6 and 20) and in the conclusion of the Patient Advocacy investigation (R. Ex. 15).

38. The observations and reporting of the "on-line" staff, the HCTs and Nurse, were given lesser weight by the employer and the Patient Advocate.

39. There is confusion by all Broughton employees who were involved in this incident concerning: what is a trigger or warning sign that a patient may be about to be aggressive or violent; how a trigger is identified; and how a trigger is to be reported or communicated to other staff.

40. There is confusion by all Broughton employees who were involved in this incident concerning the definition of restraint and seclusion, and when and how these techniques may be used.

41. All of the Broughton employees who were involved in the incident, including the members of the Mediation Team, were aware of the need to redirect DS and to use de-escalation techniques and, yet, no attempt was made by anyone to redirect or de-escalate him.

42. It is clear that Petitioner used poor judgment when he walked by DS the second time and made eye contact with him.

43. It is also clear that all of the Broughton employees exercised poor judgment when no attempt was made to redirect DS or to use de-escalation techniques.

44. Respondent terminated the Petitioner on or about October 13, 2008 for unacceptable personal conduct for willful violation of known and/or written work rules, namely, the written prohibition against patient neglect, abuse, or exploitation (R. Ex. 20).

CONCLUSIONS OF LAW:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action.

2. The Respondent has the burden of proof.

3. Petitioner was a state employee working at a state facility and is subject to N.C.G.S. Ch. 126.

4. Respondent has not met its burden of proof that the termination of Petitioner was supported by evidence that Petitioner had physically or emotionally abused a patient, DS, on the date in question, by teasing or baiting the patient with "stares", and/or subsequently intentionally striking the patient's head on the floor or with Petitioner's knee.

5. Respondent acted erroneously, arbitrarily and capriciously because there is insufficient evidence to support Respondent's conclusion that the Petitioner physically or emotionally abused a patient and, therefore, insufficient evidence for the Respondent to have concluded that the Petitioner violated a known or written work rule.

6. Respondent has not met its burden of showing that the Petitioner was dismissed for just cause.

DECISION:

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned decides that the Respondent's decision to dismiss the Petitioner for just cause be REVERSED.

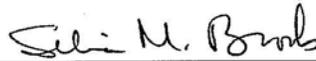
ORDER:

IT IS HEREBY ORDERED that this Final Decision shall be transmitted to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, per G.S. 150B-36(6).

Before a final decision is rendered, G.S. 150B-36(a) allows each party to file exceptions to this recommended decision, and to present written arguments to those in the agency who will make the final decision. The final decision shall thereafter be served upon all parties and counsel of record.

Per G.S. 150B-36 the Agency shall adopt each Finding of Fact contained herein unless the finding is clearly contradictory to the preponderance of the admissible evidence. For each finding not adopted by the Agency, the Agency shall set forth and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the Agency in not adopting the Finding of Fact.

This is the 19th day of April, 2010.



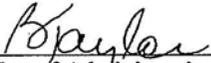
Selina M. Brooks
Administrative Law Judge

A copy of the foregoing was sent to:

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PETITIONERS

M. Elizabeth Guzman
Assistant Attorney General
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PO Box 121
Morganton, NC 28655
ATTORNEY FOR RESPONDENT

This the 19th day of April, 2010.


Office of Administrative Hearings
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STATE OF NORTH CAROLINA
COUNTY OF DURHAM

Filed
2010 APR 23 AM 10:00

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
NO. 09 OSP 5567

QUINTINO BROOKS,

Office of
Administrative Hearings

Petitioner,

v.

DECISION

NORTH CAROLINA CENTRAL
UNIVERSITY,

Respondent.

The above-captioned case was heard before the Honorable Joe L. Webster, Administrative Law Judge on 24 February 2010.

APPEARANCES

For Petitioner: Quintino Brooks (pro se)
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For Respondent: Kimberly D. Potter
Assistant Attorney General
N.C. Department of Justice
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EXHIBITS

Admitted for Respondent:

Exhibit Document

Respondent Exhibits 1, 2, 3, and Respondent's Exhibit 6 (excluding emails dated March 27 and April 2, 2009) are being allowed as an offer of proof only.

- 4. Various emails about residents' concerns for their safety
- 5. Letter from Stacy Jones, Assistant Resident Director, to "To Whom It May Concern" about issues with Petitioner

*(After taking under advisement Respondent's Exhibits #s 5 & 6, with exception of the email dated March 27, 2009 and the email dated April 2, 2009, the undersigned declines

to admit the remainder of Respondent's Exhibit 6 into evidence as inadmissible hearsay. Respondent's Exhibit 5 is admitted into evidence to be given whatever weight the undersigned determines to be appropriate.

- 7 Letter from Phillip Powell to Petitioner, Re: Pre-disciplinary conference
- 8 Letter from Phillip Powell to Petitioner, Re: Investigatory placement
- 9 Letter from Phillip Powell to Petitioner, Re: Pre-disciplinary conference
- 10 Letter from Phillip Powell to Petitioner, Re: Termination letter
- 11 Email from Leo Marsh to Jennifer Wilder, Phillip Powell and Clarence King, Re: Employee Switch

Admitted for Petitioner:

None

WITNESSES

Called by Petitioner

None

Called by Respondent

Jennifer Wilder
Leo Marsh
Phillip Powell, Sr.

ISSUES

Whether NCCU had just cause to discharge Petitioner?

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the issues in this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.
2. At the time of his discharge, Petitioner Quintino Brooks was a permanent State employee subject to Chapter 126 of the General Statutes of North Carolina (the State Personnel Act) and was a citizen and resident of North Carolina.
3. Respondent North Carolina Central University (NCCU) is subject to Chapter 126 and was Petitioner's employer.
4. Petitioner was employed by North Carolina Central University for just under 4 years. At the time of his discharge on April 24, 2009, Petitioner was employed as a Housekeeper.
5. Petitioner worked in dormitories where students resided. The mission of the university is to provide an educational environment for students. Similarly, Residence Life, which supervises student dormitories, is charged with providing a safe and secure residence for students who live on campus.
6. Petitioner reported to Housekeeping Supervisor III Kimbular DeWitt. DeWitt reported to Housekeeping Administrator Leo Marsh. Marsh reported to Director of Facility Services Phillip Powell. (T pp. 89, 137)
7. In the fall of 2006, Sitembile Knatt, a student residing on the 5th floor of New Resident Hall Building II, sent a request to the Resident Director of the building asking if there was "any way that the male janitor can . . . stay away from the female floors." (Resp. Ex. 4.) She reported that she did not like a man on the floor taking out trash when they are getting ready for the day and that she wanted him not to come on the floor to pull trash until the afternoon. Jennifer Wilder, Director of Residential Life at NCCU, informed Ms. Knatt that "due to staffing that would not be changing." Ms. Knatt told Ms. Wilder that "Q" was holding conversations with the students when they are going into or out of the shower in their robes and towels and he is having conversations with the female housekeeper near the bathroom as she is preparing to clean it or as she is leaving after cleaning the bathroom and that this makes her feel uncomfortable (Resp. Ex. 4, email dated 10/31/2006 from Jennifer Wilder), (T pp. 20-21). Ms. Wilder instructed staff to post the housekeeping schedule on each floor and that the housekeeper pulling the trash could be male or female. Ms. Wilder's email to staff put in bold print that that Ms. Knatt did not say that Petitioner was inappropriate in his conversation. (Resp. Ex. 4)
8. Dr. Jennifer Wilder testified that she asked Ms. DeWitt to speak with Petitioner about his conversations with Sitembile Knatt and how the conversations could be perceived by her. It was Dr. Wilder's understanding that Ms. Dewitt did talk with Petitioner. (T p. 23). Ms.

Dewitt did not testify and Petitioner denies that she talked with him about anything relating to his matter. (T. pp. 219, 221)

9. In the fall of 2007, Assistant Resident Director Stacy Jones wrote a letter detailing her concerns regarding Petitioner. Jones reported that Petitioner would find ways to busy himself outside of the bathrooms when the residents were showering. He would also find various pretexts to stop residents while in their robes and engage them in conversation with "roaming eyes." This made the residents "very uncomfortable to the point where they would not shower with him around." (T pp. 24-26); (Resp. Ex. 5)
10. After receiving a copy of a letter from Ms. Stacy Adams, Mr. Leo Marsh decided to move Petitioner to another dorm. Mr. Marsh met with Petitioner because Petitioner wanted to know why he was being moved to another dorm and what was said. Mr. Marsh informed Petitioner he was moving him to another dorm with all males. (Residential Hall II to Eagleson) In the meeting with Petitioner, Mr. Marsh told him there had been some allegations. Mr. Marsh did not share with Petitioner the content of Respondents Exhibit 5 nor tell him what the allegations were, but simply told him he was moving him to another dorm so that he could do his job and not have to worry about the allegations. (T. p. 111-113). Petitioner testified he was not told the allegations had anything to do with female students. (T. p.219). When Marsh told Petitioner he had received an email, he asked to see it and Marsh refused. (T. p. 220)
11. For some explained reason, at some point after moving Petitioner to an all male floor in 2006, by the next school year, the University had assigned Petitioner to a female floor again. The undersigned finds as a fact that and as a matter of law that since the University had not told Petitioner why he was being assigned to a male dorm or male floor, that any implication that he should have notified his employer that he could not work on a female floor is not supported by the facts of this case.
12. Petitioner testified that he was not notified by anyone regarding the incidents in 2007; that no one gave him the opportunity to express himself or find out what was going on. (T. 228). He did not learn that students were saying certain things about him until March 23, 2009, the date he was called to the office and notified that he had to speak with someone in HR. He had not seen Resp. Ex. 4, 5 or 6 until the day of the hearing. Petitioner further testified that the first time he was told that female students were saying things about him was at the first predisciplinary meeting. (T. p. 231)
13. Respondent contends that based on Petitioner's conduct herein as set forth, in the spring 2009 and the conduct previously reported in fall 2006 and fall 2007, the administration began disciplinary proceedings. Dr. Jennifer Wilder, testified the decision was because of "consistent inappropriate behavior. We've tried to address the issues. Everything we've done in the past didn't work, so [termination] was really the next step." (T p. 42)
14. On April 7, 2009, Phillip Powell sent Petitioner a pre-disciplinary conference notice setting a pre-disciplinary conference for April 7, 2009 at 2 p.m. Mr. Powell notified Petitioner the

conference was to discuss a disciplinary action due to his unacceptable personal conduct. The notice stated that the specific personal conduct issue given rise to the conference is:

It was reported via email that on March 23, 2009, you looked at a resident of Eagleston Hall inappropriately when she came into the common area (kitchen area) with short shorts on. It is my understanding that you were in the doorway of the kitchen as the resident walked from the kitchen to the elevator and you followed her with your eyes all the way there. Also, according to the email, another resident stated that you go out of your way to speak to them especially when they are in their shower robe and have no bra on. The email also stated that some of the residents feel uncomfortable around you and that you always go out of your way to speak to every female that you come in contact with. On March 27, 2009, it was reported by one of the residents that you watch the residents walk to the bathroom while they are getting ready to take a shower. (Resp. Ex. 7)

15. Petitioner attended the pre-disciplinary conference on April 7, 2009 and was provided the opportunity to respond to the issues detailed in the April 7, 2009 notice. Petitioner presented information that required further research. Petitioner's status was changed to investigatory placement with pay on April 8, 2009. The University did additional investigation after the initial pre-disciplinary conference. (Resp. Ex. 8)
16. Mr. Phillip Powell made a decision not to interview the accusers of Petitioner. Mr. Powell testified that he dismissed that idea "for the mere reason that safety is an issue when bringing students in, and again, it's a different type of issue when you engage students because they're pretty shy and sometimes fearful of being exposed to legal issues those issues."
17. Just prior to the pre-disciplinary conference, University official obtained statements from students who resided in the dormitory where Petitioner was assigned. Neither of these students testified during the hearing and these statements were ruled to be inadmissible hearsay. Without testimony of the accusers as to the specifics of the conversations between the students and Petitioner, the specifics and the extent of the eye contact with the students, the undersigned cannot determine whether Petitioner crossed the line between normal conversation encouraged by the University between students and employees and normal and acceptable "looking" that takes places between male and females in everyday society in America and unacceptable conduct which would be "just cause" for dismissal of the Petitioner. There is no admissible evidence of record that Petitioner looked upon the female students with malice, covetousness, lustfully or in any manner that would cross the line between proper and unacceptable personal conduct. Petitioner denied even being flirtatious with the female students. (T. p. 222). There was no evidence of how long and in what manner Petitioner looked at the students, no evidence that Petitioner touched, attempted to touch or "came on" to the students, or did anything other than engaged in frequent conversation with the students in a friendly manner. There is no evidence of record that the conversations between Petitioner and the students was anything but ordinary friendly chatter. The testimony

of Petitioner was that he was friendly and talked to everyone he met. Dr. Jennifer Wilder testified they there is no University policy that prohibits employees from conversing with the students. To the contrary, employees are advised to build a relationship with the students. They are also told about what's inappropriate information and how they should speak with students. (T p. 79). The undersigned finds that the student statements obtained by University officials as a part of its investigation were not voluntary "complaints" within the true meaning of the word, and that even if they had been admitted into evidence, would not have constituted "just cause" for dismissing Petitioner.

18. Petitioner testified that he was not notified by anyone regarding the incidents in 2007; that no one gave him the opportunity to express himself or find out what was going on. (T. 228). Petitioner further testified that he did not know what he was being accused of until the March 23 letter he received and that he did not see the tendered exhibits regarding about what was being said about him until the day of the hearing.
19. Petitioner's testimony was credible and sincere; specifically he testified that he would have stopped speaking to the students if he had known he was offending anyone or making them feel uncomfortable. He further testified that no one ever said anything to him about this. Neither the Resident Director, Ms. Woods nor the Assistant Resident Director, Ms. Jones said anything to Petitioner about any inappropriate conduct on his part. Petitioner testified that he had done work for Ms. Jones in her room and she had never said anything to him about anyone stating he engaged in inappropriate behavior. (T. p. 214). Neither of these potentially important witnesses appeared to testify in the hearing. In Ms. Jones' statement (Resp. Ex. 5), she indicates that Que would stop her and have random conversations and that she could "feel his eyes wandering and that she had caught him numerous times looking at my (female) residents behinds as they walk by. Ms. Jones further states that Petitioner gives her compliments that she could easily consider sexual harassment..." Ironically, the record is void of any evidence that the Resident Director Ms. Woods or Assistant Director, Ms. Jones counseled Petitioner or even had a conversation with Petitioner about the very incidents that Respondent relies upon to terminate him for unacceptable personal conduct. The undersigned also takes note that Ms. Jones' statement (Resp. Ex. 5) makes no mention that she expressed any concerns whatsoever to Petitioner about any "remarks he may have made to her that she considered to be harassment or caution him when she would "feel his eyes wandering" (Resp. Ex. 5)
20. Sometime during the 2009 school year, there was an investigation about a peeping tom in the dorm where Petitioner worked. Petitioner was cleared of any involvement of this alleged incident. (T. 66, 218, 179)
21. On April 20, 2009, Mr. Powell completed his investigation and sent Petitioner a notice for another pre-disciplinary conference on April 21, 2009 at 1:30 pm. This was rescheduled to April 22, 2009 at 1:00 pm.
22. At the pre-disciplinary conference on April 22, 2009, Powell determined that Petitioner

should be terminated on April 24, 2009. Specifically, Powell determined, based on a review of all available information, that Petitioner should be terminated for unacceptable personal conduct. (Resp. Ex. 10)

23. Powell testified that the decision was made because this was not an isolated incident and that students needed to feel secure in the dormitories and that Petitioner failed to change his conduct over an extended period of time. (T pp. 146-51)
24. By letter dated April 24, 2009, Mr. Phillip Powell, Sr. notified Petitioner that Petitioner was terminated for unacceptable personal conduct. The specific instances of misconduct alleged in the letter of termination of Petitioner were as follows:

It was reported via email that on March 23, 2009, you looked at a resident of Eagleson Hall inappropriately when she came into the common area (kitchen area) with short shorts on. It is my understanding that you were in the doorway of the kitchen as the resident walked from the kitchen to the elevator and you followed her with your eyes all the way there. Also, according to the email, another resident stated that you go out of your way to speak to them especially when they are in their shower robe and have no bra on. The email also stated that some of the residents feel uncomfortable around you and that you always go out of your way to speak to every female that you come in contact with. On March 27, 2009, it was reported by one of the residents that you watch the residents walk to the bathroom while they are getting ready to take a shower. We also received several statements from residents regarding the way that you looked at them inappropriately and other behavior exhibited by you made them feel uncomfortable in your presence. Based upon your unacceptable personal conduct, you are not eligible for rehire here at the University. (Resp. Ex. 10)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over the just cause issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.
2. N.C. Gen. Stat. § 126-35(a) provides that “[n]o career State employee subject to the State Personnel Act shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.” “By statute, ‘just cause’ for the dismissal, suspension, or demotion of a career state employee may be established only on the basis of ‘unsatisfactory job performance or ‘unacceptable personal conduct’” North Carolina Dept. of Environment & Natural Resources v. Carroll, 358 N.C. 649, 666, 599 S.E. 2d 888, 889 (2004). In this case, Petitioner was dismissed for “unacceptable personal conduct.” Just cause is a “flexible concept, embodying notions of equity and fairness,” that can only be determined upon an

examination of the facts and circumstances of each individual case." Even inappropriate or distasteful conduct that is without legal justification or excuse, or is otherwise unsafe to the public or unwise, can be insufficient to support a finding of "unbecoming conduct." See id. at 670 n.4, 559 S.E. 2d at 901 n.4 (noting disapproval of conduct but finding no cause).

3. Petitioner's conduct, summarized in the discharge letter of April 24, 2009 and detailed in the above Findings of Fact, does not constitute unacceptable personal conduct.
4. Respondent did not carry its burden of proof by a preponderance of the evidence that it had just cause for discharging Petitioner.

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned issues the following:

DECISION

It is hereby ordered that NCSU's decision to discharge Petitioner is **REVERSED** and it is recommended that the following relief should be granted to Petitioner.

1. Pursuant to 25 NCAC 01B.0431, Petitioner should be reinstated to his former position.
2. Pursuant to 25 NCAC 01B.0421, Petitioner should receive back pay from the time of his termination to the time he is reinstated, including any and all cost-of-living or performance-based raises to which he would have been entitled since that date.
3. Respondent should pay into the Retirement System the full actuarial amount of the State's contribution toward retirement on the amounts of the back pay, necessary to make Petitioner whole for Respondent's improper termination of him.
4. Respondent shall pay to Petitioner the costs incurred in prosecuting this matter, including, including any filing fees paid by Petitioner.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Services Center, Raleigh, N.C. 27699-6714, in accordance with N.C.G.S. § 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to Decision and to present written arguments to those in the agency who will consider this Decision. N.C.G.S. § 150B-36(a). The agency is required by N.C.G.S. §

150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 28th day of April, 2010.



Joe L. Webster
Administrative Law Judge

A copy of the foregoing was mailed to:

Quintino Brooks
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PETITIONER

Kimberly D Potter
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ATTORNEY FOR RESPONDENT

This the 28th day of April, 2010.



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