

# NORTH CAROLINA

## REGISTER



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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. Subchapters are optional classifications to be used by agencies when appropriate.*

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
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**Note:** Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2005 – December 2005

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 (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

## 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.

**Note from the Codifier:** This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

*From the Codifier*

Two Notices of Text submitted and published in the N.C. Register on October 17, 2005, Volume 20, Issue 8, contained a typographical error.

Notice of Text for rules proposed by the N.C. Department of Insurance cited as:

11 NCAC 06A .0901, .0902, .0904, and .0905 found on page 649, should reflect correctly as: **“Comment period ends: December 16, 2005.”**

Notice of Text for rules proposed by the N.C. Manufactured Housing Board cited as:

11 NCAC 08 .0904 and .0911 found on page 656, should reflect correctly as:

**“Comment period ends: December 16, 2005.”**

**The comment period for both notices ends on December 16, 2005.**

Please contact the APA Coordinator for the Department of Insurance with any questions at 919-733-4529, or [esprenke@ncdoi.net](mailto:esprenke@ncdoi.net)

**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**Alamac American Knits, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Alamac American Knits, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Lumberton, Robeson County, North Carolina. The Property consists of 194 acres and is located at 1885 Alamac Road. Environmental contamination exists on the Property in soil and groundwater. Alamac American Knits, LLC has committed itself to make no use of the Property other than for continued manufacturing of textile products. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Alamac American Knits, LLC which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Robeson County Library located at 101 North Chestnut Street, P.O. Box 988, Lumberton, NC, 28359 by contacting Mr. Robert Fisher at that address, at [rfisher@robesoncountylibrary.com](mailto:rfisher@robesoncountylibrary.com), or at (910)-738-4859; or at the offices of the North Carolina Brownfields Program (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at [shirley.liggins@ncmail.net](mailto:shirley.liggins@ncmail.net), or at (919) 508-8411.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if Alamac American Knits, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on November 16, 2005. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Brownfields Program Manager  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

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

Comment period ends: January 17, 2006

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for MH/DD/SAS intends to adopt the rules cited as 10A NCAC 27G .4401-.4403, .4501-.4503.

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Proposed Effective Date:** April 1, 2006

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by November 30, 2005.

**Fiscal Impact**

- State** – 10A NCAC 27G .4401-.4403, .4501-.4503
- Local** – 10A NCAC 27G .4401-.4403, .4501-.4503
- Substantive** (≥\$3,000,000) - 10A NCAC 27G .4501-.4503
- None**

**Reason for Proposed Action:**

**21 NCAC 27G .4401-.4403** – The proposed adoptions are necessary to establish a new facility licensure category for Substance Abuse Intensive Outpatient Program (SAIOP). The Division of MH/DD/SAS implemented SAIOP as a new service in July 2001 and a waiver request was approved by the Division of Facility Services to provide a temporary means of licensing these programs. SAIOP is currently licensed through a waiver under the .3700 Day Treatment Facilities for Individuals with Substance Abuse Disorders Rule. SAIOP is a service that provides structured individual and group addiction treatment and services that are provided in an outpatient setting designed to assist adults or adolescents with a principle substance-related diagnosis to begin recovery and learn skills for recovery maintenance.

**CHAPTER 27 – MENTAL HEALTH: COMMUNITY FACILITIES AND SERVICES**

**SUBCHAPTER 27G - RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE FACILITIES AND SERVICES**

**SECTION .4400 – SUBSTANCE ABUSE INTENSIVE OUTPATIENT PROGRAM**

**21 NCAC 27G .4501-.4503** – The proposed adoption is necessary to establish a new facility licensure category for Substance Abuse Comprehensive Outpatient Treatment Program (SACOT). SACOT is a new service with a proposed implementation date of April 1, 2006. SACOT is a service that provides structure and support to achieve and sustain recovery in an outpatient setting to adults with a principal substance related diagnosis (also include homogeneous groups such as individuals with co-occurring disorders or pregnant women.)

**10A NCAC 27G .4401 SCOPE**

(a) A substance abuse intensive outpatient program (SAIOP) is one that provides structured individual and group addiction treatment and services that are provided in an outpatient setting designed to assist adults or adolescents with a principle substance-related diagnosis to begin recovery and learn skills for recovery maintenance.

(b) Treatment support activities may be adapted or specifically designed for persons with physical disabilities, co-occurring disorders including mental illness or developmental disabilities, pregnant women, chronic relapse and other homogenous groups.

(c) Each SAIOP shall have a structured program, which includes the following services:

- (1) individual counseling;
- (2) group counseling;

**Procedure by which a person can object to the agency on a proposed rule:** The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.

**Comments may be submitted to:** Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919)715-2780 or email [cindy.kornegay@ncmail.net](mailto:cindy.kornegay@ncmail.net).

- (3) family counseling;
- (4) strategies for relapse prevention, which incorporate community and social supports;
- (5) life skills;
- (6) crisis contingency planning;
- (7) disease management;
- (8) service coordination activities; and
- (9) biochemical assays to identify recent drug use (e.g. urine drug screens).

Authority G.S. 122C-26; 143B-147.

**10A NCAC 27G .4402 STAFF**

- (a) Each SAIOP shall be under the direction of a Certified Clinical Addictions Specialist or a Certified Clinical Supervisor who is on site a minimum of 50% of the hours the program is in operation.
- (b) When a SAIOP serves adult clients there shall be at least one direct care staff who meets the requirements of a Qualified Professional as set forth in 10A NCAC 27G .0104(18) for every 12 or fewer adult clients.
- (c) When a SAIOP serves adolescent clients there shall be at least one direct care staff who meets the requirements of a Qualified Professional as set forth in 10A NCAC 27G .0104(18) for every six or fewer adolescent clients.
- (d) Each SAIOP shall have at least one direct care staff present in the program who is trained in the following areas:
  - (1) alcohol and other drug withdrawal symptoms; and
  - (2) symptoms of secondary complications due to alcoholism and drug addiction.
- (e) Each direct care staff shall receive continuing education that includes the following:
  - (1) understanding of the nature of addiction;
  - (2) the withdrawal syndrome;
  - (3) group therapy;
  - (4) family therapy;
  - (5) relapse prevention; and
  - (6) other treatment methodologies.
- (f) When a SAIOP serves adolescent clients each direct care staff shall receive training that includes the following:
  - (1) adolescent development; and
  - (2) therapeutic techniques for adolescents.

Authority G.S. 122C-26; 143B-147.

**10A NCAC 27G .4403 OPERATIONS**

- (a) A SAIOP shall operate in a setting separate from the client's residence.
- (b) Each SAIOP shall operate at least three hours per day, at least three days per week with a maximum of two days between offered services.
- (c) A SAIOP should provide services a maximum of 19 hours for each client.
- (d) Each SAIOP shall provide services a minimum of nine hours per week for each client.
- (e) Group counseling shall be provided each day program services are offered.

- (f) Crisis services shall be available by telephone 24 hours a day, seven days a week when the treatment program is not in session.
- (g) Before discharge, the program shall complete a discharge plan and refer each client who has completed services to the level of treatment or rehabilitation as specified in the treatment plan.

Authority G.S. 122C-26; 143B-147.

**SECTION .4500 – SUBSTANCE ABUSE  
COMPREHENSIVE OUTPATIENT TREATMENT  
PROGRAM**

**10A NCAC 27G .4501 SCOPE**

- (a) A substance abuse comprehensive outpatient treatment program (SACOT) is one that provides a multi-faceted approach to treatment for adults with a principle substance-related diagnosis who require structure and support to achieve and sustain recovery.
- (b) Treatment support activities may be adapted or specifically designed for persons with physical disabilities, co-occurring disorders including mental illness or developmental disabilities, pregnant women, chronic relapse, and other homogenous groups
- (c) SACOT shall have a structured program, which includes the following services:
  - (1) individual counseling;
  - (2) group counseling;
  - (3) family counseling;
  - (4) strategies for relapse prevention to include community; and social support systems in treatment;
  - (5) life skills;
  - (6) crisis contingency planning;
  - (7) disease management;
  - (8) service coordination activities; and
  - (9) biochemical assays to identify recent drug use (e.g. urine drug screens).
- (d) The treatment activities specified in Paragraph (c) of this Rule shall emphasize with the following:
  - (1) reduction in use and abuse of substances or continued abstinence;
  - (2) the understanding of addictive disease;
  - (3) development of social support network and necessary lifestyle changes;
  - (4) educational skills;
  - (5) vocational skills leading to work activity by reducing substance abuse as a barrier to employment;
  - (6) social and interpersonal skills;
  - (7) improved family functioning;
  - (8) the negative consequences of substance abuse; and
  - (9) continued commitment to recovery and maintenance program.

Authority G.S. 122C-26; 143B-147.



**10A NCAC 27G .4502 STAFF**

(a) The SACOT shall be under the direction of a Certified Clinical Addictions Specialist or a Certified Clinical Supervisor who is on site a minimum of 90% of the hours the program is in operation.

(b) For each SACOT there shall be at least one direct care-staff who meets the requirements of a Qualified Professional as set forth in 10A NCAC 27G .0104(18) for every 10 or fewer clients.

(c) Each SACOT shall have at least one direct care staff present in the program who is trained in the following areas:

- (1) alcohol and other drug withdrawal symptoms; and
- (2) symptoms of secondary complications due to alcoholism and drug addiction.

(e) Each direct care staff shall receive continuing education that includes the following:

- (1) understanding of the nature of addiction;
- (2) the withdrawal syndrome;
- (3) group therapy;
- (4) family therapy;
- (5) relapse prevention; and
- (6) other treatment methodologies.

*Authority G.S. 122C-26; 143B-147.*

**10A NCAC 27G .4503 OPERATIONS**

(a) A SACOT shall operate in a setting separate from the client's residence.

(b) Each SACOT shall provide services a minimum of 20 hours per week.

(c) Each SACOT shall operate at least four hours per day, at least five days per week with a maximum of two days between offered services.

(d) Each SACOT shall provide a structured program of services in the amounts, frequencies and intensities specified in each client's treatment plan.

(e) Group counseling shall be provided each day program services are offered.

(f) Crisis services shall be available by telephone 24 hours a day, seven days a week when the treatment program is not in session.

(g) Psychiatric consultation shall be available as needed.

(h) Before discharge, the program shall complete a discharge plan and refer each client who has completed services to the level of treatment or rehabilitation as specified in the treatment plan.

*Authority G.S. 122C-26; 143B-147.*

**TITLE 13 – DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor/Boiler and Pressure Vessel Bureau intends to amend the rule cited as 13 NCAC 13 .0213.*

**Proposed Effective Date:** *March 1, 2006*

**Public Hearing:**

**Date:** *December 7, 2005*

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

**Location:** *4 West Edenton Street, Raleigh, NC (2<sup>nd</sup> Floor, Room 205)*

**Reason for Proposed Action:** *The North Carolina Department of Labor/Boiler and Pressure Vessel Bureau is a fully receipt supported Bureau that has not had a fee increase since March, 1997. Due to increasing salaries, economical expense increases such as mileage reimbursement, increasing administrative costs for maintenance and purchase of office equipment, and a decrease in revenue caused by large industry closures, the Bureau is in need of a fee increase in order to maintain it's ability to provide quality and effective inspections. Thus far, between the fiscal years of 2003 and 2005, the Bureau has incurred a decrease in it's inspections by two-thousand one hundred and six (2,106) devices as a result of industry closings. Therefore, the ability to sustain an effective Bureau and minimize a potential budget shortfall relies upon the establishment and collections of increased fees for issuance of certificates and inspections.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, NC 27699-1101; or via facsimile at (919)733-4235. Objections may also be submitted during the public hearing conducted on this rule, which is noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objections(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on January 17, 2006.*

**Comments may be submitted to:** *Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919)733-0368, fax (919)733-4235 or email erin.gould@nclabor.com.*

**Comment period ends:** *January 17, 2006*

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.*

SECTION .0200 – ADMINISTRATION

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

13 NCAC 13 .0213 CERTIFICATE AND INSPECTION FEES

(a) A ~~twenty five dollar (\$25.00)~~ thirty dollar (\$30.00) certificate and processing fee for each boiler or pressure vessel inspected by an Insurance Inspector and found to be in compliance with the rules in this Chapter shall be paid to the North Carolina Department of Labor.

CHAPTER 13 - BOILER AND PRESSURE VESSEL

(b) An inspection and certificate fee shall be paid to the North Carolina Department of Labor for each boiler or pressure vessel inspected by a ~~deputy inspector~~ Deputy Inspector as follows:

Boilers - An inspection of a boiler where the heating surface is:

- Less than 500 sq. ft.
- 500 or more sq. ft. but less than 5000 sq. ft.
- 5000 or more sq. ft.

Cast iron boilers

Locomotive boilers (Antique Exhibition/Show)

Exhibition boilers (Antique Exhibition/Show)

Hobby boilers

Pressure Vessels - An inspection of a pressure vessel, other than a heat exchanger, where the product of measurement in feet of the diameter or width, multiplied by its length is:

- Less than 20
- 20 or more but less than 50
- 50 or more but less than 70
- 70 or more

Heat Exchangers - An inspection of a heat exchanger, where the heating surface is:

- Less than 500 sq. ft.
- 500 or more sq. ft. but less than 1000 sq. ft.
- 1000 or more sq. ft. but less than 2000 sq. ft.
- 2000 or more sq. ft. but less than 3000 sq. ft.
- 3000

(c) In addition to the base fees established herein, a fee of ~~seventy eight five dollars (\$70.00)~~ (\$85.00) per hour, including travel time, plus each expense allowed by 138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for each special inspection as defined by 13 NCAC 13 .0101(43) and for all inspections performed outside of normal working hours as defined by 13 NCAC 13 .0101(31).

(d) A fee of ~~two three hundred fifty dollars (\$250.00)~~ (\$300.00) per one-half day (four hours) or any part of one-half day or ~~four five hundred twenty dollars (\$420.00)~~ (\$500.00) for one day (four to eight hours) plus, in either case, each expense allowed by 138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for each shop inspection as defined by 13 NCAC 13 .0101(42).

(e) A fee of three hundred fifty dollars (\$350.00) per one-half day (four hours) or any part of one-half day or ~~four five hundred eighty sixty dollars (\$480.00)~~ (\$560.00) for one day (four to eight hours), plus, in either case, each expense allowed by 1138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for each nuclear inspection.

External Inspection	Internal Inspection
<del>\$40.00</del> <u>\$45.00</u>	<del>\$70.00</del> <u>\$80.00</u>
<del>\$100.00</del> <u>\$110.00</u>	<del>\$200.00</del> <u>\$225.00</u>
<del>\$250.00</del> <u>\$300.00</u>	<del>\$400.00</del> <u>\$500.00</u>
<u>\$45.00</u>	<u>\$75.00</u>
N/A	<u>\$75.00</u>
N/A	<u>\$45.00</u>
N/A	<u>\$30.00</u>

External Inspection	Internal Inspection
<del>\$30.00</del> <u>\$35.00</u>	<del>\$35.00</del> <u>\$40.00</u>
<del>\$40.00</del> <u>\$45.00</u>	<del>\$50.00</del> <u>\$55.00</u>
<del>\$70.00</del> <u>\$75.00</u>	<del>\$100.00</del> <u>\$125.00</u>
<del>\$100.00</del> <u>\$125.00</u>	<del>\$150.00</del> <u>\$180.00</u>

External Inspection
<del>\$40.00</del> <u>\$45.00</u>
<del>\$50.00</del> <u>\$55.00</u>
<del>\$75.00</del> <u>\$85.00</u>
<del>\$100.00</del> <u>\$125.00</u>
<del>\$125.00</del> <u>\$175.00</u>

(f) A fee of ~~three four hundred fifty dollars (\$350.00)~~ (\$400.00) per one-half day (four hours) or any part of one-half day or ~~five six hundred fifty forty dollars (\$550.00)~~ (\$640.00) for one day (four to eight hours), plus, in either case, each expense allowed by 1138-6 and 138-7 and the standards and criteria established thereto by the Director of the Budget, at the applicable state rate shall be paid to the North Carolina Department of Labor for audits.

(g) Fees for regularly scheduled inspections and audits conducted by the Chief Inspector or a Deputy Inspector outside of normal working hours or that exceed eight hours per inspection visit shall include an additional ~~thirty fifty dollar (\$30.00)~~ (\$50.00) fee per hour in addition to the normal inspection or audit fee.

(h) Printed information derived from the database for boilers and pressure vessels maintained by the Division, is available for public scrutiny. Charges for providing this service shall be payable upon receipt of invoice to the North Carolina Department of Labor. Charges for this service are as follows:

- (1) Requests for database information for which the Division has created the information selection criteria and printout format for its own use, and which can be furnished without the need for special programming will be furnished to the requester at the actual cost of reproducing the record.

- (2) Requests for database information which requires special selection criteria or printout format, and which requires the need for special programming services to derive the requested information or format, will be furnished for seventy-five dollars (\$75.00) plus twenty-five cents (\$0.25) per page.

(i) Copies of inspection reports or other inspection records may be provided upon written request to the requester at the actual cost of reproducing the record.

Authority G.S. 95-69.11.

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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0121, .0215.*

**Proposed Effective Date:** May 1, 2006

**Public Hearing:**

**Date:** January 31, 2006

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

**Location:** NC Wildlife Resources Commission Auditorium, first floor of WRC building at 1751 Varsity Drive (NC State Centennial Campus), Raleigh, NC

**Reason for Proposed Action:**

**15A NCAC 10B .0121** – Add Mute swan to list of birds excluded from the definition of "wild birds"

**15A NCAC 10B .0215** – Adjust season on crows

**Procedure by which a person can object to the agency on a proposed rule:** Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for these Rules. For these Rules, the contact person is David Cobb, Wildlife Management Division, 1701 Mail Service Center, Raleigh, NC 27699-1701, email david.cobb@ncwildlife.org.

**Comments may be submitted to:** David Cobb, 1701 Mail Service Center, Raleigh, NC 27699-1701, email david.cobb@ncwildlife.org.

**Comment period ends:** February 2, 2006

**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. If the Rules Review Commission receives written and signed objections 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

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

**SUBCHAPTER 10B - HUNTING AND TRAPPING**

**SECTION .0100 - GENERAL REGULATIONS**

**15A NCAC 10B .0121 WILD BIRDS DEFINED**

The English sparrow (*Passer domesticus*), ~~the~~ pigeon (*Columba livia*) ~~livia~~, mute swan (*Cygnus olor*), and ~~the~~ starling (*Sturnus vulgaris*) are specifically excluded from the definition of "wild birds" contained in G.S. 113-129(15a).

Authority G.S. 113-129; 113-134.

**SECTION .0200 - HUNTING**

**15A NCAC 10B .0215 CROWS**

(a) Open Seasons: Wednesday, Friday and Saturday of each week from June 1 to the last day of February and on ~~Labor Day and Labor Day~~, Thanksgiving Day and Christmas Day.

Note: Federal law protects crows and limits state seasons to a maximum of 124 days per year.

(b) Bag Limits: No restriction.

Authority G.S. 113-134; 113-291.2; 50 C.F.R. 20.133.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to adopt the rules cited as 15A NCAC 10B .0124, .0221 and amend the rules cited as 15A NCAC 10B .0114, .0123, .0202-.0203, .0206, .0209, .0219, .0302; 10C .0205, .0305, .0401-.0402; 10D .0102-.0103; 10J .0102.*

**Proposed Effective Date:** May 1, 2006

**Public Hearing:**

**Date:** January 9, 2006

**Time:** 7:00 p.m.

**Location:** Courthouse, 106 E. Broad St., Elizabethtown, NC

**Date:** January 11, 2006

**Time:** 7:00 p.m.

**Location:** Courthouse, #1 Court Square, Graham, NC

**Date:** January 12, 2006  
**Time:** 7:00 p.m.  
**Location:** South Stanly High School, 40488 South Stanly School Road, Norwood, NC

**Date:** January 17, 2006  
**Time:** 7:00 p.m.  
**Location:** Municipal Auditorium, 401 S. College Street, Morganton, NC

**Date:** January 18, 2006  
**Time:** 7:00 p.m.  
**Location:** Southwest Community College, 447 College Drive, Sylva, NC

**Date:** January 19, 2006  
**Time:** 7:00 p.m.  
**Location:** Starmount High School, 2516 Longtown Road, Boonville, NC

**Date:** January 24, 2006  
**Time:** 7:00 p.m.  
**Location:** Swain Auditorium, 107 Court Street, Edenton, NC

**Date:** January 25, 2006  
**Time:** 7:00 p.m.  
**Location:** Courthouse, 406 Craven St., New Bern, NC

**Date:** January 26, 2006  
**Time:** 7:00 p.m.  
**Location:** Annex Building, District Court Room, 113 S. Main Street, Louisburg, NC

**Reason for Proposed Action:**

**15A NCAC 10B .0114** – Allow dog training using domestically raised birds during the closed season.

**15A NCAC 10B .0123** – Add species to list of those prohibited for import, export, purchase, sale, stocking or releasing.

**15A NCAC 10B .0124** – Ban cervid carcass or parts from states or provinces where Chronic Wasting Disease occurs as part of the effort to prevent entry of this disease into North Carolina.

**15A NCAC 10B .0202** – Adjust bear seasons and remove Mt. Mitchell Bear Sanctuary for sanctuary program.

**15A NCAC 10B .0203** – Adjust deer seasons and bag limits.

**15A NCAC 10B .0206** – Open certain counties to squirrel hunting.

**15A NCAC 10B .0209** – Adjust harvest of male or bearded turkeys.

**15A NCAC 10B .0219** – Adjust regulations for weaponry and day or nighttime hunting for coyote.

**15A NCAC 10B .0221** – Adjust season and bag limits for Striped Skunk.

**15A NCAC 10B .0302** – Allow trapping of nutria east of I-77.

**15A NCAC 10C .0205, .0305** - Adjust seasons and bag limits.

**15A NCAC 10C .0401, .0402** – Protect herring stocks in coastal/inland rivers.

**15A NCAC 10D .0102** – Increase the either-sex deer season from conservative to moderate on certain game lands.

**15A NCAC 10D .0103** – Add certain properties to existing gamelands and change the name of White Oak River Impoundment Game Land to White Oak River Game Land.

**15A NCAC 10J .0102** – Limit operation of motorized land vehicles that are not licensed for highway use on Wildlife Conservation Areas to those persons who have a permit pursuant to G.S. 113-297.

**Procedure by which a person can object to the agency on a proposed rule:** Any person who wishes to object to a proposed rule may do so by writing (or emailing) the person specified in connection with a given rule within the public comment period set up for this rule. For 15A NCAC 10B, 10D, 10J the contact person is David Cobb, Chief, Wildlife Management Division. For 15A NCAC 10C the contact person is Robert Curry.

**Comments may be submitted to:** For 15A NCAC 10B, 10D, 10J - David Cobb, 1701 Mail Service Center, Raleigh, NC 27699-1701, email david.cobb@ncwildlife.org. For 15A NCAC 10C – Robert Curry, 1701 Mail Service Center, Raleigh, NC 27699-1701, email robert.curry@ncwildlife.org.

**Comment period ends:** February 2, 2006

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

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

**SUBCHAPTER 10B - HUNTING AND TRAPPING**

**SECTION .0100 - GENERAL REGULATIONS**

**15A NCAC 10B .0114 DOG TRAINING AND FIELD TRIALS**

(a) Except as provided in Paragraphs (b) and (c) of this Rule, each person engaged in training or running a dog or dogs and each active participant in a field trial ~~must shall~~ have obtained a North Carolina hunting license. The term "active participant" as used herein includes each person who owns or handles dogs, carries a firearm, or is a member of an organized group engaged in the conduct of a field trial, but does not include a person who is observing a field trial incidentally or who has stopped to witness a part of it.

(b) A person serving as judge of a commission-sanctioned field trial and any nonresident participating therein may do so without having a North Carolina license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. A "commission-sanctioned" field trial is one which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence by an authorized representative of the Wildlife Resources Commission.

(c) Persons without license may participate in commission-sanctioned field trials for beagles conducted without firearms on private field trial areas which are fenced in accordance with G.S. 113-276(k).

(d) Except as allowed by regulations pertaining to authorized field trials, it is unlawful to carry firearms, axes, saws or climbing irons while training or running dogs during closed season on game animals.

(e) Except as authorized in this Paragraph, no firearms or other hunting weapons ~~may shall~~ be possessed or used during any field trial for foxhounds or any field trial conducted during the closed hunting season for any other species of wildlife serving as the quarry or prey. On a commission-sanctioned field trial for retrievers or bird dogs, shotguns containing live ammunition or firearms using only blank ammunition may be used only when the application for and the authorization of the field trial so provide. No wild waterfowl, quail or pheasant ~~may shall~~ be used in field trials when shotguns with live ammunition are permitted. All waterfowl, quail and pheasants so used ~~must shall~~ be obtained from a licensed game bird propagator. Each specimen of waterfowl so obtained shall be marked by one of the methods provided by 50 C.F.R. 21.13. Each pheasant or quail so obtained shall be banded by the propagator prior to delivery with a metal leg band ~~which that~~ is imprinted with the number of his or her propagation license. The purchaser of such birds shall obtain a copy of the receipt from the propagator showing the date and the number and species of birds purchased. The copy of the receipt shall be available for inspection by any authorized agent of the Wildlife Resources Commission during the time and at the place where the trial is being held.

(f) Applications for authorization of a field trial ~~must shall~~ be submitted in writing to a Wildlife Enforcement Officer at least 30 days prior to the scheduled event.

(g) Pursuant to G.S. 113-291.1(d), hunters may train dogs during the closed season using domestically raised waterfowl and domestically raised game birds. All domestically raised waterfowl and domestically raised game birds shall be individually tagged on one leg with a seamless metal band stamped with the number of the propagation license for the

facility from which the domestically raised waterfowl or game birds originated.

Authority G.S. 113-134; 113-273; 113-276; 113-291.1; 113-291.5; 50 C.F.R. 21.13.

**15A NCAC 10B .0123 POSSESSION OF CERTAIN SPECIES OF WILDLIFE RESOURCES**

~~It is unlawful for any individual to import, transport, export, purchase, possess, or sell any species of Tongueless or African Clawed Frog (Xenopus spp.) or to stock or release The importation, transportation, exportation, purchase, sale, stocking, or releasing them in~~ into the public or private waters or lands of North Carolina of the following species is prohibited except as authorized under permit issued by the Executive Director pursuant to G.S. 113-274(c)(4) and subject to limitations as specified in this Rule:

(1) Tongueless or African Clawed Frog (Xenopus spp.)

~~(1)(a)~~ Importation, possession, sales, transportation, and exportation will be allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research; provided that they must be possessed in indoor facilities; and that all transportation of specimens provides adequate safeguards against accidental escape; and that sale or transfer is permitted only as listed in Item (2) of this Rule. Written applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.

~~(2)(b)~~ Purchase, importation, and possession of this species within North Carolina will be allowed under permit only by state and federal governmental agencies, corporate research entities, and research institutions; provided that sales are permitted to lawful out-of-state consumers; and, provided that they must be possessed in indoor facilities and that all transportation of specimens provides adequate safeguards against accidental escape; and that the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and, further provided that no specimens may be stocked or

released in the public or private waters or lands of North Carolina and may not be transferred to any private individual.

- (2) Mute Swan (*Cygnus olor*)
- (a) Purchase, importation, transportation, and possession of live mute swans will be allowed under permit by publicly financed zoos and scientific and biological research facilities provided that all specimens are pinioned or kept within an indoor facility that provides safeguards against accidental escape.
- (b) Nothing in this Rule shall prohibit the possession and transportation of dead mute swans.

Authority G.S. 113-134; 113-274; 113-292.

**15A NCAC 10B .0124 IMPORTATION OF ANIMAL PARTS**

(a) No cervid carcass or carcass part from any state or province where Chronic Wasting Disease occurs as identified by the Chronic Wasting Disease Alliance on the Internet at <http://www.cwd-info.org/index.php/fuseaction/about.map> shall be imported, transported, or possessed in North Carolina except as provided herein:

- (1) meat that is cut and wrapped;
- (2) quarters or other portions of meat with no part of the spinal column or head attached;
- (3) meat that has been boned out;
- (4) hides with no head, meat, or other tissue attached;
- (5) cleaned skull plates with no meat or other tissue attached;
- (6) antlers;
- (7) cleaned teeth;
- (8) finished taxidermy products.

(b) Pursuant to G.S. 113-291.2, any cervid carcass, carcass part, or container of processed and packaged cervid meat imported as in (a) above from a state or province where Chronic Wasting Disease is known to occur as identified by the Chronic Wasting Disease Alliance on the Internet at <http://www.cwd-info.org/index.php/fuseaction/about.map> shall be tagged identifying:

- (1) Hunter's name and address;
- (2) State or province of origin of any cervid carcass, carcass part, or container of processed and packaged cervid meat;
- (3) Date the cervid was killed and the hunter's hunting license number from the state or province of origin of any cervid carcass, carcass part, or container of processed and packaged cervid meat; and
- (4) Destination of the cervid carcass, carcass part or container of processed and packaged cervid meat within North Carolina.

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

**SECTION .0200 - HUNTING**

**15A NCAC 10B .0202 BEAR**

- (a) Open Seasons for bear shall be from the:
- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by I-77 from the Virginia State line to the intersection with I-40, continuing along I-40 west until the intersection of NC 18 and NC 18 to the South Carolina State line.
- (2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Hertford County and Martin counties; and in the following parts of counties:  
Halifax: that part east of US 301.  
Northampton: that part east of US 301.
- (3) Second Monday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, ~~Onslow and Onslow~~, Pender and Sampson counties; and in the following parts of counties:  
Cumberland: that part south of NC 24 and east of the Cape Fear River.  
~~Sampson: that part south of NC 24.~~
- (4) Second Monday in December to January 1 in Brunswick and Columbus counties.
- (5) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, ~~Bertie, Camden~~, Craven, Dare, ~~Gates~~, Hyde, Jones, Pamlico, ~~Pasquotank~~, Tyrrell, and Washington counties, and in the following parts of counties:  
~~Chowan: that part north of US 17.~~  
~~Currituck: except Knotts Island and the Outer Banks.~~
- (6) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Camden, Chowan, Currituck, Gates and Pasquotank counties.
- (b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:  
Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary  
Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary  
Beaufort and Pamlico counties--Gum Swamp bear sanctuary

Bladen County--Suggs Mill Pond bear sanctuary  
 Brunswick County--Green Swamp bear sanctuary  
 Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary  
 Carteret, Craven and Jones counties--Croatan bear sanctuary  
 Clay County--Fires Creek bear sanctuary  
 Columbus County--Columbus County bear sanctuary  
 Currituck County--North River bear sanctuary  
 Dare County--Bombing Range bear sanctuary except by permit only  
 Haywood County--Harmon Den bear sanctuary  
 Haywood County--Sherwood bear sanctuary  
 Hyde County--Gull Rock bear sanctuary  
 Hyde County--Pungo River bear sanctuary  
 Jackson County--Panthertown-Bonas Defeat bear sanctuary  
 Macon County--Standing Indian bear sanctuary  
 Macon County--Wayah bear sanctuary  
 Madison County--Rich Mountain bear sanctuary  
~~McDowell and Yancey counties Mt. Mitchell bear sanctuary~~  
 Mitchell and Yancey counties--Flat Top bear sanctuary  
 Wilkes County--Thurmond Chatham bear sanctuary

(c) Bag limits shall be:

- (1) daily, one;
- (2) possession, one;
- (3) season, one.

(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NC AC 10B .0113.

Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305.

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

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) 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\*, Craven, Currituck, Dare, Duplin,

Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond\*\*, Robeson, Sampson, Scotland\*\*, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;  
~~Harnett: That part west of NC 87;~~  
 Moore\*\*: All of the county except that part north of NC 211 and west of US 1;

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

\*\*Refer to 15A NCAC 10D .0103(f)(53)(B) for seasons on Nicholson Creek, Rockfish Creek and Sandhills Game Lands. Lands.

(B) Saturday before Thanksgiving through the fourth Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(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, and in the following parts of counties:

Cumberland: That part east of US 401, north of NC 24 and west of I-95;

~~Harnett: That part east of NC 87;~~

Moore: That part north of NC 211 and west of US 1;

- (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 of Currituck County known as 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 (b)(1) of this Rule in all of ~~Avery~~, Buncombe, Haywood, Henderson, ~~Madison~~, Madison and Transylvania ~~Mitchell, Transalvania, and Yancey~~ counties and the following parts of counties:  
Avery: That part south of the Blue Ridge Parkway.  
 Dare, except the Outer Banks north of Whalebone.  
 Scotland: That part south of US 74.  
Yancey: That part south of US 19 and US 19E.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Mitchell, Polk and Watauga and the following parts of counties:  
Avery: That part north of the Blue Ridge Parkway.  
~~Camden: That part south of US 158.~~  
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 (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Robeson, Rutherford, counties and in the following parts of counties:



~~Cumberland: That part west of I-95.~~

~~Harnett: That part west of NC 87.~~

Moore: All of the county except that part north of NC 211 and west of US 1.

Scotland: That part north of US 74.

- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Caswell, Chatham, Chowan, Columbus, Cumberland, Currituck, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin 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.

~~Camden: That part north of US 158.~~

~~Cumberland: That part east of I-95.~~

~~Currituck: All of the county except the Outer Banks.~~

Dare: That part of the Outer Banks north of Whalebone.

~~Harnett: That part east of NC 87.~~

Henderson: That part east of NC 191 and north and west of NC 280.

Moore: That part north of NC 211 and west of US 1.

Richmond: That part west of Little River.

(c) 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 fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on ~~the~~ Nicholson Creek, Rockfish Creek, and Sandhills Game Land Lands and the area known as the Outer Banks in Currituck County.

(B) Saturday on or nearest September 10 to the second 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 fourth 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 (b)(1) of this Rule and in Cleveland and Rutherford counties.

(D) Saturday on or nearest September 10 to the third 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 Land 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.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading

firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

- (A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Land Lands and the area known as the Outer Banks in Currituck County.
  - (B) The second Saturday preceding Thanksgiving until the following Friday 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.
  - (C) Monday on or nearest October 8 to the following Saturday 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 (b)(1) of this Rule.
  - (D) The third Saturday preceding Thanksgiving until the following Friday 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 Land Lands.
- (2) Restrictions
- (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.
  - (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.
  - (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.
- (e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag

limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

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

**15A NCAC 10B .0206 SQUIRRELS**

- (a) Open Seasons:
- (1) Gray and Red Squirrels: Monday on or nearest October 15 to January 31 statewide.
  - (2) Fox Squirrels: Monday on or nearest October 15 to December 31 in the counties of Alleghany, Anson, Ashe, Bladen, Brunswick, Cumberland, Duplin, Edgecombe, Greene, Harnett, Hoke, Johnston, Jones, Lenoir, Moore, New Hanover, Onslow, Pender, Pitt, Richmond, Sampson, Scotland and Wayne.
- (b) Bag Limits: Daily, eight; possession, 16; season, 75; These statewide limits include the following limits of fox squirrels taken in those counties having an open season: daily, one; possession, two; season, 10.

*Authority G.S. 113-134; 113-291.2.*

**15A NCAC 10B .0209 WILD TURKEY**

- (a) Open Seasons:
- (1) Winter Either-Sex Wild Turkey Season shall be from the Monday on or nearest to January 15 through the following Saturday on bearded or beardless turkeys in Alleghany, Ashe, Caswell, Granville, Person, Rockingham, Stokes, Surry, Watauga and Wilkes counties except on Game Lands
  - (2) Spring Wild Turkey Season for male or bearded turkeys only in all counties statewide shall be from April 10 through May 8, unless April 10 occurs on a Sunday, in which event the aforementioned season shall be from April 9 through May 7. shall be from the Second Saturday in April

~~through the Saturday of the fourth week on bearded turkeys only in all counties statewide.~~

- (3) Spring Youth Only Wild Turkey Season: the Spring Youth Only Wild Turkey Season shall be for one day on the first Saturday in April on bearded wild turkeys only. This Subparagraph shall not apply to Game Lands unless provided for, on certain Game Lands, by special permit issued pursuant to 15A NCAC 10D .0103. For purposes of this Subparagraph a youth hunter shall be less than 16 years of age. Each youth hunting during this season shall be accompanied by a properly licensed adult at least 21 years of age. An adult may accompany only one youth during any particular hunt and only one weapon is allowed per youth hunter.

(b) Bag Limits: The daily bag limit shall be one bird and the annual bag limit shall be two birds only one of which may be taken during the Winter Either-Sex Wild Turkey Season. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys during the Spring Wild Turkey Season and the Spring Youth Only Wild Turkey Season shall be prohibited.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

*Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2; 113-291.5.*

**15A NCAC 10B .0219 COYOTE**

(a) ~~No closed season— season for taking coyotes during daytime hunting hours as defined in G.S. 113-291(a), provided however, that when hunting from an elevated platform during the open deer seasons as provided in 15A NCAC 10B .0203, hunters shall only possess the legal weapon for hunting deer within the open season.~~

~~(b) Bag Limits: No restriction.~~

~~(b) From the first Monday in January through the last day in July, coyotes may be taken at night with the use of lights not exceeding a power source of 12 volts and equipped with a red or amber lens subject to the following conditions:~~

- ~~(1) lights and/or calling devices shall not be attached to a motorized vehicle;~~
- ~~(2) the shining of a light from a motorized vehicle or from a road to search for coyotes is prohibited;~~
- ~~(3) calling or hunting from an elevated platform is prohibited; and~~
- ~~(4) when hunting on private lands, hunters shall possess written permission from the landowner or lessee of agricultural rights dated no more than one year from the date of hunting.~~

~~(c) Bag Limits: No restriction.~~

*Authority G.S. 113-134; 113-291.2.*

**15A NCAC 10B .0221 STRIPED SKUNK**

~~(a) There shall be no closed season.~~

~~(b) There shall be no bag limit restrictions.~~

*Authority G.S. 113-134; 113-291.2.*

**SECTION .0300 - TRAPPING**

**15A NCAC 10B .0302 OPEN SEASONS**

(a) General. Subject to the restrictions set out in Paragraph (b) of this Rule, the following seasons for taking furbearing animals as defined in G.S. 113-129(7a), coyotes, and groundhogs shall apply as indicated, all dates being inclusive:

- (1) November 7 through February 12 in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland counties.
- (2) December 15 through February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties, except that in the marshes adjoining Currituck Sound in Currituck County the season is December 15-March 12 and nutria may not be shot at any time (day or night) during the open season for migratory waterfowl.
- (3) December 1 through February 20 in all other counties.
- (4) November 1 through March 31 statewide for beaver only.
- (5) Trapping coyotes is allowed during times and with methods described by local laws in counties where local laws have established fox trapping seasons even when those seasons fall outside the regular trapping seasons described above.
- ~~(6) Nutria may be trapped at any time east of I-77.~~

(b) Restrictions

- (1) It is unlawful to trap or take otter on Roanoke Island north of US 64/264 in Dare County.
- (2) It is unlawful to set steel traps for muskrat or mink in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland counties except in or adjacent to the waters of lakes, streams or ponds.
- (3) It is unlawful to trap raccoon in Yadkin County and in and west of Surry, Wilkes, Alexander, Catawba, Lincoln and Gaston counties.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

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

**SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

**SECTION .0200 - GENERAL REGULATIONS**

**15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. 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. Otherwise, Wild Trout regulations apply to the tributaries.

- (A) Alleghany County:
- New River (not trout water)
  - Little River (Whitehead to McCann Dam)
  - Crab Creek
  - Brush Creek (except where posted against trespass)
  - Big Pine Creek
  - Laurel Branch
  - 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 Co. 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 ~~Tuckerdale~~ 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)
  - Hoskins Fork (Watauga County line to North Fork New River)
  - 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
  - North 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)
- 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
- Archie 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
- Mineral Creek (including portions of tributaries on game lands)
- 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 (~~game lands portion below the Blue Ridge Parkway including portions of tributaries on~~)

- ~~game—lands (portion within Linville Gorge Wilderness Area, including tributaries, and portion below Lake James powerhouse from first upstream bridge on SR 1223 below Lake James powerhouse to Muddy Creek)~~
- (F) Caldwell County:
- Catawba River (not trout water)
  - Johns River (not trout water)
  - Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)
  - Estes Mill Creek (not trout water)
  - Thorps Creek (falls to NC 90 bridge)
  - 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 (not trout water)
  - 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 (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)
  - North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)
  - Persimmon Creek
  - Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
- Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)
- Valley River
- Hyatt Creek (including portions of tributaries on game lands)
- Webb 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 (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)
  - Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)
  - Big Tuni Creek (including portions of tributaries on game lands)
  - Chatuge Lake (not trout water)
  - Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338)
  - Hothouse Branch (including portions of tributaries on gamelands)
  - Vineyard Creek (including portions of tributaries on game lands)
- (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 mouth, 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) Franks Creek Cheoah Reservoir Fontana Reservoir (not trout water) Stecoah Creek Sawyer Creek Panther Creek (including portions of tributaries on game lands)
- (J) Haywood County:  
 Pigeon River (Stamey Cove Branch to US 19-23 bridge)  
 Cold Springs Creek (including portions of tributaries on game lands)  
 Jonathans Creek - lower (SR 1394 bridge to Pigeon River)  
 Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]  
 Hemphill Creek  
 West Fork Pigeon River (triple arch bridge on highway NC 215 to Queens Creek, including portions of tributaries within this section located on game lands, except Middle Prong)
- Richland Creek (Russ Avenue bridge to US 19A-23 bridge)  
 West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:  
 (Rocky) Broad River (one-half mile north of Bat Cave to Rutherford County line)  
 Green River - upper (mouth of Rock Creek to mouth of Bobs Creek)  
 Green River - lower (Lake Summit Dam to I-26 bridge)  
 Camp Creek (SR 1919 to Polk County line)  
 (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 1572)  
 Mills River (not trout water)  
 North Fork Mills River (game lands portion below the Hendersonville watershed dam). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (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 NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule.]  
 Scott Creek (entire stream, except where posted against trespass)  
 Dark Ridge Creek (Jones Creek to Scotts Creek)

- Buff Creek (uppermost crossing on SR 1457 to Scott 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
- West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)
- Shoal Creek (Glenville Reservoir pipeline to mouth)
- (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 Power and Light powerhouse 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 (US 64 bridge to Little Tennessee River)
- Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)
- Savannah River (not trout water)
- Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)
- (N) Madison County:
- French Broad River (not trout water)
- Shut-In Creek (including portions of tributaries on game lands)
- Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)
- 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)  
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 U.S. 70 Bridge,  
except where posted  
against trespass)
- (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)
- (Q) Polk County:  
Broad River (not trout water)  
North Pacolet River  
(Pacolet Falls to NC 108  
bridge)  
Fork Creek (Fork  
Creek Church on SR  
1100 to North Pacolet  
River)  
Big Fall Creek  
(portion above and  
below water supply  
reservoir)  
Green River (Fishtop Falls  
Access Area to mouth of  
Brights Creek) [Delayed  
Harvest Regulations apply  
to the portion from  
Fishtop Falls Access Area  
to Cove Creek. See  
Subparagraph (a)(5) of  
this Rule.]  
Little Cove Creek  
(including portions of  
tributaries on game lands)  
Cove Creek  
(including portions of  
tributaries on game lands)  
Camp Creek  
[Henderson County line  
(top of falls) to Green  
River]

- (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)  
 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 ~~SR 1334~~  
~~bridge~~) Interstate 77  
bridge)  
 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 ~~Eesta~~ intake)  
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  
 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  
~~Howards~~ Howard  
 Creek (downstream from  
 lower falls)  
 Middle Fork New River  
 (Lake Chetola Dam to  
 South Fork New River)  
 Yadkin River (not trout water)

- |  |   |   |  |
|--|---|---|--|
| <p>Stony Fork (headwaters to Wilkes County line)<br/>Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)<br/>Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crusis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]<br/>Beech Creek<br/>Buckeye Creek Reservoir<br/>Coffee Lake<br/>Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)<br/>Laurel Creek<br/>Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)<br/>Dutch Creek (second bridge on SR 1134 to mouth)</p> | <p>West Prong Roaring River (not trout waters)<br/>Pike Creek<br/>Pike Creek Pond<br/><u>Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)</u><br/>Reddies River (not trout water)<br/>Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)<br/>South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)<br/>North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)<br/>Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)<br/>Lewis Fork Creek (not trout water)<br/>South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)<br/>Fall Creek (except portions posted against trespass)</p> | <p>(X) Wilkes County:<br/>Yadkin River (not trout water)<br/>Roaring River (not trout water)<br/>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.]<br/>Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]<br/>Middle Prong Roaring River (headwaters to second bridge on SR 1736)<br/>Bell Branch Pond<br/>Boundary Line Pond</p> | <p>(Y) Yancey County:<br/>Nolichucky River (not trout water)<br/>Cane River [Bee Branch (SR 1110) to Bowlens Creek]<br/>Bald Mountain Creek (except portions posted against trespass)<br/>Indian Creek (not trout water)</p> |
|--|---|---|--|

- 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)  
Ramey Creek (entire stream)  
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 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:  
Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:  
All waters located on South Mountain State Park, except the main stream of Jacob Fork Between the mouth of Shiny 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.  
Nettle Branch (game land portion)
- (F) 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.]
- (H) Graham County:  
Little Buffalo Creek (entire stream)  
South Fork Squally Creek (entire stream)  
Squally Creek (entire stream)
- (I) Haywood County  
Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Henderson County:

- (K) Green River (I-26 bridge to Henderson/Polk County line)  
 Jackson County:  
 Gage Creek (entire stream)  
 North Fork Scott Creek (entire stream)  
 Tanasee Creek (entire stream)  
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (L) 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.]
- (M) 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)
- (N) Polk County  
 Green River (Henderson County line to Fishtop Falls Access Area)  
 Pulliam (Fulloms) Creek and tributaries (game lands portions)
- (O) Transylvania County:  
 All waters located on Gorges State Park  
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (P) Watauga County:  
 Dutch Creek (headwaters to second bridge on SR 1134)  
 Howards Creek (headwaters to lower falls)  
 Watauga River (Avery County line to steel bridge at Riverside Farm Road)
- (Q) Wilkes County:  
 Big Sandy Creek (portion on Stone Mountain State Park)  
 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)
- (R) Yancey County:  
 Cattail Creek (Bridge at Mountain Farm Community Road (Pvt) to NC 197 bridge)  
 Lickskillet Creek (entire stream)  
 Middle Creek (game land boundary to mouth)  
~~Roek Creek (game land boundary to mouth)~~  
~~South Toe River (game land boundary downstream to Clear Creek)~~
- (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 fish 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) Wilkes County:  
 Harris Creek (portion on Stone Mountain State Park)
- (H) Yancey County:  
 Lower Creek  
 Upper Creek
- (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/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish 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 (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)
- (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 and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. 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 streams open for fishing under Hatchery Supported Waters rules:
  - (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) Haywood County:
    - West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
  - (D) Henderson County:
    - North Fork Mills River (game land portion below the Hendersonville watershed dam)

- (E) Jackson County:
  - Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)
- (F) Macon County:
  - Nantahala River (~~portion from Whiteoak Creek to the Nantahala Power and Light power house~~ hydropower discharge canal)
- (G) 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)
- (H) McDowell County:
  - Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
- (I) Mitchell County:
  - Cane Creek (NC 226 bridge to NC 80 bridge)
- (J) Polk County:
  - Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (K) Surry County:
  - Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
- (L) Transylvania County:
  - East Fork French Broad River (Glady Fork to French Broad River)
  - Little River (confluence of Lake Dense outflow to Hooker Falls)
- (M) Watauga County:
  - Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)
- (N) 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)
- (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)
  - Tellico River (Fain Ford to Tennessee state line excluding tributaries)
- (B) Clay County:
  - Buck Creek (game land portion downstream of US 64 bridge)
- (C) Graham County:
  - Deep Creek
  - Long Creek (game land portion)
- (D) Haywood County:
  - Hurricane Creek (including portions of tributaries on game lands)
- (E) Jackson County:
  - Chattooga River (SR 1100 bridge to South Carolina state line)
  - (lower) Fowler Creek (game land portion)
  - Scotsman Creek (game land portion)
- (F) 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)
- (G) Madison County:
  - Big Creek (headwaters to the lower game land boundary, including tributaries)
- (H) 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 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.

*Authority G.S. 113-134; 113-272; 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:

**PROPOSED RULES**

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR <del>(exc. (2))</del> <u>(exc. (3))</u>
Hatchery Supported Trout Waters and undesignated waters	7 <del>(exc. (2))</del> <u>(exc. (3))</u>	None <del>(exc. (2))</del> <u>(exc. (3))</u>	All year, except March 1 to 6:00 a.m. on first Saturday in April <del>(exc. (2))</del> <u>(exc. (3))</u>
Muskellunge	2 <del>(exc. (20))</del> <u>(exc. (21))</u>	30 in.	ALL YEAR
Pickereel: chain (Jack) and redfin	None	None	ALL YEAR
Walleye	8 <del>(exc. (8))</del> <u>(exc. (9))</u>	None <del>(exc. (8))</del> <u>(exc. (9))</u>	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. <del>(excs. (7&amp;9))</del> <u>(excs. (8&amp;10))</u>	ALL YEAR <del>(exc. (16))</del> <u>(exc. (17))</u>
Smallmouth and Spotted	5	12 in. <del>(excs. (7&amp;9))</del> <u>(excs. (8&amp;10))</u>	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	<del>None</del> <u>8</u>	<del>13 in.</del> <u>14 in.</u>	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. <del>(exc. (18))</del> <u>(exc. (19))</u>	ALL YEAR
Striped Bass and their hybrids <del>(excs. 1,4,5,10 &amp; 12)</del> <u>(excs. 1,2,5,6,11,&amp;13)</u> <del>(excs. 1, 4,5,10 &amp; 12)</del> <u>(excs. 1,2,5,6,11&amp;13)</u> <del>(excs. 5,12&amp;14)</del> <u>(excs. 6,13&amp;15)</u> (Morone Hybrids)	8 aggregate	16 in.	ALL YEAR
Shad: (American and hickory)	10 aggregate	None	ALL YEAR <del>(exc. (17))</del> <u>(exc. (18))</u>
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish <del>(excs. 3,11&amp;15)</del> <u>(excs. 4,12&amp;16)</u> <del>(exc. (11))</del> <u>(exc. (12))</u> <del>(exc. (3))</del> <u>(exc. (4))</u>	None	None	ALL YEAR
NONGAME FISHES	None <del>(excs. (13&amp;19))</del> <u>(excs. (14&amp;20))</u>	None <del>(exc. (19))</del> <u>(exc. (20))</u>	ALL YEAR <del>(exc. (6))</del> <u>(exc. (7))</u>
(b) Exceptions			<u>hybrids is four in aggregate with no minimum size limit.</u>
(1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, <del>the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment Dam</del> and in John H. Kerr Reservoir <del>Gaston, Roanoke Rapids and B. Everett Jordan reservoirs and Lake Norman,</del> the creel limit on striped bass and Morone hybrids is <del>four</del> <u>two</u> in the aggregate and the minimum size limit is <del>20</del> <u>26 inches.</u> <del>inches from October 1 through May 31. In Lake Norman, there is no minimum size limit for striped bass from June 1 through September 30. From June 1 through September 30 the daily creel limit on striped bass and Morone</del>			<u>In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in Gaston, Roanoke Rapids and B. Everett Jordan reservoirs the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit is 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30.</u>
			<del>(2)</del> <u>(2)(3)</u> 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 Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, Linville River ~~from Linville Falls to the NC 126 bridge, 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. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.

- ~~(3)~~(4) On Mattamuskeet Lake, special federal regulations apply.
- ~~(4)~~(5) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, 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 Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.
- ~~(5)~~(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 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge 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.
- ~~(6)~~(7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- ~~(7)~~(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, Randleman Reservoir in Randolph and Guilford counties, in the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina State line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the 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 B. Everett Jordan Reservoir, in Falls of the Neuse ~~Reservoir, east of SR 4004~~ Reservoir to Lake Michie Dam on the Flat River and to the mouth of Cub Creek on Eno River, in Lake Lure, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed.

- ~~(8)~~(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.
- ~~(9)~~(10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County;
  - (B) Lake Thom-A-Lex in Davidson County.
- ~~(10)~~(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.
- ~~(11)~~(12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following

waters: the 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, and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U. S. 258 bridge, lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe and Rutherford counties, in Lake James, Lake Rhodhiss, Lake Hickory, and in Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.

- (12)(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 shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (13)(14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (14)(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.
- (15)(16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-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.
- (16)(17) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.
- (17)(18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.
- (18)(19) No red drum greater than 27 inches in length may be retained.

(19)(20) The daily possession limit for herring (alewife and blueback in aggregate) greater than six inches in length is specified in 15A NCAC 10C .0401(a) and in 15A NCAC 10C .0402(d).

(20)(21) On the French Broad River and its tributaries upstream of the US 64 bridge near Etowah, no muskellunge shall be retained.

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 shall be unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point):
- (2) No person shall take or possess ~~during one day more than 25~~ herring (alewife and blueback in aggregate) blueback that are greater than 6 inches in length from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment dam of the main course on the rivers. First impoundment dams are: Roanoke Rapids Dam on Roanoke River, Rocky Mount Mill Dam on Tar River, Milburnie Dam on Neuse River, Buckhorn Dam on Cape Fear River, Lake Waccamaw Dam on Waccamaw River and Blewett Falls Dam on Pee-Dee River.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, ~~Lake Norman and Norman~~, Mountain Island, Gaston and Roanoke Rapids reservoirs, except that two 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.

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

(c) Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Alewife and blueback herring less than 6 inches in length may be sold except in those waters specified in Paragraph (d) of Rule .0402 of this Section, where their possession is

prohibited. 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 shall be unlawful to possess more than 200 freshwater mussels.

(e) It shall be unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

(f) In the posted waters listed below it shall be unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

- Cedarrock Pond, Alamance County
- Lake Julian, Buncombe County
- Lake Tomahawk, Buncombe County
- Frank Liske Park Pond, Cabarrus County
- High Rock Pond, Caswell County
- Rabbit Shuffle Pond, Caswell County
- Lake Rim, Cumberland County
- Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
- Indian Lake, Edgecombe County
- Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County
- C.G. Hill Memorial Park Pond, Forsyth County
- Kernersville Lake, Forsyth County
- Winston Pond, Forsyth County
- Lake Devin, Granville County
- Bur-Mil Park Ponds, Guilford County
- Hagan-Stone Park Ponds, Guilford County
- Oka T. Hester Pond, Guilford County
- San-Lee Park Ponds, Lee County
- Kinston Neuseway Park Pond, Lenoir County
- Freedom Park Pond, Mecklenburg County
- Hornet's Nest Pond, Mecklenburg County
- McAlpine Lake, Mecklenburg County
- Park Road Pond, Mecklenburg County
- Reedy Creek Park Ponds, Mecklenburg County
- Squirrel Park Pond, Mecklenburg County
- Lake Luke Marion, Moore County
- Anderson Community Park, Orange County
- Lake Michael, Orange County
- River Park North Pond, Pitt County
- Laughter Pond, Polk County
- Ellerbe Community Lake, Richmond County
- Hamlet City Lake, Richmond County
- Indian Camp Lake, Richmond County
- Hinson Lake, Rockingham County
- Salisbury Community Lake, Rowan County
- Albemarle City Lake, Stanly County
- Big Elkin Creek, Surry County
- Apex Community Lake, Wake County
- Bass Lake, Wake County
- Bond Park Lake, Wake County
- Lake Crabtree, Wake County
- Shelley Lake, Wake County
- Simpkins Pond, Wake County

Lake Toisnot, Wilson County  
Harris Lake County Park Ponds, Wake County

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

**15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT**

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

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net; or
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.

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

(c) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water.

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

- (1) No more than 50 eels, none of which may be less than six inches in length, from inland fishing waters; and
- (2) No ~~more than 200~~ herring (alewife and blueback ~~in aggregate~~), ~~no more than 25 of which~~ may be ~~greater than six inches in length, taken or possessed~~ from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment dam of the main course on the river. First impoundment dams are Roanoke Rapids Dam on Roanoke River, Rocky Mount Mill Dam on Tar River, Milburnie Dam on Neuse River, Buckhorn Dam on Cape Fear River, Lake Waccamaw Dam on Waccamaw River and Blewett Falls Dam on Pee-Dee River.

(e) Any fishes taken for bait purposes are included within the daily possession limit for that species, if one is specified.

(f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and:

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

Fork Creek

(g) In the waters of the Little Tennessee River, the Catawba River upstream of ~~Lookout Shoals~~ Rhodhiss Dam, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.

*Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292.*

**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 may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

- (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. No person shall possess a loaded firearm or bow with arrow nocked while inside 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) 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.

(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.

- (1) 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, ~~thereon~~ unless said 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 shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl or coyote hunting. Furthermore, only shotguns with any size shot 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.

(2) It is unlawful to possess a loaded firearm in a motorized vehicle on game lands. "Loaded" includes a round in the chamber or attached magazine of the firearm. The following are exempted:

(A) Muzzle loaders are exempt when firing caps are not attached and not readily accessible.

(B) Disabled hunters are exempt when vehicle is not in motion and vehicle is used as a stand.

(C) .22 caliber pistols with barrels not greater than seven and one-half inches in length, listed in Paragraph (c) of this Rule may be loaded if secured in a holster.

(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.

(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 officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so 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 specific 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 specific 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. 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 multiple sets (with anchors less than 15 feet apart) or 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) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) 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 a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in that paragraph.

(i) **Camping.** No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to September 1 through February 29 and April 7 through May 14.

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

(k) **Disabled Sportsman Program.** In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (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) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) **Release of Animals and Fish.** It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, 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. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.

(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 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 where this Paragraph applies shall be 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 shall be unlawful for anyone other than 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" shall be 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 marksmanship, development of shooting skills or for exercising the safe use 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 expressly 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 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 are to 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 Regulation for the purpose of regulating the use of the area.

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

*Note: Text in bold is pending adoption by the WRC.*

**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 special 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 shall 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. 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 "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western"

- season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
- (2) 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.
- (3) 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.
- (4) 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, except that:
- (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
- (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on deer on bear sanctuaries;
- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
- (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (iii) Additionally, raccoon and opossum may be hunted
- when in season on Uwharrie Game Lands;
- (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15.
- (f) The listed seasons and restrictions apply in the following game lands:
- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
- (2) Alligator River Game Land in Tyrrell 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) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (3) Angola Bay Game Land in Duplin and Pender counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (4) Bachlelor Bay Game Land in Bertie and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the ~~first six open days and the last six~~ open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six



- open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
- (C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.
  - (D) On the Singletary Lake Tract deer and bear may be taken only by still hunting.
  - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
  - (F) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (7) Broad River Game Land in Cleveland County.
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
    - (C) Use of centerfire rifles is prohibited.
  - (8) Brunswick County Game Land in Brunswick County: Permit Only Area
  - (9) Buckhorn Game Land in Orange County: Permit Only Area, except during the bow and arrow season for deer, during which the area shall be open as a three-day-per-week area.
  - (10) Buckridge Game Land in Tyrrell County.
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
    - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.
  - (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
    - (A) Six Days per Week Area
    - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving.
- Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the fourth 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 8 through the following Saturday, and during the Deer With Visible Antlers season.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
  - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
    - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
    - (D) Horseback riding, including all equine species, is prohibited.
    - (E) Target shooting is prohibited
    - (F) Wild turkey hunting is by permit **only, except on those areas posted as an archery zone, only.**
    - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
  - (14) Cape Fear 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.
- ~~(15)~~ 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.
- ~~(15)~~ (16) 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 by participants in the Disabled Sportsman Program.
  - (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) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
  - (E) The area encompassed by the following roads is closed to 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.
- ~~(16)~~ (17) Caswell Farm Game Land in Lenoir County-Dove-Only Area
  - (A) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.
- ~~(17)~~ (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.
- ~~(18)~~ (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, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
- ~~(19)~~ (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.
- ~~(20)~~ (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.
- ~~(21)~~ (22) Chowan Swamp Game Land in Gates 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.
- ~~(22)~~ (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. This Rule includes all equine species.
- ~~(23)~~ (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.
- ~~(24)~~ (25) Croatan Game Land in Carteret, Craven and Jones counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

- (C) Waterfowl shall be taken only on the following days:
- (i) 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.
- ~~(25)~~(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 after November 1.
  - (C) Licensed hunting guides may accompany the permitted individual 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 shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
  - (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
  - (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- ~~(26)~~(27) Dare Game Land in Dare County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last day of the 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.
- ~~(27)~~(28) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
  - (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
  - (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal
- weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- ~~(28)~~(29) Elk Knob Game Land in Ashe and Watauga 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.
- ~~(29)~~(30) 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; and
    - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (D) After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the applicable waterfowl seasons, Saturdays of the applicable waterfowl seasons, and on Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days.
  - (E) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(30)~~(31) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- ~~(31)~~(32) Green Swamp Game Land in Brunswick County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(32)~~(33) Gull Rock Game Land in Hyde County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the ~~first six open days and the last six~~ 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 Sep. 1-Feb 28 and April 7- 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 on the Long Shoal River Tract of Gull Rock Game Land.
- ~~(33)~~(34) 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.
- ~~(34)~~(35) Holly Shelter Game Land in Pender 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. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur, provided however, that 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) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(35)~~(36) 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) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- ~~(36)~~(37) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- ~~(37)~~(38) Jordan Game Land in Chatham, Durham, Orange 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 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, including all equine species, is prohibited except on those areas posted as American Tobacco Trail and other areas specifically 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~~ **only, except on those areas posted as an Archery Zone.**
- ~~(38)~~(39) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
  - (B) Use of centerfire rifles shall be 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.
- ~~(39)~~(40) 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.
- ~~(40)~~(41) 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.
- ~~(42)~~ 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.
- ~~(41)~~(43) 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.
- ~~(42)~~(44) 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; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
  - ~~(D)~~ Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- ~~(43)~~(45) 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.
  - (C) Raccoon and opossum shall be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- ~~(44)~~(46) Needmore Game Land in Macon and Swain counties.
- (A) Six Days per Week Area
  - (B) Horseback riding shall be prohibited except on designated trails May 16 through August 31 and all horseback riding shall be prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(45)~~(47) 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.
- ~~(46)~~(48) New Lake Game Land in Hyde ~~County~~ and Tyrrell counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

- (49) 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 third Friday before Thanksgiving.  
 (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the third Saturday before Thanksgiving through the following Wednesday.  
 (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.
- ~~(47)~~(50) North River Game Land in Currituck and Currituck, Camden and Pasquotank 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. Season except in that part in Camden County south of US 158 where the season is the last six 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.
- ~~(48)~~(51) 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.
- (49)(52) 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.
- (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- ~~(50)~~(53) 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.
- ~~(51)~~(54) 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 except on that portion in Avery County south of the Blue Ridge Parkway, and Yancey counties County, and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
- (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- ~~(52)~~(55) Pungo River Game Land in Hyde County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken all the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (56) Rhodes Pond Game Land in Cumberland County – hunting is by permit only. Swimming is prohibited on the area.
- ~~(53)~~(57) Roanoke River Wetlands in Bertie, Halifax and Martin counties  
 (A) Hunting is by Permit only.  
 (B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
- (C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(54)~~(58) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
- ~~(55)~~(59) 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.
- (60) 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 third Friday before Thanksgiving.
  - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the third Saturday before Thanksgiving through the following Wednesday.
  - (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.
- (56)(61) 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.
- (57)(62) 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 third Saturday before Thanksgiving through the following Wednesday, 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, 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 and rabbit~~, raccoon and squirrel seasons specifically 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 will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (G) ~~Opossum and Opossum~~, raccoon and squirrel (fox and gray) hunting on the field trial grounds will be 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 closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of east of SR 1001 and west of US 15/501.
- (I) Horseback riding on field trial grounds from October 22 through March 31 shall be prohibited except by participants in authorized field trials.
- (58)(63) Scuppernong 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.

~~(59)~~(64) Shocco Creek Game Land in Franklin 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, including all equine species, is prohibited.

~~(60)~~(65) 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.
- (C) Deer of either sex may be taken the last six open days 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. This Rule includes all equine species.
- (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.

~~(61)~~(66) 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.

~~(62)~~(67) Suggs Mill Pond Game Land in Bladen County;

- (A) Hunting is by Permit only.
- (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

~~(63)~~(68) Sutton Lake Game Land in New Hanover 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.

~~(64)~~(69) Tar River Game Land in Edgecombe County; hunting is by permit only.

- ~~(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 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.~~

~~(65)~~(70) 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 except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.

~~(66)~~(71) Thurmond Chatham Game Land in Wilkes 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. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow 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. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.

(D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.

~~(67)~~(72) Toxaway Game Land in Transylvania County

- (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 may also take deer of either sex with any legal weapon on the Saturday prior to the



- first segment of the Western bow and arrow 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. This Rule includes all equine species.
- ~~(68)~~(73) 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.
- ~~(69)~~(74) 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.
- ~~(70)~~(75) 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.
- ~~(71)~~(76) White Oak River Impoundment 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; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) After October 1, a special permit is required for hunting on opening

and closing days of the applicable waterfowl seasons, Saturdays of the applicable waterfowl seasons, and on Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days.

- (g) 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 shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.
- (h) The following game lands and refuges shall be 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

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

**SUBCHAPTER 10J - WILDLIFE CONSERVATION  
 AREA REGULATIONS**

**15A NCAC 10J .0102 GENERAL REGULATIONS  
 REGARDING USE OF CONSERVATION AREAS**

- (a) Trespass. Entry on areas posted as Wildlife Conservation Areas for purposes other than wildlife observation, hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or live or dead nongame wildlife species or parts thereof, or other materials, without the written authorization of the landowner: Restrictions. On those areas designated and posted as Colonial Waterbird Nesting Areas, entry is prohibited during the period of April 1 through August 31 of each year, except by written permission of the landowner. Entry into Colonial Waterbird Nesting Areas during the period of September 1 through March 31 will be as authorized by the landowner.
- (b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any wildlife conservation area except in receptacles provided for disposal of such refuse. No garbage dumps or sanitary landfills shall be established on any wildlife conservation area 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 designated wildlife conservation area at any time except during the open hunting seasons or hunting days for game birds or game animals thereon unless such device is cased or not immediately available for use, provided that such devices may be 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 designated wildlife conservation areas at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons. This Rule shall not prevent possession or use of bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a designated wildlife conservation area except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting waterfowl on any area designated as a wildlife conservation area, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) License Requirements:

- (1) Hunting and Trapping:
  - (A) Requirement. Except as provided in Paragraph (d)(1)(B) of this Rule, any person entering upon any designated wildlife conservation area for the purpose of hunting or trapping shall have in his possession a game lands use license in addition to the appropriate hunting or trapping licenses.
  - (B) Exception. A person under 16 years of age may hunt on designated wildlife conservation areas on the license of his parent or legal guardian.
- (2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a designated wildlife conservation area for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a regular fishing license and special trout license. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on designated wildlife conservation areas.

(e) Training Dogs. Dogs shall not be trained on designated wildlife conservation areas except during open hunting seasons for game animals or game birds thereon. Dogs may not be allowed to enter any wildlife conservation area

designated and posted as a colonial waterbird nesting area during the period of April 1 through August 31.

(f) Trapping. Subject to the restrictions contained in 15 NCAC 10B .0110, .0302, and .0303, trapping of furbearing animals is permitted on any area designated and posted as a wildlife conservation area during the applicable open seasons, except that trapping is prohibited:

- (1) on the Nona Pitt Hinson Cohen Wildlife Conservation Area in Richmond County;
- (2) in posted "safety zones" located on any Wildlife Conservation Area.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping areas, or within, into, or across a posted "safety zone" on any designated wildlife conservation area. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any designated wildlife conservation area.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on a road, trail or area posted against vehicular traffic or other than on roads maintained for vehicular use on any designated wildlife conservation area.

(i) Camping. No person shall camp on any designated wildlife conservation area except on an area designated by the landowner for camping. On the coastal islands designated wildlife conservation areas, camping shall be allowed except on those areas designated and posted as Colonial Waterbird Nesting Areas.

(j) Swimming. No person shall swim in the waters located on designated wildlife conservation areas, except that a person may swim in waters adjacent to coastal island wildlife conservation areas.

(k) Motorboats. No person shall operate any vessel powered by an internal combustion engine on the waters located on designated wildlife conservation areas.

(l) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Wildlife Conservation Areas. Persons who have obtained a permit issued pursuant to G.S. 113-297 are exempt from this rule but shall comply with permit conditions.

Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 113-296; 113-297.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .2646 and amend the rule cited as 15A NCAC 18A .2601.*

**Proposed Effective Date:** April 1, 2006

**Public Hearing:**

**Date:** December 6, 2005

**Time:** 2:00 p.m.

**Location:** 1A201, Parker Lincoln Building, 2728 Capital Blvd, Raleigh, NC

**Reason for Proposed Action:** *The amendment and adoption of rules .2601 and .2646 will offer food service establishments the option of submitting supporting documentation to the Department for review and, if accepted, utilize an alternate method of foodhandling without penalty.*

**Procedure by which a person can object to the agency on a proposed rule:** *Contact Sue Grayson, Branch Head, DENR Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632 or email sue.grayson@ncmail.net or phone (919)715-0926 or (919)733-2905.*

**Comments may be submitted to:** *Sue Grayson, 1632 Mail Service Center, Raleigh, NC 27699-1632, (919)715-0926, Fax(919)715-4739 or email sue.grayson@ncmail.net.*

**Comment period ends:** *January 17, 2006*

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A – SANITATION**

**SECTION .2600 – THE SANITATION OF FOOD SERVICE ESTABLISHMENTS**

**15A NCAC 18A .2601 DEFINITIONS**

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means procedures and equipment determined by the Department to be in compliance with this Section. Food equipment that is certified for sanitation by an American National Standards Institute (ANSI) – accredited program shall be approved. ANSI sanitation standards are incorporated by reference including

subsequent amendments and editions. These standards may be obtained from ANSI, 1819 L Street, NW, 6<sup>th</sup> Floor, Washington, DC 20036, at a cost of six-hundred sixty-five dollars (\$665.00) and are also available for inspection at the Division of Environmental Health.

- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the rules of the N.C. Department of Human Resources, Division of Aging.
- (3) "Commissary" means a food stand that services mobile food units and pushcarts. The commissary may or may not serve customers at the food stand's location.
- (4) "Critical control point" means the steps of the process in a specific food system in which controls can be applied to prevent, reduce, or eliminate a food safety hazard and where loss of control may result in an adverse health risk.
- (5) "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- (6) "Cure accelerator" means compounds such as ascorbic acid or erythorbic acid or their derivatives, sodium ascorbate and sodium erythorbate as defined for use in 9 CFR 424.21 which shortens the time required for the distinctive pink color to develop in cured meat and poultry products.
- (7) "Curing" means the process of preserving meat by the addition of salt alone or the combination of one or more ingredients such as sodium nitrate, sugar, curing accelerators, and seasonings and is characterized by the interaction of nitrate and meat pigment resulting in the development of a "cured" pink color.
- ~~(4)~~(8) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department. For purposes of any notices required pursuant to the rules of this Section, notice shall be mailed to "Division of Environmental Health, Environmental Health Services Section, North Carolina Department of Environment and Natural Resources," 1632 Mail Service Center, Raleigh, NC 27699-1632.
- ~~(5)~~(9) "Drink stand" means those establishments in which only beverages are prepared on the

- premises and are served in multi-use containers, such as glasses or mugs.
- ~~(6)~~(10) "Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating, cooking, or processing utensils or equipment, or who is employed at any time in a room in which food or drink is prepared or served.
- ~~(7)~~(11) "Environmental Health Specialist" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- ~~(8)~~(12) "Equipment" means refrigeration, including racks and shelving used in refrigeration, utensil cleaning and culinary sinks and drainboards, warewashing and dishwashing machines, food preparation tables, counters, stoves, ovens, and other food preparation and holding appliances.
- ~~(9)~~(13) "Food" means any raw, cooked, or processed edible substance including meat, meat food products, poultry, poultry products, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (14) "Food Additive" means the meaning stated in the Federal Food, Drug, and Cosmetic Act 201(s) and 21 CFR 170.
- ~~(10)~~(15) "Food service establishment" means any establishment or operation where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- ~~(11)~~(16) "Food stand" means a food service establishment which prepares or serves foods and which does not provide seating facilities for customers to use while eating or drinking.
- ~~(12)~~(17) "Good repair" means that the item in question can be kept clean and used for its intended purpose.
- (18) "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.
- (19) "Hazard" means a biological, chemical, or physical property that may cause an adverse consumer health risk.
- ~~(13)~~(20) "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- ~~(14)~~(21) "Highly susceptible population" means persons who are more likely than other persons in the general population to experience foodborne disease because they are:
- (a) immunocompromised, preschool age children or adults, 55 years of age or older; and
  - (b) obtaining food as a patient or client at a facility that provides services such as custodial care, health care or assisted living, such as an adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.
- ~~(15)~~(22) "Limited food service establishment" means a food service establishment as described in G.S. 130A-247(7).
- ~~(16)~~(23) "Local health director" means the administrative head of a local health department or his authorized representative.
- ~~(17)~~(24) "Meat" or "meat food products" means meat and meat food products as defined in G.S. 106-549.15(14).
- ~~(18)~~(25) "Meat market" means those food service establishments as defined in G.S. 130A-247(1)(v).
- ~~(19)~~(26) "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- ~~(20)~~(27) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- ~~(21)~~(28) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- ~~(22)~~(29) "Poultry" or "poultry products" means poultry and poultry products as defined in G.S. 106-549.51(25) and (26).
- ~~(23)~~(30) "Private club" means a private club as defined in G.S. 130A-247(2).
- ~~(24)~~(31) "Pushcart" means a mobile piece of equipment or vehicle which serves hot dogs or foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.

- ~~(25)~~(32) "Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- ~~(26)~~(33) "Restaurant" means a food service establishment which prepares or serves food and which provides seating.
- (34) "Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.
- (35) "Reduced oxygen packaging" means:
- (A) the reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the surround, 21% oxygen atmosphere; and
  - (B) a process as specified above that involves a food for which *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form.
- ~~(27)~~(36) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- ~~(28)~~(37) "Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- ~~(29)~~(38) "Shellstock" means any shellfish which remains in their shells. Shellfish which are shucked or on the half-shell shall not be considered shellstock.
- ~~(30)~~(39) "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- ~~(31)~~(40) "Substantially similar" means similar in importance, degree, amount, placement or extent.
- ~~(32)~~(41) "Temporary food establishment" means those food or drink establishments which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- ~~(33)~~(42) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers and

similar items with which food or drink comes in contact during storage, preparation, or serving.

Authority G.S. 130A-248.

**15A NCAC 18A .2646 ALTERNATE METHODS AND SPECIALIZED FOOD PROCESSES**

(a) A food establishment shall obtain an approval from the Department before considering:

- (1) the use of alternate methods of compliance for specific food uses; or
- (2) the following specialized processing methods:
  - (A) the use of food additives or adding components such as vinegar as a method of food preservation or to render a food so that it does not meet the definition of a potentially hazardous food;
  - (B) packaging food using reduced oxygen packaging (POP);
  - (C) smoking food as a method of food preservation;
  - (D) curing food;
  - (E) Treating Juice; and
  - (F) other processes determined by the Department to represent a potential public health hazard or nuisance.

(b) The Department may approve alternate methods or specialized food processes for compliance with these Rules if in the opinion of the Department the alternate methods or specialized food processes will result in safe, unadulterated food products.

(c) Before a request is approved, an application shall be provided to the Department by the person requesting the approval. The application shall include:

- (1) a statement of the proposed alternate method or specialized food process that differs from the rule requirement, citing relevant rule section numbers;
- (2) an analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively controlled by the proposal; and
- (3) a HACCP plan if required as specified under Paragraph (d) of this Rule that includes the information specified under Paragraph (e) of this Rule as it is relevant to the request.

(d) An applicant must submit a HACCP plan along with an application to the Department if:

- (1) an approval is required as specified under Subparagraph (a)(2) of this Rule; or
- (2) the Department determines that a food preparation or processing method requires an approval based on a plan submittal specified under 15A NCAC 18A .2607, an

inspectional finding, or a request from an applicant.

(e) For an application that is required under Paragraph (d) of this Rule to have a HACCP plan, the HACCP plan shall include:

- (1) a flow diagram by specific food or category type identifying critical control points and providing information on the following:
  - (A) ingredients, materials and equipment used in the preparation of that food; and
  - (B) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.
- (2) a food employee and supervisory training plan that addresses the food safety issues of concern; and
- (3) a statement of standard operating procedures for the plan under consideration including clearly identifying:
  - (A) each critical control point;
  - (B) the critical limits for each critical control point;
  - (C) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the responsible person;
  - (D) the method and frequency for the responsible person to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
  - (E) action to be taken by the responsible person if the critical limits for each critical control point are not met, and
  - (F) records to be maintained by the responsible person, for a length of time specific to the hazard associated with the process, to demonstrate that the HACCP plan is properly operated and managed.
- (4) additional scientific data or other information, as required by the Department, supporting the determination that food safety is not compromised by the proposal.

(f) If the Department approves a request for an alternate method or specialized food process, the food service establishment shall:

- (1) comply with the HACCP plans and procedures that are submitted as specified under Paragraph (d) of this Rule and approved by the Department;
- (2) maintain and provide to the Department, upon request, records specified under Subparagraph (e)(3) of this Rule that

demonstrate the following are routinely employed;

- (A) procedures for monitoring critical control points;
  - (B) monitoring of the critical control point;
  - (C) verification of the effectiveness of an operation or process; and
  - (D) necessary documentation of corrective actions if there is failure at a critical control point.
- (3) submit to the Department any significant changes in the product or manufacturing process that may affect the accuracy of the HACCP plan.

(g) The Department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under Paragraph (e) of this Rule.

*Authority G.S 130A-24.*

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## TITLE 21 – OCCUPATIONAL LICENSING BOARDS

### CHAPTER 34 - BOARD OF FUNERAL SERVICE

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends amend the rule cited as 21 NCAC 34C .0101.*

**Proposed Effective Date:** *March 1, 2006*

**Public Hearing:**

**Date:** *December 14, 2005*

**Time:** *9:00 a.m.*

**Location:** *NC Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

**Reason for Proposed Action:** *A temporary amendment was made to this rule in 2005. The Board wishes to make this amendment permanent.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections can be filed as written comments or made at the public hearing.*

**Comments may be submitted to:** *Paul Harris, Board of Funeral Service, 1033 Wade Avenue, Suite 108, Raleigh, NC 27605*

**Comment period ends:** *January 17, 2006*

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SUBCHAPTER 34C - CREMATORIES**

**SECTION .0100 - GENERAL PROVISIONS**

**21 NCAC 34C .0101 ELECTION TO CREMATORY AUTHORITY**

(a) Definitions. As used in this Rule:

- (1) "Crematory operator" shall have the same meaning as the term "crematory licensee" defined in G.S. 90-210.121(12).
- (2) "Return official envelope" shall mean the envelope in which the crematory operator places a completed ballot for election to the Crematory Authority to return to the Board.
- (3) "Seat subject to election" means the seat held by a member of the Crematory Authority whose term expires December 31 of the calendar year in which the election is held.

(b) The nomination and election of members of the ~~North Carolina~~ Crematory Authority shall be conducted simultaneously with the nomination and election of members of the Board, and the procedures in G.S. 90-210.18(c) shall apply, except that nomination shall be made by a written petition signed by at least three crematory licensees as follows:

- (1) Every crematory operator with a current North Carolina license shall be eligible to vote. The list of crematory operators with a current North Carolina license at the time ballots are prescribed shall constitute the registration list for elections. The Board shall keep an official list of all crematory operators in its office. The Board shall post a list of crematory operators indicating whether a return official envelope has been returned during each election.
- (2) Nomination of candidates for election shall be made to the Board by a written petition pursuant to 21 NCAC 34A .0103. Petitions for nomination must be filed with the Board between July 1 and August 1 of the calendar

year preceding the expiration of the term of the seat subject to election. Any candidate who is nominated may withdraw his or her name after filing written notice with the Board prior to the closing of the polls in any election.

(3) The following procedures shall apply to ballots for election to the Crematory Authority:

(A) The Board shall prescribe ballots and determine the time allowed for voting at its first meeting after nominations have closed. The ballots shall contain a listing of the nominees in alphabetical order; instructions for voting; a method of identification; and other information the Board deems necessary as required by law.

(B) At the same meeting where ballots are prescribed, the Board shall designate a day for ballots to be mailed; a deadline for the latest day and time for ballots to be returned; and the day and hour when ballots will be canvassed and counted. The Board shall set the deadline for ballots to be returned to be at least 10 days after the time ballots are mailed.

(C) The Board shall mail to each crematory operator a ballot; a return official envelope; a notice designating the latest day and hour for ballots to be received by the Board; a notice of when ballots will be canvassed and counted; and other information the Board deems necessary as required by law. The return official envelope shall be addressed to the Board; shall bear a serial number; and shall have printed on the left portion of its face the following:

"Serial No. of Envelope \_\_\_\_\_  
Signature of Voter \_\_\_\_\_  
Address of Voter \_\_\_\_\_

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)."

(4) Ballots shall be canvassed publicly at the designated day and hour. Any eligible voter may be present. No ballot shall be canvassed unless it has been delivered in a sealed return official envelope to the Board by hand or by U.S. mail before the latest day and hour designated by the ballot for receipt.

(5) Ballots shall be counted as follows:

- (A) All return official envelopes shall be displayed to the persons present. Any person present may challenge the qualification of the voter whose signature appears on the return official envelope or the validity of the return official envelope. Any challenged return official envelope shall be set aside, and the Board may hear the challenge either immediately or after all unchallenged ballots have been counted.
- (B) After all return official envelopes have been displayed, the Board shall open all unchallenged return official envelopes, extract the ballot without showing its marking as much as possible, and separate each ballot from its return official envelope.
- (C) After all ballots have been separated, the Board shall display all ballots. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election; provided that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choice or choices from the ballot. Any person present may challenge the validity of the ballot only on the grounds of defects appearing on the face of the ballot. The Board may hear the challenge either immediately or after all unchallenged ballots have been counted.
- (D) After all ballots have been displayed, all unchallenged ballots shall be counted, and all remaining challenges shall be resolved by the Board. The Board shall count the number of votes cast for each candidate and the total number of votes cast. If a candidate dies or withdraws his or her nomination before polls are closed in any election, he or she shall be eliminated from the contest, and any votes cast for him or her shall be disregarded and shall not count toward the total number of votes cast.
- (6) The following procedures shall apply to fill all seats subject to election:
- (A) To determine a majority of votes cast when there is one seat subject to election, the total number of votes cast for all candidates shall be divided by two, and any candidate receiving a number of votes exceeding one half of the total number of votes cast shall be deemed to have received a majority of votes cast and shall be deemed elected. If no candidate receives a majority of votes cast, the candidate receiving the highest vote total shall be deemed elected.
- (B) To determine the majority of votes cast when there are two seats subject to election, the total number of votes cast for all candidates shall be divided by four, and any candidate receiving a number of votes exceeding this sum shall be deemed to have received a majority of votes cast. Any candidate receiving a majority of votes cast shall be deemed elected, but if more than two candidates receive a majority of votes cast, the candidates receiving the two highest vote totals shall be deemed elected. If no candidate receives a majority of votes cast, the candidate receiving the highest vote total shall be deemed elected. If one candidate has been deemed elected but one seat remains vacant because no other candidate received a majority of votes cast, the candidate receiving the highest vote total among candidates who did not receive a majority of votes cast shall be deemed elected.
- (C) In any election where a candidate was deemed elected but failed to receive a majority of votes cast, the candidate who received the next highest vote total but was not elected may file a written petition requesting a second election within ten days after the first election. The second election shall be between the petitioner and the candidate who was deemed elected but did not receive a majority of votes cast. The procedures in Subparagraphs (b)(1) through (b)(6) of this Rule shall apply to the second election except where inconsistent with this subparagraph. The candidate receiving the majority of votes cast in the second election shall be deemed elected.



(D) If there is a tie vote between candidates in any election, the tie shall be resolved by a vote of the Board. If there is a tie after a vote of the Board, the President of the Board may break the tie.

(E) If, after nominations have closed, there is only one candidate for each seat subject to election, the Board may declare the candidate or candidates elected without holding an election. If, after nominations have closed, there is no candidate for a seat subject to election or if a candidate receiving a majority of votes cast dies or withdraws after the election but before taking office, the Board may fill the position by majority vote.

(7) Each new member shall take office on the first day of his or her term unless the election to the Crematory Authority has not completed by the beginning of the term, in which case the new member shall take office immediately after the election has been completed.

(8) If a member of the Board is nominated for election to the Crematory Authority and does not withdraw his or her name, he or she shall be disqualified from all matters pertaining to that election, and the remaining members of the Board shall proceed without his or her participation.

(9) The Board shall keep the voting records required by 21 NCAC 34A .0104 for a period of six months following the election.

Authority G.S. 90-210.122(c); 90-210.134(a).

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**CHAPTER 52 - BOARD OF PODIATRY EXAMINERS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Podiatry Examiners intends amend the rule cited as 21 NCAC 52 .0205.*

**Proposed Effective Date:** March 1, 2006

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Penney De Pas, CAE, Assistant Executive Secretary, NC Board Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151, phone(919)861-5583, fax(919)787-4916 or email info@ncbpe.org.*

**Reason for Proposed Action:** *The proposed amendment includes both a grammar change to allow for singular-plural agreement and a clarification of reasons why a podiatrist will*

*be allowed to miss the mandatory practice orientation to avoid frivolous reasons.*

**Procedure by which a person can object to the agency on a proposed rule:** *Objections in writing may be submitted on or before January 17, 2006 to: Penney De Pas, CAE, Assistant Executive Secretary, Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151, phone(919)861-5583, fax(919)787-4916 or email info@ncbpe.org.*

**Comments may be submitted to:** *Penney De Pas, Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151, phone(919)861-5583, fax(919)787-4916 or email info@ncbpe.org.*

**Comment period ends:** January 17, 2006

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.*

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SECTION .0200 - EXAMINATION AND LICENSING**

**21 NCAC 52 .0205 PRACTICE ORIENTATION**

The board shall require each applicant, who has otherwise successfully completed ~~their~~ his/her requirements to practice in the state, to attend a practice- and ethics-orientation prior to receiving his/her license. Should an applicant be unable to attend the required orientation in person for a documented emergency reason, such as death in the family or personal medical emergency, e.g., emergency appendectomy, then the board shall require an applicant to spend up to one week as a trial period to better equip them to practice podiatry in North Carolina in the office of and under the direction of a podiatrist practicing in North Carolina. Such orientation shall take place only in those offices approved by the board and assignment of an orientation office in which to work shall be considered as a portion of the clinical examination in podiatry. The license shall not be issued until the orientation requirement has been fulfilled.

Authority G.S. 90-202.4(g); 90-202.6(a)(b).

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**CHAPTER 57 – APPRAISAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Appraisal Board intends to amend the rules cited as 21 NCAC 57A .0201, .0203-.0204, .0301, .0402, .0405, .0407; 57B .0211, .0306, .0403, .0503, .0602-.0603, .0609, .0612.*

**Proposed Effective Date:** April 1, 2006

**Public Hearing:**

**Date:** December 13, 2005

**Time:** 9:00 a.m.

**Location:** 3900 Barrett Drive, Suite 100, Raleigh, NC 27609

**Reason for Proposed Action:**

**21 NCAC 57A .0201** - Currently, applicants to become trainees or appraisers must complete a 15 hour course in appraisal standards as part of their prelicensing education. Applicants who received their education prior to 2003 have not had the 15 hour standards (USPAP course). This rule makes it clear that applicants seeking to upgrade their status must have taken the 15 hour course within the past 5 years. In addition, the examination required before licensure or certification is now taken after experience has been gained, but the current examination measures education, not experience. A new test will be in effect in January 2008 that will measure experience, not education. Until that time, applicants should be able to take the examination any time after completing their education.

**21 NCAC 57A .0203** – Currently an appraiser licensed in North Carolina who resides out of state is not required to be in good standing in his or her state of residence. This rule would require such good standing.

**21 NCAC 57A .0204** – Current rules state that continuing education is required every other year. This amendment clarifies the rule. In addition, this rule would require that continuing education be completed by June 1 of every odd numbered year, instead of June 30, giving staff more time to process renewals in those years. Finally, current rules require that appraisers residing out of state must complete continuing education in North Carolina if they do not live in a state with which the North Carolina Appraisal Board has reciprocity. The proposed amendment would make it easier for those appraisers to renew their licenses by allowing them to substitute a letter of good standing from the resident state indicating that they have not met the continuing education requirements in the resident state.

**21 NCAC 57A .0301** – Current rules state that applicants for licensure and certification must take the examination after education and experience is completed. Federal guidelines regarding the amount and type of education required to be a real estate appraiser, as well as the contents of the examination itself, will be changing effective January 1, 2008. There are concerns that people beginning their appraisal

education now will not be able to complete their experience in time to take the examination before the more stringent requirements are in place. This proposed amendment will allow applicants for licensure or certification to take the examination any time after they have completed the educational requirements, and to then get their experience, so that they will not be adversely affected by the change in requirements.

**21 NCAC 57A .0402, .0405** – Changes were made to these rules in 2005 where the terms "state licensed" and "state-certified" were change to simply "licensed" and "certified". These rules did not reflect that change.

**21 NCAC 57A .0407** – Current rules require a supervisor to notify the Board when the supervisor engages a trainee, but not when the trainee leaves. This proposed amendment would require such notification. The proposed amendment would also delete a requirement that the trainee's log include the date the declaration form was sent to the Board since that information is already included in another form.

**21 NCAC 57B .0211, .0609** – Some schools and course sponsors have been making requests for approval of changes a day or two before those changes would take effect. This proposed amendment would require that schools and course sponsors give 15 calendar days' notice of such proposed changes so that the Board could have enough time to decide whether to grant such approval.

**21 NCAC 57B .0306** – The Board is concerned that instructors for prelicensing and precertification courses must have adequate experience in order to be adequate instructors. The proposed amendment would require that instructors have held their current level of licensure for a minimum period before they could become instructors. In addition, approval for schools, course sponsors and instructors currently expires on June 30 of each year. Other proposed rules would have school and course sponsor approval expire on December 31 of each year. This proposed amendment would have approval of instructors expire on December 31 of each year so that all educational providers would expire at the same time.

**21 NCAC 57B .0403, .0503** – Currently, approval of courses expires on June 30 of each year, which is the same time that all appraisal licenses expire. The proposed amendment would have all courses expire on December 31 of each year so that existing staff would be better able to process the applications for renewal without having to hire temporary help during June.

**21 NCAC 57B .0602** – The Board currently requires copies of all materials be sent with the application. This proposed amendment brings the rules into conformance with current practice so that applicants have notice of the requirement.

**21 NCAC 57B .0603** – Appraisers and trainees are required to take a National USPAP course every two years. Some course providers indicate in their course titles that the course titles that the course is a USPAP course when it is not the National USPAP course, which causes confusion among students as to whether the course meets the USPAP requirement. The proposed amendment would allow providers to use the terms "USPAP" or "Uniform Standards of Professional Appraisal Practice" in the course title only if the course is the 15 hour of 7 hour national course.

21 NCAC 57B .0612 – Some schools and course sponsors have been offering continuing education classes stating that students will receive continuing education credit in North Carolina for those classes when they have not been approved to do so. The proposed amendment will make it clear that the Board can deny or withdraw approval of those courses if it is found that such misleading advertising occurred.

**Procedure by which a person can object to the agency on a proposed rule:** Make comments in written form to Roberta Ouellette, North Carolina Appraisal Board, PO Box 20500, Raleigh, NC 27619, by email to roberta.ncab.org, or by fax at (919)420-7925. Attend the public hearing on December 13, 2005 and make oral comments.

**Comments may be submitted to:** Roberta Ouellette, PO Box 20500, Raleigh, NC 27619, phone (919)420-7920, fax (919)420-7925, email roberta.ncab.org.

**Comment period ends:** January 17, 2006

**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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SUBCHAPTER 57A - REGISTRATION LICENSING, CERTIFICATION AND PRACTICE**

**SECTION .0200 – TRAINEE REGISTRATION, APPRAISER LICENSING AND CERTIFICATION**

**21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION, APPRAISER LICENSURE AND CERTIFICATION**

(a) Applicants for trainee registration, licensure as a licensed residential real estate appraiser and certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 as further set forth in Subparagraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this Rule, provided however that registration as a trainee or licensure as a licensed residential real estate appraiser is not prerequisite

for certification as a certified residential or general real estate appraiser:

- (1) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education in the areas of Introduction to Real Estate Appraisal, Valuation Principles and Practices, Applied Residential Property Valuation, ~~and, effective January 1, 2003,~~ and the Uniform Standards of Professional Appraisal Practice (USPAP) or appraisal education found by the Board to be equivalent to such courses.
- (2) Applicants for licensure as a licensed residential real estate appraiser shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in Subparagraph (a)(1) of this Rule, and shall have obtained at least 2,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of 18 calendar months. Applicants must have been actively engaged in real estate appraising for at least 18 months prior to the date application is made. Applicants shall also have taken and passed the licensed residential examination as specified in 57A .0301 of these Rules within the two-year period immediately preceding the date application is made.
- (3) Applicants for certification as a certified residential real estate appraiser shall have completed those courses required for registration as a trainee or licensure as a licensed residential real estate appraiser or equivalent education as set forth in Subparagraph (a)(1) of this Rule and, in addition, within the five-year period immediately preceding the date application is made, the 15 hour Uniform Standards of Professional Appraisal Practice (USPAP) course, and a course in Introduction to Income Property Appraisal that consists of ~~consisting of~~ at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 2,500 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two calendar years. Applicants must have been actively engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in

the appraisal process. Applicants shall also have taken and passed the certified residential examination as specified in 57A .0301 of these Rules within the two-year period immediately preceding the date application is made.

- (4) Applicants for certification as a certified general real estate appraiser shall have completed those courses required for certification as a certified residential real estate appraiser or equivalent education and, in addition, within the five-year period immediately preceding the date application is made, the 15 hour Uniform Standards of Professional Appraisal Practice (USPAP) course, and courses in Advanced Income Capitalization Procedures and Applied Income Property Valuation each consisting of at least 30 classroom hours of instruction or equivalent education; and shall have obtained at least 3,000 hours of appraisal experience acquired within the five-year period immediately preceding the date application is made and over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been actively engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of complex properties or of improved properties in which the income approach was utilized in the appraisal process. Applicants shall also have taken and passed the certified general examination as specified in 57A .0301 of these Rules within the two-year period immediately preceding the date application is made.

(b) Applicants for licensure or certification may be required to provide to the Board copies of appraisal reports in support of experience credit. All appraisals submitted in support of experience credit must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(c) When a trainee becomes a licensed or certified real estate appraiser or when a licensed real estate appraiser becomes certified as a real estate appraiser, his registration or licensure shall be immediately canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his previous certification shall be immediately canceled by the Board.

(d) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee will be retained by the Board. An applicant

whose application has been cancelled and who wishes to obtain a registration, license or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

*Authority G.S. 93E-1-6(a); 93E-1-10.*

### **21 NCAC 57A .0203 REGISTRATION, LICENSE AND CERTIFICATE RENEWAL**

(a) All registrations, licenses and certificates expire on June 30 of each year unless renewed before that time.

(b) A holder of a trainee registration, an appraiser license or certificate desiring the renewal of such registration, license or certificate shall apply for same in writing upon the form approved by the Board and shall forward the required fee of two-hundred dollars (\$200.00). Forms are available upon request to the Board. The renewal fee is not refundable under any circumstances.

(c) All trainees, licensees and certificate holders, either active or inactive, resident or non-resident, who are required by G.S. 93E-1-7 to complete continuing education as a condition of renewal, shall be required to satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(d) An applicant applying for renewal of a registration, license or certificate obtained by reciprocity must submit with the renewal application a current license history from the appraiser regulatory authority of the state upon whose qualification requirements the reciprocal registration, license or certificate was granted showing that the applicant is currently registered, licensed or certified in good standing. A holder of a trainee registration, an appraiser license or certificate that was originally obtained by examination in North Carolina and who resides out of state must, if currently licensed by the appraiser certification board of that state, supply a current license history from the appraiser regulatory authority of the state of residence showing that the applicant is currently registered, licensed or certified in good standing in the resident state. Submission of false or misleading information to the Board in connection with registration, license or certificate renewal shall constitute grounds for disciplinary action.

(e) Any person who acts or holds himself out as a registered trainee, state-licensed or state-certified real estate appraiser while his trainee registration, appraiser license or certificate is expired shall be subject to disciplinary action and penalties as prescribed in Chapter 93E of the North Carolina General Statutes.

*Authority G.S. 93E-1-10.*

### **21 NCAC 57A .0204 CONTINUING EDUCATION**

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the renewal of their registration, license or ~~certificate~~, certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Registered trainees who were initially registered with the Board after January 1 of an odd numbered year will not be required to

show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must complete 28 hours of continuing education ~~between July 1, 2003 and June 30, 2005 and prior to June 30~~ by June 1 of every odd numbered ~~year thereafter.~~ year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education ~~purposes.~~ purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the annual continuing education requirement. Trainees, licensees and certificate holders may not take the same continuing education course more than once during the two year continuing education cycle. The 7 hour National Uniform Standards of Professional Appraisal Practice (USPAP) update course may be taken once for each edition of USPAP.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, licensee or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to .0204(a) must, as part of the 28 hours of continuing education required in .0204(b) of this section, complete the seven hour National USPAP update course, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent, prior to ~~June 30~~ June 1 of every odd numbered year.

(e) A licensee who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a prescribed certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than ~~June 30~~ June 15 of each year.

In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$ 50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. ~~The awarding of credit for such activities is wholly discretionary on the part of the Board.~~ Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit shall be deemed to have taken an equivalent course and shall not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every three years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received by June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year.

(h) A trainee, licensee or certificate holder may receive continuing education credit by taking any of the Board-approved precicensing or precertification courses or their approved equivalents. These courses cannot be used for both continuing education credit and for credit for licensing purposes. In order to receive continuing education credit for these courses, the examination must be taken. Trainee, licensees and certificate holders who wish to use a precicensing course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder who resides in another state and is currently licensed by the appraiser certification board of that state may satisfy the requirements of this Section by providing a current letter of good standing from the resident state showing that the licensee has met all continuing education requirements in the resident state.

*Authority G.S. 93E-1-7(a); 93E-1-10.*

**SECTION .0300 - APPRAISER EXAMINATIONS**

**21 NCAC 57A .0301 TIME AND PLACE**

(a) ~~Applicants who have met the education and experience requirements shall be issued an examination approval form by the Appraisal Board in order to take the examination. Until December 31, 2007, trainees and appraisers who hold a current, valid registration, license or certification issued by the Board and who wish to apply for licensure or for a higher level of certification may apply to take the examination for that license or higher certification level once they have completed all prelicensing or precertification education required as stated in 21 NCAC 57A .0201.~~ The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for real estate trainee registrations, appraiser licenses and certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions shall be grounds for denial, suspension or revocation of a license or certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

(d) Effective January 1, 2008, applicants must have completed both the education and experience requirements as set forth in 21 NCAC 57A .0201 before they will be issued an examination approval form.

*Authority G.S. 93E-1-6(c); 93E-1-10.*

**21 NCAC 57A .0402 DISPLAY OF REGISTRATIONS, LICENSES AND CERTIFICATES**

(a) The original or a copy of the trainee registration, real estate appraiser license or certificate of a trainee, ~~state-licensed licensed or state-certified certified~~ real estate appraiser shall be prominently displayed at each of the trainee's or appraiser's places of business.

(b) The annual registration, license or certificate renewal pocket card issued by the Board to each trainee, ~~state-licensed licensed or state-certified certified~~ real estate appraiser shall be retained by the trainee, licensee or certificate holder as evidence of registration, licensure or certification.

*Authority G.S. 93E-1-10.*

**21 NCAC 57A .0405 APPRAISAL REPORTS**

(a) Each written appraisal report prepared by or under the supervision of a ~~state-licensed licensed or state-certified certified~~ real estate appraiser shall bear the signature of the ~~state-licensed licensed or state-certified certified~~ appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "licensed residential real estate appraiser", "~~state-certified residential~~ certified residential real estate appraiser",

or the designation "~~state-certified~~ certified general real estate appraiser", or "~~state-certified~~ certified residential/general real estate appraiser", as applicable. Each such appraisal report shall also indicate whether or not the ~~state-licensed licensed or state-certified certified~~ appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

(b) Every ~~state-licensed licensed and state-certified~~ "certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "~~state-licensed licensed residential real estate appraiser~~", a "~~state-certified certified residential real estate appraiser~~", or as a "~~state-certified~~ certified general real estate appraiser" or "~~state-certified~~ certified residential/general real estate appraiser", as applicable. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A ~~state-licensed licensed or state-certified certified~~ real estate appraiser who signs an appraisal report prepared by another person, in any capacity, shall be fully responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

*Authority G.S. 93E-1-10.*

**21 NCAC 57A .0407 SUPERVISION OF TRAINEES**

(a) A licensed or certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the licensed or certified real estate appraiser:

- (1) has been licensed or certified for at least two years;
- (2) has no more than one trainee working under his or her supervision at any one time, if the supervisor is a licensed real estate appraiser, or two trainees if the supervisor is a certified real estate appraiser, ~~either as employees or as subcontractors.~~ appraiser. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the ~~trainee;~~ trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision. A trainee who upgrades to licensed or certified will be removed from the supervision of the appraiser as of the date of upgrade;
- (3) actively and personally supervises the trainee. The supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments performed after the effective date of this Rule for which the trainee will perform more than 75% of the work. After that point, the trainee may perform the

inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location;

- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) prepares and furnishes to each trainee, whose services were utilized in connection with the appraisal, a report describing the nature and extent of assistance rendered by the trainee in connection with the appraisal, and places a copy of such report in the supporting file for the appraisal. In addition, the supervisor must make available to the trainee a copy of every appraisal report to the trainee where the trainee performs more than 75% of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means only an active suspension or a revocation.

(b) The trainee must maintain a log on a form prescribed by the Board that includes, but is not limited to, each appraisal performed by the trainee, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject property and the date the supervisor sent in the Supervisor Declaration Form to the Appraisal Board. ~~subject.~~

(c) A license or certificate holder who wishes to supervise a trainee must attend an education program regarding the role of a supervisor before such supervision may begin.

(d) Trainees must assure that the supervisor has properly completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Section.

(e) Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

Authority G.S. 93E-1-3(b); 93E-1-10.

**SUBCHAPTER 57B – REAL ESTATE APPRAISAL EDUCATION**

**SECTION .0200 - COURSE SPONSOR STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION**

**21 NCAC 57B .0211 PROGRAM CHANGES**

Approved schools and course sponsors must notify the Board of any changes to be made with respect to course content, course completion standards, instructors, school director or textbooks as prescribed in Section .0300 of this Subchapter. Requests for approval of such changes must be in ~~writing,~~ writing, and must be sent to the Board at least 15 calendar days before the proposed change would take effect.

Authority G.S. 93E-1-8(a); 93E-1-10.

**SECTION .0300 - COURSE STANDARDS FOR PRELICENSING AND PRECERTIFICATION EDUCATION**

**21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS**

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal prelicensing and precertification courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years full time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience being in residential property appraising. Instructors must also be a certified residential ~~appraiser,~~ appraiser and have been so certified for at least three years.
- (2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. Instructors must also be a certified general real estate ~~appraiser,~~ appraiser and have been so certified for at least five years.

- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.
- (b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area the lecturer is teaching.
- (c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:
  - (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary;
  - (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;
  - (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
  - (4) The ability to effectively utilize instructional aids to enhance learning;
  - (5) The ability to maintain an effective learning environment and control of a class; and
  - (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.
- (d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of a prelicensing course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.
- (e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act. This inquiry may include consideration of whether disciplinary action or criminal charges are pending.
- (f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary

- action means a reprimand, suspension (whether active or inactive) or a revocation.
- (g) Proposed prelicensing or precertification instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports.
- (h) Persons desiring to become instructors for prelicensing and precertification courses must file an application for approval with the Board. Board approval of instructors expires on the next ~~June 30~~ December 31 following the date of issuance. Instructors who wish to renew their approval must file an application for renewal of approval annually on or before ~~June 1~~ December 1. There is no fee for application for or renewal of instructor approval. Once an instructor has been approved to teach a specific prelicensing or precertification course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer prelicensing and precertification courses.

Authority G.S. 93E-1-8(a); 93E-1-10.

**SECTION .0400 - COURSE SPONSOR FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION**

**21 NCAC 57B .0403 FEE FOR RENEWAL OF COURSE APPROVAL**

- (a) Board approval of courses expires on the next ~~June 30~~ December 31 following the date of issuance. In order to assure continuous approval of courses, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before ~~June 1~~ December 1. ~~Applications for renewal that are complete and that are received between June 1 and June 30 will be processed after processing applications received by the due date. All applications for renewal of course approval received on or before June 30~~ Applications which are incomplete as of that date, incomplete, as well as all applications for renewal of course approval submitted after ~~June 30~~ December 1, shall be treated as original course approval applications.
- (b) The annual fee for renewal of Board approval shall be fifty (\$50.00) for each course for which renewal of Board approval is requested. The fee is non-refundable.

Authority G.S. 93E-1-8(a),(b); 93E-1-10.

**SECTION .0500 - PRIVATE REAL ESTATE APPRAISAL SCHOOL FEES FOR PRELICENSING AND PRECERTIFICATION EDUCATION**

**21 NCAC 57B. 0503 FEE FOR RENEWAL OF COURSE APPROVAL**

- (a) Board approval of courses expires on the next ~~June 30~~ December 31 following the date of issuance. In order to assure continuous approval of courses, applications for



renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before ~~June 1, December 1.~~ Applications for renewal that are complete and that are received between June 1 and June 30 will be processed after processing applications received by the due date. All applications for renewal of course approval received on or before June 30. ~~Applications which are incomplete as of that date, incomplete,~~ as well as all applications for renewal of course approval submitted after ~~June 30, December 1,~~ shall be treated as original course approval applications.

(b) The annual fee for renewal of Board approval shall be fifty (\$50.00) for each course for which renewal of Board approval is requested. The fee is non-refundable.

*Authority G.S. 93E-1-8(a),(b); 93E-1-10.*

**SECTION .0600 - CONTINUING EDUCATION COURSES**

**21 NCAC 57B .0602 APPLICATION AND FEE**

(a) Course sponsors seeking approval of their courses as appraisal continuing education courses must make written application to the Board. A course sponsor must be the owner of the proprietary rights to the course for which approval is sought or must have the permission of the course owner to seek course approval. If the course for which approval is sought is one that may be offered outside North Carolina, and the course owner wants the Board to approve such course when it is conducted outside North Carolina, application must be made by the course owner. After receipt of a properly completed application, the Board will review the application pursuant to the criteria set forth in 21 NCAC 57B.0603 and shall notify the sponsor of its decision. Decisions to approve or withhold approval lie within the sole discretion of the Board.

(b) The original application fee shall be one hundred dollars (\$100.00) for each course for which approval is sought, provided that no fee is required if the course sponsor is an accredited North Carolina college, university, junior college, or community or technical college, or if the course sponsor is an agency of the federal, state or local government. The fee is non-refundable. A course sponsor may offer approved courses as frequently as is desired during the period for which approval is granted without paying additional fees.

(c) Each application must be accompanied by copies of all course materials, including handbooks, slides, overheads, and other non-published materials. The application must also include the title, author, publisher and edition for each published textbook. Each application must also have a timed outline for the course.

*Authority G.S. 93E-1-8(c),(d).*

**21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL**

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
  - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification; and
  - (b) either:
    - (i) two years' full-time experience that is directly related to the subject matter to be taught;
    - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught;
    - (iii) two years' full-time experience teaching the subject matter to be taught; or
    - (iv) an equivalent combination of such education and experience.
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his

personal instruction; however, such other persons shall not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.

- (6) A trainee or appraiser may receive up to 14 hours of credit every two years in the period ending on ~~June 30~~ June 1 of each odd numbered year for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and, must make available at the sponsor's expense, all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, licensed and certified real estate appraisers. Activities not

eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, trade conferences or similar activities.

- (8) The course sponsor must certify that the course shall be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.
- (9) The course title may not include the words "Uniform Standards of Professional Appraisal Practice" or "USPAP" unless the course is either the 15 hour National USPAP course or the seven hour National USPAP update course. If the course is the seven hour national USPAP course, the course title must state which edition of USPAP will be taught in that specific course.
- (10) Each course must utilize a textbook or course materials that have been approved by the Board.

*Authority G.S. 93E-1-8(c); 93E-1-10.*

**21 NCAC 57B .0609 CHANGES DURING THE APPROVAL PERIOD**

Course sponsors must obtain advance approval from the Board for any changes to be made in approved courses with regard to the number of classroom hours, course content or instructors. Requests for approval of such changes must be in ~~writing~~ writing, and must be sent to the Board at least 15 calendar days before the proposed change would take effect.

*Authority G.S. 93E-1-8(c); 93E-1-10.*

**21 NCAC 57B .0612 WITHDRAWAL OR DENIAL OF APPROVAL**

The Board may deny or withdraw approval of any course upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course approval or renewal of course approval;
- (2) the course sponsor has refused or failed to comply with any of the provisions of this Section;
- (3) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (4) the school or course sponsor has offered or held a continuing education course stating that the students will receive continuing education credit from the North Carolina Appraisal Board when it is not approved to do so;
- ~~(4)~~(5) the instruction provided in a course is of unsatisfactory quality; or

(5)(6) the instructor failed to demonstrate effective teaching skills.

- State
- Local
- Substantive (≥\$3,000,000)
- None

Authority G.S. 93E-1-8; 93E-1-10.

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SUBCHAPTER 58A - REAL ESTATE BROKERS

CHAPTER 58 – REAL ESTATE COMMISSION

SECTION .0100 - GENERAL BROKERAGE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to adopt the rules cited as 21 NCAC 58A .1901-.1904; 58F .0101-.0106; 58G .0101, .0114, .0301-.0302, .0304, .0402, .0406, .0502-.0504, .0506, .0616, .0902, .1701-.1704, .1708, .1711, .1801, .1803, .1804, .1806-.1809; 58B .0202, .0501, .0601-.0602; 58C .0101-.0105, .0202-.0204, .0206, .0209, .0216-.0217, .0301-.0302, .0304-.0305, .0307, .0309, .0311, .0601-.0608; 58E .0102, .0302, .0406 and repeal the rules cited as 21 NCAC 58A .0510; 58E .0407.

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing from its formation. A broker or salesperson shall not continue to represent a buyer or tenant without a written agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for its existence for a definite period of time, shall include the licensee's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this rule, an agreement between licensees to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

Proposed Effective Date: April 1, 2006

Public Hearing:

Date: December 7, 2005

Time: 9:00 a.m.

Location: 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action: Changes in the North Carolina General Statutes.

Procedure by which a person can object to the agency on a proposed rule: Contact the rulemaking coordinator, Pamela Millward by email: pmillward@ncrec.state.nc.us, or by writing 1313 Navaho Drive, Raleigh, NC 27609.

Comments may be submitted to: Pamela Millward, 1313 Navaho Drive, Raleigh, NC 27609, phone (919)875-3700, fax (919)981-5023, email pmillward@ncrec.state.nc.us.

Comment period ends: January 17, 2006

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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate transaction shall contain the following provision: The broker shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status. status of any party or prospective party to the agreement. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker or salesperson shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker or salesperson's broker's name and license number thereon, review the publication with

Fiscal Impact

the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker ~~or salesperson~~ shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker ~~or salesperson~~ and a consumer where the consumer or broker ~~or salesperson~~ begins to act as though an agency relationship exists and the consumer begins to disclose to the broker ~~or salesperson~~ personal or confidential information.

(d) A real estate broker ~~or salesperson~~ representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker ~~or salesperson~~ makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker ~~or salesperson~~ working directly with a prospective buyer as a seller's agent or subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker ~~or salesperson~~ represents the interests of the seller. The written disclosure shall include the broker ~~or salesperson's~~ broker's license number. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker ~~or salesperson~~ shall immediately disclose by similar means whom he represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker ~~or salesperson~~ mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker ~~or salesperson~~ representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker ~~or salesperson~~ represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker ~~or salesperson~~ shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to purchase and shall include the ~~broker or salesperson's~~ broker's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker ~~or salesperson~~ representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers ~~and salespersons~~ associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers ~~and salespersons~~ associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker ~~or salesperson~~ shall not be so designated and shall not undertake to represent only the interests of one party if the broker ~~or salesperson~~ has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a ~~salesperson~~ provisional broker under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker ~~or salesperson~~ to represent the seller, the broker ~~or salesperson~~ so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker ~~or salesperson~~ designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker ~~or salesperson~~ to represent the buyer, the broker ~~or salesperson~~ so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker ~~or salesperson~~ designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and

- (3) any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker ~~or salesperson~~ designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers ~~and salespersons~~ so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker ~~or salesperson~~ represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker ~~or salesperson~~ shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

*Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-9.*

**21 NCAC 58A .0105 ADVERTISING**

(a) Blind Ads. A licensee shall not advertise the sale, purchase, exchange, rent or lease of real estate, for another or others, in a manner indicating the offer to sell, purchase, exchange, rent, or lease is being made by the licensee's principal only. Every such advertisement shall conspicuously indicate that it is the advertisement of a broker or brokerage firm and shall not be confined to publication of only a post office box number, telephone number, or street address.

(b) Registration of Assumed Name. In the event that any licensee shall advertise in any manner using a firm name or an assumed name which does not set forth the surname of the licensee, the licensee shall first file the appropriate certificate with the office of the county register of deeds in compliance with G.S. 66-68 and notify the Commission in writing of the use of such a firm name or assumed name.

(c) Authority to Advertise.

- (1) A ~~salesperson~~ provisional broker shall not advertise the sale, purchase, exchange, rent or lease of real estate for another or others without his or her broker's consent and without including in the advertisement the name of the broker or firm with whom the ~~salesperson~~ provisional broker is associated.
- (2) A licensee shall not advertise or display a "for sale" or "for rent" sign on any real estate without the consent of the owner or his or her authorized agent.

(d) Business names. A licensee shall not include the name of a ~~salesperson or provisional broker~~ or an unlicensed person in the name of a sole proprietorship, partnership or non-corporate business formed for the purpose of real estate brokerage.

(e) A person licensed as a limited nonresident commercial broker ~~or salesperson~~ shall comply with the provisions of Rule .1809 of this Subchapter in connection with all advertising concerning or relating to his or her status as a North Carolina licensee.

*Authority G.S. 55B-5; 66-68; 93A-3(c); 93A-9.*

**21 NCAC 58A .0106 DELIVERY OF INSTRUMENTS**

(a) Except as provided in Paragraph (b) of this Rule, every broker ~~or salesperson~~ shall immediately, but in no event later than five days from the date of execution, deliver to the parties thereto copies of any required written agency agreement, contract, offer, lease, or option affecting real property.

(b) A broker ~~or salesperson~~ may be relieved of his or her duty under Paragraph (a) of this Rule to deliver copies of leases or rental agreements to the property owner, if the broker:

- (1) obtains the express written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;
- (2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner except as may be required by law;
- (3) promptly provides a copy of the lease or rental agreement to the property owner upon reasonable request; and
- (4) delivers to the property owner within 45 days following the date of execution of the lease or rental agreement, an accounting which identifies the leased property and which sets forth the names of the tenants, the rental rates and rents collected.

*Authority G.S. 93A-3(c).*

**21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS**

(a) Except as provided herein, all monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a ~~salesperson~~ provisional broker shall be delivered immediately to the broker by whom

he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter. A licensee may accept custody of a check or other negotiable instrument made payable to the seller of real property as option money only for the purpose of delivering the instrument to the optionor-seller. While the instrument is in the custody of the licensee, the licensee shall, according to the instructions of the buyer-optionee, either deliver it to the seller-optionor or return it to the buyer-optionee. The licensee shall safeguard the instrument and shall be responsible to the parties on the instrument for its prompt and safe delivery. In no event shall a licensee retain such an instrument for more than three business days after the acceptance of the option contract.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

- (1) bank statements;
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall conspicuously identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced

to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the licensee's bank retains for a period of at least six years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F. R. 229.51, and makes the original or substitute checks available to the licensee and the Commission upon request;

- (3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket;
- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the

running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate;

- (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;
- (7) copies of contracts, leases and management agreements;
- (8) closing statements and property management statements;
- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association; and
- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the broker may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of G.S. 93A-12. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account ~~or accounts~~ dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a

subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

(l) In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format described in Paragraph (k) of this Rule for vacation rental tenant security deposit monies and vacation rental advance payments.

Authority G.S. 93A-3(c); 93A-9.

**21 NCAC 58A .0109 BROKERAGE FEES AND COMPENSATION**

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value for services which the licensee recommends, procures, or arranges relating to a real estate transaction for any party, without full disclosure to such party; provided, however, that nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to such Act.

(c) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of ~~salespersons~~, brokers, and similar matters.

(d) Except as provided in (e) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(e) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;

- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and
- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental agreement. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

Authority G.S. 93A-3(c).

**21 NCAC 58A .0110 BROKER-IN-CHARGE**

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office ~~or branch office~~ at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other ~~brokers or salespersons~~ brokers affiliated with him or her in the real estate business. Each broker-in-charge shall ~~make written notification of~~ declare in writing his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker-in-charge. The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers ~~and salespersons~~ employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;



- (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
- (3) the proper conduct of advertising by or in the name of the firm at such office;
- (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) the proper supervision of ~~salespersons~~ provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- ~~(7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and~~
- ~~(8)~~(7) the proper supervision of all brokers and ~~salespersons~~ licensees employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required.

(c) ~~A broker in charge must continually maintain his or her license on active status. To qualify to serve as a broker-in-charge, a broker shall not be a provisional broker and shall:~~

- (1) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and
- (2) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

A broker-in-charge shall certify his or her experience qualifications in the written broker-in-charge declaration he or she submits to the Commission and shall provide to the Commission upon request evidence that he or she possesses the required experience. Status as a broker-in-charge shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or

if the Commission finds the broker-in-charge does not possess the required experience. A broker-in-charge shall, upon written request of the Commission or a broker who has been affiliated with the broker-in-charge within the previous five years provide the Commission or broker, on a form prescribed by the Commission, an accurate written statement regarding the broker's work at the office of the broker-in-charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the broker during his or her affiliation with the broker-in-charge.

(d) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who has completed the Commission's broker-in-charge course within five years prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her status is terminated as provided in Paragraph (e) of this Rule.

(e) A broker's status as a broker-in-charge shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's right to engage in real estate brokerage is suspended, revoked or surrendered;
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter or Paragraph (f) of this Rule;
- (3) the license of the broker's firm expires or the firm's right to engage in real estate brokerage is suspended, revoked, or surrendered;
- (4) the broker's firm is dissolved or otherwise ceases to be lawfully entitled to engage in business in North Carolina; or
- (5) the broker ceases to act as the broker-in-charge of the office for which he or she was designated as broker-in-charge.

When a broker's status as a broker-in-charge is terminated and the broker subsequently seeks to again serve as broker-in-charge of the same or a different office, the broker must fully satisfy all the current broker-in-charge experience and education qualification requirements stated in this Rule, and a broker-in-charge course taken by such broker prior to April 1, 2006 shall not be recognized toward the current education requirement. However, when a broker terminates his or her broker-in-charge status with one office and contemporaneously declares himself or herself broker-in-charge of a different office with the same or a different firm, this change shall be considered a transfer rather than a termination and the broker shall not be required to satisfy the current broker-in-charge experience and education qualification requirements.

(f) To continue to serve as a broker-in-charge, a broker shall complete during each license period a special four classroom hour continuing education course prescribed by the Commission for brokers-in-charge. This course must first be taken during the first full license period following designation

as a broker-in-charge and must subsequently be taken each license period. The course shall satisfy the broker's general continuing education elective course requirement, but the broker must continue to take the continuing education update course each license period. When a broker-in-charge fails to take the special continuing education course for brokers-in-charge during any license period, his or her broker-in-charge status will be terminated at the end of that license period.

~~(d)(g)~~ Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge within 10 days following the change. ~~Upon written request of a salesperson within five years after termination of his or her association with a broker in charge, the broker in charge shall provide the salesperson, on a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker in charge.~~

~~(e)(h)~~ A licensed real estate firm shall not be required to designate a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its qualifying broker through another firm or broker;
- (2) is designated a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

~~(f)(i) Except as provided herein every broker in charge designated before October 1, 2000 shall complete the Commission's broker in charge course not later than October 1, 2005 in order to remain broker in charge on that date and thereafter. Except as provided herein, every broker in charge designated after October 1, 2000 shall complete the broker in charge course within 120 days following designation in order to remain broker in charge thereafter. Every broker who has completed the broker in charge course shall take the course on a recurring basis at intervals not to exceed five years between courses in order to remain eligible to be designated broker in charge of the principal or branch office of any real estate firm. If a broker who is designated broker in charge fails to complete the broker in charge course within the prescribed time period, the broker in charge status of that broker shall be immediately terminated, and the broker must complete the broker in charge course before he or she may again be designated as broker in charge. A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina shall not be required to complete the broker-in-charge course. course or the special continuing education course prescribed for brokers-in-charge under Paragraph (f) of this Rule.~~

~~(g)(j)~~ A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

*Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-9.*

**21 NCAC 58A .0111 DRAFTING LEGAL INSTRUMENTS**

(a) A broker ~~or salesperson~~ acting as an agent in a real estate transaction shall not draft offers, sales contracts, options, leases, promissory notes, deeds, deeds of trust or other legal instruments by which the rights of others are secured; however, a broker ~~or salesperson~~ may complete preprinted offer, option contract, sales contract and lease forms in real estate transactions when authorized or directed to do so by the parties.

(b) A broker ~~or salesperson~~ may use electronic, computer, or word processing equipment to store preprinted offer and sales contract forms which comply with Rule .0112, as well as preprinted option and lease forms, and may use such equipment to complete and print offer, contract and lease documents. Provided, however, a broker ~~or salesperson~~ may not alter the form before it is presented to the parties. If the parties propose to delete or change any word or provision in the form, the form must be marked to indicate the change or deletion made. The language of the form shall not be modified, rewritten, or changed by the broker or ~~salesperson~~ ~~or~~ their clerical employees unless directed to do so by the parties.

(c) Nothing contained in this Rule shall be construed to prohibit a broker ~~or salesperson~~ from making written notes, memoranda or correspondence recording the negotiations of the parties to a real estate transaction when such notes, memoranda or correspondence do not themselves constitute binding agreements or other legal instruments.

*Authority G.S. 93A-3(c).*

**21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS**

(a) A broker ~~or salesperson~~ acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;

- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0107 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and number of discount points, loan term, loan commitment date, and who shall pay loan closing costs; and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
- (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
- (11) the date for closing and transfer of possession;
- (12) the signatures of the buyer and seller;
- (13) the date of offer and acceptance;
- (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer, or a provision otherwise describing the estate to be conveyed, and encumbrances, and the form of conveyance;
- (15) the items to be prorated or adjusted at closing;
- (16) who shall pay closing expenses;
- (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
- (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing; and
- (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents.

The provisions of this rule shall apply only to preprinted offer and sales contract forms which a broker ~~or salesperson~~ acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract; nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

(b) A broker ~~or salesperson~~ acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing the provisions or terms listed in Subparagraphs (b)(1) and (2) of this Rule. A broker ~~broker, salesperson~~ or anyone acting for or at the direction of the broker or salesperson shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys:

- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker ~~broker, salesperson~~ or firm; or
- (2) any provision that attempts to disclaim the liability of a broker ~~or salesperson~~ for his or her representations in connection with the transaction.

*Authority G.S. 93A-3(c).*

**21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS**

Any broker ~~or salesperson~~ who is convicted of any felony or misdemeanor misdemeanor, or who has disciplinary action taken against him or her by any governmental agency in connection with any other occupational ~~license~~ license, shall file with the Commission a written report of such conviction or disciplinary action within 60 days of the final judgment or final order in the case. A form for this report is available from the Commission.

*Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2).*

**21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT**

(a) Every owner of real property subject to a transfer of the type contemplated by G.S. 47E-1, G.S. 47E-2, and G.S. 47E-3, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA  
RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must check  one of the boxes for each of the 20 questions on the reverse side of this form.
  - a. If you check "Yes" for any question, you must describe the problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
  - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
  - c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
- \* If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker ~~or salesperson~~, you are still responsible for completing and delivering the Statement to the purchasers; and the broker ~~or salesperson~~ must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

**Note to Purchasers**

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: \_\_\_\_\_  
 Owner's Name(s): \_\_\_\_\_  
*Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.*

Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_  
 Owner Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_  
*Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before*

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*signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.*

Purchaser Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_  
 Purchaser Signature: \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_

Property Address/Description: \_\_\_\_\_

*[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]*

**Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:**

		Yes*	No	No Representation
1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Siding is: <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other _____				<input type="checkbox"/>
b. Approximate age of structure? _____				<input type="checkbox"/>
2. ROOF (leakage or other problem)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Approximate age of roof covering? _____				<input type="checkbox"/>
3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. HEATING AND/OR AIR CONDITIONING?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other _____				<input type="checkbox"/>
b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other _____				<input type="checkbox"/>
c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other _____				<input type="checkbox"/>
7. WATER SUPPLY (including water quality, quantity and water pressure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other _____				<input type="checkbox"/>
b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other _____ <input type="checkbox"/> Unknown				<input type="checkbox"/>
8. SEWER AND/OR SEPTIC SYSTEM?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System				

**PROPOSED RULES**

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- City/County System available  Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law])   
 Other \_\_\_\_\_

9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?

**Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you know of any:**

10. PROBLEMS WITH PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?

11. PROBLEMS WITH DRAINAGE, GRADING OR SOIL STABILITY OF LOT?

12. PROBLEMS WITH OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?

13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ?

14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)?

15. COMMERCIAL OR INDUSTRIAL NUISANCES (noise, odor, smoke, etc.) affecting the property?

16. VIOLATIONS OF BUILDING CODES, ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS?

17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?

18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?

19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?

20. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN?

\* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner Initials and Date

Owner Initials and Date

Purchaser Initials and Date

Purchaser Initials and Date

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

Authority G.S. 47E-4(b); 93A-3(c); 93A-6.

**SECTION .0300 – APPLICATION FOR LICENSE**

**21 NCAC 58A .0301 FORM**

An individual or business entity who wishes to file an application for a broker ~~or salesperson~~ license shall make application on a form prescribed by the Commission and can obtain the required form upon request to the Commission. In general, the application form for an individual calls for information such as the applicant's name and address, the applicant's social security number, satisfactory proof of the applicant's identity, places of residence, education, prior real estate licenses, and such other information necessary to identify the applicant and determine the applicant's qualifications and fitness for licensure. The application form for a business entity is described in Rule .0502 of this Section.

*Authority G.S. 93A-3(c); 93A-4(a),(b),(d).*

**21 NCAC 58A .0302 FILING AND FEES**

(a) Applications for a real estate license shall be complete and, except as provided by Rule .0403 of this Subchapter, shall be submitted to the Commission's office accompanied by the application fee. Examination scheduling of applicants who are required to pass the real estate licensing examination shall be accomplished in accordance with Rule .0401 of this Subchapter. ~~An applicant for a real estate salesperson license shall not make application for a broker license while the salesperson application is pending unless the applicant first withdraws the salesperson application.~~

(b) Except for persons applying for licensure under the provisions of Section .1800 of this Subchapter, the license application fee shall be thirty dollars (\$30.00). In addition to

the license application fee, applicants for licensure who are required to take the license examination must pay the examination fee charged by the Commission's authorized testing service in the form and manner acceptable to the testing service. Persons applying for licensure under Section .1800 of this Subchapter shall pay the application fee set forth in Rule .1803 of this Subchapter.

(c) An applicant shall update information provided in connection with an application or submit a newly completed application form without request by the Commission to assure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a licensee in accordance with G.S. 93A-6(b)(1). In the event

that the Commission requests an applicant to submit updated information or to provide additional information necessary to complete the application and the applicant fails to submit such information within 90 days following the Commission's request, the Commission shall cancel the applicant's application. The license application of an individual found by the Commission to be qualified for the licensing examination shall be immediately canceled if the applicant fails to pass a scheduled licensing examination, fails to appear for and take any examination for which the applicant has been scheduled without having the applicant's examination postponed or

absence excused in accordance with Rule .0401(b) and (c) of this Section, or fails to take and pass the examination within 180 days of filing a complete application as described in Rule .0301 of this Section and having the application entered into the Commission's examination applicant file. Except as permitted otherwise in Rule .0403 of this Subchapter, an applicant whose license application has been canceled and who wishes to obtain a real estate license must start the licensing process over by filing a complete application to the Commission and paying all required fees.

*Authority G.S. 93A-4; 93A-9.*

**21 NCAC 58A .0304 EQUIVALENT EXPERIENCE QUALIFICATIONS FOR APPLICANTS**

Experience obtained by a ~~salesperson~~ or broker applicant in violation of law or rule may not be recognized by the Commission as fulfilling the requirements for licensure when the applicant is requesting the Commission to waive the prescribed education requirement based wholly or in part on equivalent experience obtained by the applicant.

*Authority G.S. 93A-3(c); 93A-4.*

**SECTION .0400 - EXAMINATIONS**

**21 NCAC 58A .0402 SUBJECT MATTER AND PASSING SCORES**

(a) The real estate licensing examination shall test applicants on the following general subject areas:

- (1) real estate law;
- (2) real estate brokerage law and practices;
- (3) the Real Estate License Law, rules of the Commission, and the Commission's trust account guidelines;
- (4) real estate finance;
- (5) real estate valuation (appraisal);
- (6) real estate mathematics; and
- (7) related subject areas.

(b) In order to pass the real estate licensing examination, an applicant must attain a score at least equal to the passing score established by the Commission in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. Passing applicants will receive only a score of "pass"; however, failing applicants will be informed of their actual score. A passing examination score obtained by a license applicant shall be recognized as valid for a period of one year from the date of examination, during which time the applicant must fully satisfy any remaining requirements for licensure that were pending at the time of examination; provided that the running of the one-year period shall be tolled ~~by issuance of a notice to upon mailing the applicant, pursuant to Rule .0501(c) of this Section, applicant the letter contemplated in 21 NCAC 58A .0616(b) informing the applicant that his or her moral~~

character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be required to reapply and satisfy all requirements for licensure, including retaking and passing the license examination, in order to be eligible for licensure.

Authority G.S. 93A-3(c); G.S. 93A-4(b),(d).

**21 NCAC 58A .0404 CHEATING AND RELATED MISCONDUCT**

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Applicants shall not disrupt the quiet and orderly administration of an examination in any manner. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of a real estate license, as well as for disciplinary action if the applicant is a licensed salesperson. has been issued a license.

Authority G. S. 93A-4(d).

**21 NCAC 58A .0406 EXAMINATION REVIEW**

~~(a) An applicant who fails an examination may review the examination as provided in Paragraphs (b) and (c) of this Rule. Applicants who pass an examination may not review the examination. Applicants who review an examination may not be accompanied by any other person at a review session, nor may any other person review an examination on behalf of an applicant.~~

~~(b) An applicant who fails an examination taken by computer may review the examination at the testing center immediately following completion of the examination and receipt of the applicant's examination results but prior to leaving the testing center. An applicant eligible for examination review who fails to review the examination at the testing center immediately following completion of the examination will be deemed to have waived the right to review the examination.~~

~~(c) An applicant who fails an examination taken by the paper and pencil method may review the examination at such times and places as are scheduled by the Executive Director provided the applicant makes a request to review the examination not later than the request deadline date established by the Executive Director for a scheduled examination review date. Failure to request an appointment to review an examination by the request deadline date shall constitute a waiver of the right to review such examination. An applicant who has taken the examination by the paper and pencil method may be granted an excused absence from a scheduled examination review if the applicant provides evidence satisfactory to the Commission that the absence was the direct result of an emergency situation or condition which was beyond the applicant's control and which could not have been reasonably foreseen. A request for an excused absence~~

~~must be promptly made in writing and must be supported by appropriate documentation verifying the reason for the absence. A request for an excused absence received more than 15 days after the scheduled examination review will be denied unless the applicant was unable to file a timely request due to the same circumstances that prevented the applicant from attending the examination review. An applicant who fails to appear for a scheduled examination review and who does not obtain an excused absence in accordance with this Rule shall be deemed to have waived the right to review the examination. An applicant who fails the license examination may review the examination at the testing center immediately following completion of the examination and receipt of the applicant's examination results but prior to leaving the testing center. An applicant who fails the examination and who declines the opportunity to immediately review the examination prior to leaving the testing center will be deemed to have waived the right to review the examination. An applicant who is reviewing his or her failed examination may not have any other person present during his or her review, nor may any other person review an examination on behalf of an applicant. An applicant who passes the license examination may not review the examination.~~

Authority G.S. 93A-4(d).

**SECTION .0500 - LICENSING**

**21 NCAC 58A .0502 BUSINESS ENTITIES**

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form shall be required to submit a new application immediately upon making the change and to obtain a new license. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office where brokerage activities will be conducted, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;



- (8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (11) if a business entity other than a corporation, limited liability company or partnership, a full description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
- (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and
- (13) any other information required by this Rule.

The Commission also may require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Paragraph, the term principal shall mean any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(b) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as qualifying broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The qualifying broker of a partnership of any kind must be a general partner of the partnership; the qualifying broker of a limited liability company must be a manager of the company; and the qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the qualifying broker of another licensed business entity if the qualifying broker-entity has as its qualifying broker a natural person who is licensed as a broker. The natural person who is qualifying broker shall assure the performance of the qualifying broker's duties with regard to both entities. A provisional broker may not serve as a qualifying broker.

(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(d) The qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as qualifying broker within ten days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out of balance or have not been reconciled as required by Rule .0107 of this Chapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as qualifying broker until a new qualifying broker has been designated with the Commission or, if no new qualifying broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Chapter; and
- (8) notifying the Commission if, upon the termination of his or her status as qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are out of balance or have not been reconciled as required by Rule .0107(e) of this Chapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

*Authority G.S. 93A-3(c); 93A-4(a),(b),(d).*

**21 NCAC 58A .0503 LICENSE RENEWAL;  
PENALTY FOR OPERATING WHILE LICENSE  
EXPIRED**

(a) ~~(Effective until January 1, 2006)~~ All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form prescribed by the Commission and submitting with the application the required renewal fee of forty dollars (\$40.00).

~~(a) (Effective January 1, 2006) All real estate licenses issued by the Commission under G.S. 93A, Article 1 shall expire on the 30th day of June following issuance. Any licensee desiring renewal of a license shall apply for renewal within 45 days prior to license expiration by submitting a renewal application on a form provided by the Commission and submitting with the application the required renewal fee of forty-five dollars (\$45.00).~~

(b) Any person desiring to renew his or her license on active status shall, upon the second renewal of such license following initial licensure, and upon each subsequent renewal, have obtained all continuing education required by G.S. 93A-4A and Rule .1702 of this Subchapter.

(c) A person renewing a license on inactive status shall not be required to have obtained any continuing education in order to renew such license; however, in order to subsequently change his or her license from inactive status to active status, the licensee must satisfy the continuing education requirement prescribed in Rule .1703 or .1711 of this Subchapter.

(d) Any person or firm which engages in the business of a real estate broker ~~or salesperson~~ while his, her, or its license is expired is subject to the penalties prescribed in G.S. 93A-6.

Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4A; 93A-6.

**21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS**

(a) Except for licenses that have expired or that have been canceled, revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of G.S. 93A or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

~~(b) Except as provided by Rule .1804 of this Subchapter, a salesperson's A license issued to a provisional broker shall, upon initial licensure, be assigned to inactive status status, except that a license issued to a provisional broker based on reciprocity with another licensing jurisdiction shall be~~

assigned to active status. ~~The license of a broker or A license issued to a firm or a broker other than a provisional broker shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson may change the status of his or her license from active to inactive status by submitting a written request to the Commission. Except for salespersons licensed under Section .1800 of this Subchapter, a salesperson's A provisional broker's license shall be assigned by the Commission to inactive status when the salesperson provisional broker is not under the active, personal direct supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a qualifying broker. broker with an active license in good standing.~~ Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker ~~or salesperson~~ shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

~~(c) A salesperson provisional broker with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.~~

(d) A ~~broker~~ broker, other than a provisional broker, with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the firm and its qualifying broker. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage

activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker or salesperson under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

*Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6; 93A-9.*

**21 NCAC 58A .0506 PROVISIONAL BROKER TO BE SUPERVISED BY BROKER**

(a) This Rule shall apply to all real estate salespersons ~~except those salespersons licensed under the provisions of Section .1800 of this Subchapter.~~ provisional brokers.

(b) A salesperson provisional broker may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status and he or she is supervised by the broker-in-charge of the real estate firm or office where the salesperson provisional broker is associated. A salesperson provisional broker may be supervised by only one broker-in-charge at a time.

(c) Upon a salesperson's provisional broker's association with a real estate broker or brokerage firm, the salesperson provisional broker and the broker-in-charge of the office where the salesperson provisional broker will be engaged in the real estate business shall immediately file with the Commission a salesperson provisional broker supervision notification on a form provided by the Commission containing identifying information about the salesperson provisional broker and the broker-in-charge, a statement from the broker-in-charge certifying that he or she will supervise the salesperson provisional broker in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesperson provisional broker and broker-in-charge. If the salesperson provisional broker is on inactive status at the time of associating with a broker or brokerage firm, the salesperson provisional broker and broker-in-charge shall also file, along with the salesperson provisional broker supervision notification, the salesperson's provisional broker's request for license activation on a form provided by the Commission containing identifying information about the salesperson, provisional broker, the salesperson's provisional broker's statement that he or she has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the provisional broker's statement that he or she has satisfied the postlicensing education requirements, if applicable, prescribed by Rule .1902 of this Subchapter, the date of the request, and the signatures of the salesperson provisional broker and the salesperson's provisional broker's proposed broker-in-charge. Upon the mailing or delivery of the required form(s), the salesperson provisional broker may engage in real estate brokerage activities requiring a license

under the supervision of the broker-in-charge; however, if the salesperson provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the salesperson provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesperson's provisional broker's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesperson provisional broker and broker-in-charge are notified that the salesperson provisional broker is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesperson provisional broker to immediately cease all activities requiring a real estate license until such time as the continuing education deficiency is satisfied and a new salesperson provisional broker supervision notification and request for license activation is submitted to the Commission.

(d) A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson provisional broker shall actively and directly supervise the salesperson provisional broker in a manner which reasonably assures that the salesperson provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesperson provisional broker as prescribed in this Rule may be subject to disciplinary action by the Commission.

(e) Upon the termination of the supervisory relationship between a salesperson provisional broker and his or her broker-in-charge, the salesperson provisional broker and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following said termination.

*Authority G.S. 93A-2(b); 93A-3; 93A-9.*

**21 NCAC 58A .0510 CANCELLATION OF SALESPERSON LICENSE UPON BROKER LICENSURE**

~~When a person holding a salesperson license is issued a broker license, the person's salesperson license shall be automatically cancelled.~~

*Authority G.S. 93A-3(c); 93A-4(d).*

**SECTION .0600 – REAL ESTATE COMMISSION HEARINGS**

**21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S CHARACTER IS IN QUESTION**

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite truthfulness, honesty, and integrity. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or ~~salesperson or~~ for licensure or approval as a

prelicensing or continuing education instructor, director, coordinator, school or sponsor. When the applicant is an entity, it shall be directed and controlled by persons who are truthful and honest and who possess integrity.

(b) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3.

(c) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

Authority G.S. 93A-4.

**SECTION .0900 - DECLARATORY RULINGS**

**21 NCAC 58A .0902 REQUESTS FOR RULINGS: DISPOSITION OF REQUESTS**

(a) All requests for declaratory rulings shall be written and filed with the Commission. The request must contain the following information:

- (1) the name, address and signature of petitioner;
- (2) a concise statement of the manner in which petitioner is aggrieved by the rule or statute in question, or its potential application to him or her;
- (3) a statement of the interpretation given the statute or rule in question by petitioner;
- (4) a statement of the reasons, including any legal authorities, in support of the interpretation given the statute or rule by petitioner.

(b) The Commission shall either deny the request, stating the reasons therefore, or issue a declaratory ruling. ~~When, The Commission may deny a request for a declaratory ruling when, in its discretion, the Commission determines that: that the issuance of a declaratory ruling is undesirable, it may refuse to issue such ruling.~~

- (1) ~~the petition does not comply with the requirements of Paragraph (a) of this Rule;~~
- (2) ~~the subject matter is one concerning which the Commission is without authority to make a decision binding the agency or the petitioner;~~
- (3) ~~the petitioner is not aggrieved by the rule or statute in question or otherwise has~~

~~insufficient interest in the subject matter of the request;~~

(4) ~~there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the real estate license law or the rules adopted by the Commission; or~~

(5) ~~there is any other reason the issuance of a declaratory ruling would be undesirable.~~

(c) The Commission shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Real Estate Commission or contested case before the Commission.

Authority G.S. 93A-3(c); 150B-4(a).

**SECTION .1700 – MANDATORY CONTINUING EDUCATION**

**21 NCAC 58A .1701 PURPOSE AND APPLICABILITY**

This Section describes the continuing education requirement for real estate brokers ~~and salespersons~~ authorized by G.S. 93A-4A, establishes the continuing education requirement to change a license from inactive status to active status, establishes attendance requirements for continuing education courses, establishes the criteria and procedures relating to obtaining an extension of time to complete the continuing education requirement, establishes the criteria for obtaining continuing education credit for an unapproved course or related educational activity, and addresses other similar matters.

Authority G.S. 93A-3(c); 93A-4A.

**21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT**

(a) Except as provided in 21 NCAC 58A .1708 and .1711, in order to renew a broker ~~or salesperson~~ license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission. ~~A licensed salesperson who applies for a broker license after the first renewal of his or her salesperson license must have completed the current mandatory update course and one approved elective course during the license period in which the broker license application is filed.~~

(b) No continuing education shall be required to renew a broker ~~or salesperson~~ license on inactive status; however, to change a license from inactive status to active status, the licensee must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a licensee who is a member of the U.S. Congress or the North Carolina General Assembly in order to renew his or her license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, the reinstatement of a  canceled, revoked or surrendered license, and any license expired for more than six months. The issuance, pursuant to G.S. 93A-4.3, of a broker license on provisional status on April 1, 2006 to licensees who held a salesperson license as of that date shall not be considered to constitute initial licensure for continuing education purposes.

*Authority G.S. 93A-3(c); 93A-4A.*

**21 NCAC 58A .1703 CONTINUING EDUCATION FOR LICENSE ACTIVATION**

(a) A broker ~~or salesperson~~ requesting to change an inactive license to active status on or after the licensee's second license renewal following his or her initial licensure shall be required to demonstrate completion of continuing education as described in Paragraph (b) or (c) of this Rule, whichever is appropriate.

(b) If the inactive licensee's license has properly been on active status at any time since the preceding July 1, the licensee is considered to be current with regard to continuing education and no additional continuing education is required to activate the license.

(c) If the inactive licensee's license has not properly been on active status since the preceding July 1 and the licensee has a deficiency in his or her continuing education record for the previous license period, the licensee must make up the deficiency and fully satisfy the continuing education requirement for the current license period in order to activate the license. Any deficiency may be made up by completing, during the current license period or previous license period, approved continuing education elective courses; however, such courses will not be credited toward the continuing education requirement for the current license period. When crediting elective courses for purposes of making up a continuing education deficiency, the maximum number of credit hours that will be awarded for any course is four hours. When evaluating the continuing education record of a licensee with a deficiency for the previous license period to determine the licensee's eligibility for active status, the licensee shall be deemed eligible for active status if the licensee has fully satisfied the continuing education requirement for the current license period and has taken any two additional continuing education courses since the beginning of the previous license period, even if the licensee had a continuing education deficiency prior to the beginning of the previous license period.

*Authority G.S. 93A-3(c); 93A-4A.*

**21 NCAC 58A .1704 NO CREDIT FOR PRELICENSING OR POSTLICENSING COURSES**

No credit toward the continuing education requirement shall be awarded for completing a real estate prelicensing  or postlicensing course.

*Authority G.S. 93A-3(c); 93A-4A.*

**21 NCAC 58A .1708 EQUIVALENT CREDIT**

(a) A licensee may request that the Commission award continuing education credit for a course taken by the licensee that is not approved by the Commission, or for some other real estate education activity, by making such request on a form prescribed by the Commission and submitting a nonrefundable evaluation fee of thirty dollars (\$30.00) for each request for evaluation of a course or real estate education activity. In order for requests for equivalent credit to be considered and credits to be entered into a licensee's continuing education record prior to the June 30 license expiration date, such requests and all supporting documents must be received by the Commission on or before June 10 preceding expiration of the licensee's current license, with the exception that requests from instructors desiring equivalent credit for teaching Commission-approved continuing education courses must be received by June 30. Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective course, that was completed during a previous license period may not be applied to a subsequent license period.

(b) The Commission may award continuing education elective credit for completion of an unapproved course which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. Completion of an unapproved course may serve only to satisfy the elective requirement and cannot be substituted for completion of the mandatory update course.

(c) Real estate education activities, other than teaching a Commission-approved course, which may be eligible for credit include, but are not limited to: developing a Commission-approved elective continuing education course, authorship of a published real estate textbook; and authorship of a scholarly article, on a topic acceptable for continuing education purposes, which has been published in a professional journal such as a law journal or professional college or university journal or periodical. The Commission may award continuing education elective credit for activities which the Commission finds equivalent to the elective course component of the continuing education requirement set forth in Section .0300 of Subchapter 58E. No activity other than teaching a Commission-developed mandatory update course

shall be considered equivalent to completing the mandatory update course.

(d) The Commission may award credit for teaching the Commission-developed mandatory update course and for teaching an approved elective course. Credit for teaching an approved elective course shall be awarded only for teaching a course for the first time. Credit for teaching a Commission-developed mandatory update course may be awarded for each licensing period in which the instructor teaches the course. The amount of credit awarded to the instructor of an approved continuing education course shall be the same as the amount of credit earned by a licensee who completes the course. Licensees who are instructors of continuing education courses approved by the Commission shall not be subject to the thirty dollars (\$30.00) evaluation fee when applying for continuing education credit for teaching an approved course. No credit toward the continuing education requirement shall be awarded for teaching a real estate prelicensing or postlicensing course.

(e) A licensee completing a real estate appraisal prelicensing, precertification or continuing education course approved by the North Carolina Appraisal Board may obtain real estate continuing education elective credit for such course by submitting to the Commission a written request for equivalent continuing education elective credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) and a copy of the certificate of course completion issued by the course sponsor for submission to the North Carolina Appraisal Board.

*Authority G.S. 93A-3(c); 93A-4A.*

**21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT LICENSEES**

(a) Real estate brokers ~~and salespersons~~ licensed in North Carolina but residing in another state at the time they apply for license renewal who wish to renew their licenses on active status may fully satisfy the continuing education requirement by any one of the following means:

- (1) A nonresident licensee may, at the time of license renewal, hold a real estate license on active status in another state and certify on a form prescribed by the Commission that the licensee holds such license.
- (2) A nonresident licensee may, within one year preceding license expiration, complete the Commission-prescribed Update course plus ~~four classroom hours of instruction in one~~ Commission-approved continuing education elective ~~courses~~ course, or complete two Commission-approved continuing education elective courses.
- (3) A nonresident licensee may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state

and not approved by the Commission, the licensee must submit a written request for continuing education credit accompanied by a nonrefundable processing fee of twenty dollars (\$20.00) per request and evidence satisfactory to the Commission that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the licensee's state of residence or in the state where the course was taken.

- (4) A nonresident licensee may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission will award a nonresident licensee for an unapproved course or educational activity is eight hours.

(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than ~~12~~ six months, a nonresident broker ~~or salesperson~~ may fully satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this ~~Rule. Rule.~~ Rule, except that the requirements in Subparagraphs (a)(2) and (a)(3) of this Rule restricting the taking of courses to one year preceding license expiration shall not be applicable.

(c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course.

*Authority G.S. 93A-3(c); 93A-4A.*

**SECTION .1800 - LIMITED NONRESIDENT COMMERCIAL LICENSING**

**21 NCAC 58A .1801 GENERAL PROVISIONS**

(a) Any person resident in a state or territory of the United States other than North Carolina may perform the acts or services of a real estate broker ~~or salesperson~~ in North Carolina in transactions involving commercial real estate if said person first applies for and obtains a limited nonresident commercial real estate broker ~~or salesperson~~ license as provided in this Section.

(b) Corporations, business associations and entities shall be ineligible for licensure under this Section.

(c) Nothing in this Section shall be construed to limit the rights of any person duly licensed as a real estate broker ~~or salesperson~~ in North Carolina under the provisions of G.S. 93A-4 or 93A-9(a).

*Authority G.S. 93A-4; 93A-9.*

**21 NCAC 58A .1803 REQUIREMENTS FOR LICENSURE; APPLICATION AND FEE**

(a) A person desiring to obtain a broker ~~or salesperson~~ license under this Section shall demonstrate to the Real Estate Commission that:

- (1) he or she is a resident of a state or territory of the United States other than North Carolina;
- (2) he or she is licensed as a real estate broker or salesperson in a qualifying state and that said license is on active status and not in abeyance for any reason. If licensed as a salesperson, he or she shall also demonstrate that he or she is acting under the supervision of a broker in accordance with the applicable governing statutes or regulations in the qualifying state; and
- (3) he or she possesses the requisite honesty, truthfulness, integrity, and moral character for licensure as a broker ~~or salesperson~~ in North Carolina.

A person applying for licensure under this Section shall not be required to show that the state or territory where he or she is currently licensed offers reciprocal licensing privileges to North Carolina ~~brokers, brokers and salespersons.~~

(b) A person desiring to be licensed under this Section shall submit an application on a form prescribed by the Commission and shall show the Commission that he or she has satisfied the requirements set forth in Paragraph (a) of this Rule. In connection with his or her application a person applying for licensure under this Rule shall provide the Commission with a certification of license history from the qualifying state where he or she is licensed. He or she shall also provide the Commission with a report of his or her criminal history from the service designated by the Commission. An applicant for licensure under this Section shall be required to update his or her application as required by Rule .0302(c) of this Subchapter.

(c) The fee for persons applying for licensure under this Section shall be one hundred dollars (\$100.00) and shall be paid in the form of a certified check, bank check, cashier's check, money order, or by credit card. Once paid, the application fee shall be non-refundable.

(d) If the Commission has received a complete application and the required application fee and if the Commission is satisfied that the applicant possesses the moral character necessary for licensure, the Commission shall issue to the applicant a limited nonresident commercial real estate broker ~~license, or salesperson license corresponding to the license the applicant possesses in the qualifying state.~~

Authority G.S. 93A-4; 93A-9.

**12 NCAC 58A .1804 ACTIVE STATUS**

~~Licenses issued to brokers and salespersons~~ Broker licenses issued under this Section shall be issued on active status and shall remain valid only so long as the licensee's license in the qualifying state remains valid and on active status. In addition, a license issued to a salesperson under this Section shall remain valid only while the salesperson is acting under the supervision of a real estate broker in accordance with the

applicable laws and rules in the qualifying state. ~~A broker or salesperson~~ Individuals licensed under this Section shall immediately notify the Commission if his or her license in the qualifying state lapses or expires, is suspended or revoked, made inactive, or is placed in abeyance for any reason.

Authority G.S. 93A-4; 93A-9.

**21 NCAC 58A .1806 LIMITATIONS**

(a) A person licensed under this Section may act as a real estate broker ~~or salesperson~~ in this state only if:

- (1) he or she does not reside in North Carolina;
- (2) the real property interest which is the subject of any transaction in connection with which he or she acts as a broker ~~or salesperson~~ in this state is commercial real estate as that term is defined in Rule .1802 of this Section; and
- (3) he or she is affiliated with a resident North Carolina real estate broker as required in Rule .1807 of this Section.

(b) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

Authority G.S. 93A-4; 93A-9.

**21 NCAC 58A .1807 AFFILIATION WITH RESIDENT BROKER**

(a) No person licensed under G.S. 93A-9(b) shall enter North Carolina to perform any act or service for which licensure as a real broker ~~or salesperson~~ is required unless he or she has first entered into a brokerage cooperation agreement and declaration of affiliation with an individual who is a resident in North Carolina licensed as a North Carolina real estate broker.

(b) A brokerage cooperation agreement as contemplated by this Rule shall be in writing and signed by the resident North Carolina broker and the non-resident commercial licensee. It shall contain:

- (1) the material terms of the agreement between the signatory licenses;
- (2) a description of the agency relationships, if any, which are created by the agreement among the nonresident commercial licensee, the resident North Carolina broker, and the parties each represents;
- (3) a description of the property or the identity of the parties and other information sufficient to identify the transaction which is the subject of the affiliation agreement; and
- (4) a definite expiration date.

(c) A declaration of affiliation shall be written and on the form provided by the Commission and shall identify the nonresident commercial licensee and the affiliated resident North Carolina licensee. It shall also contain a description of the duties and obligations of each as required by the North Carolina Real Estate License Law and rules duly adopted by

the Commission. The declaration of affiliation may be a part of the brokerage cooperation agreement or separate from it.

(d) A nonresident commercial licensee may affiliate with more than one resident North Carolina broker at any time. However, a nonresident commercial licensee may be affiliated with only one resident North Carolina broker in a single transaction.

(e) A resident North Carolina broker who enters into a brokerage cooperation agreement and declaration of affiliation with a nonresident commercial licensee shall:

- (1) verify that the nonresident commercial licensee is licensed in North Carolina;
- (2) actively and personally directly supervise the nonresident commercial licensee in a manner which reasonably insures that the nonresident commercial licensee complies with the North Carolina Real Estate License Law and rules adopted by the Commission;
- (3) promptly notify the Commission if the nonresident commercial licensee violates the Real Estate License Law or rules adopted by the Commission;
- (4) insure that records are retained in accordance with the requirements of the Real Estate License Law and rules adopted by the Commission; and
- (5) maintain his or her license on active status continuously for the duration of the brokerage cooperation agreement and the declaration of affiliation.

(f) The nonresident commercial licensee and the affiliated resident North Carolina broker shall each retain in his or her records a copy of brokerage cooperation agreements and declarations of affiliation from the time of their creation and for at least three years following their expiration. Such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

Authority G.S. 93A-4; 93A-9.

**21 NCAC 58A .1808 TRUST MONIES**

A nonresident commercial licensee acting as real estate broker or salesperson in North Carolina shall immediately deliver to the North Carolina resident broker with whom he or she is affiliated all money belonging to others received in connection with the nonresident commercial licensee's acts or services as a broker, broker or salesperson. Upon receipt of said money, the resident North Carolina broker shall cause said money to be deposited in a trust account in accordance with the provisions of Rule .0107 of this Subchapter.

Authority G.S. 93A-4; 93A-9.

**21 NCAC 58A .1809 ADVERTISING**

In all advertising involving a nonresident commercial licensee's conduct as a North Carolina real estate broker or salesperson and in any representation of such person's licensure in North Carolina, the advertising or representation

shall conspicuously identify the nonresident commercial licensee as a "Limited Nonresident Commercial Real Estate Broker." ~~Broker (or Salesperson).~~"

Authority G.S. 93A-4; 93A-9.

**SECTION .1900 – POST-LICENSING EDUCATION**

**21 NCAC 58A .1901 PURPOSE AND APPLICABILITY**

This Section prescribes specific procedures relating to the postlicensing education requirement for real estate brokers as prescribed by G.S. 93A-4(a1).

Authority G.S. 93A-4.

**21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT**

(a) The 90 classroom hour postlicensing education program shall consist of three 30 classroom hour courses prescribed by the Commission which may be taken in any sequence. A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) must satisfactorily complete at least one of the 30-hour courses during each of the first three years following the date of his or her initial licensure as a broker in order to retain his or her eligibility to actively engage in real estate brokerage. Upon completion of all three courses by a provisional broker, the provisional status of the broker's license will be terminated by the Commission.

(b) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete the required postlicensing education described in Paragraph (a) of this Rule by the end of either the first or second year following the date of his or her initial licensure as a broker, his or her license shall be placed on inactive status. Between the end of the first year after initial licensure and the end of the third year after initial licensure, a provisional broker who is subject to the postlicensing education requirement and who desires to activate a license that is on inactive status shall make up any postlicensing education deficiency as well as satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter, satisfy the requirement for supervision by a broker-in-charge described in Rule .0506 of this Subchapter and file with the Commission a request for license activation as described in Rule .0504 of this Subchapter.

(c) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete all three postlicensing courses within three years following the date of his or her initial licensure, his or her license shall be cancelled and, in order to reinstate such license, the former broker must satisfy the requirements described in G.S. 93A-4(a1) and Rule .0505 of this Subchapter.

Authority G.S. 93A-4.

**21NCAC 58A .1903 EXTENSIONS OF TIME TO COMPLETE POSTLICENSING EDUCATION**



A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) may request and be granted an extension of time to satisfy the postlicensing education requirement for the first and second years following the date of his or her initial licensure as a broker if the licensee provides evidence satisfactory to the Commission that he or she was unable to obtain the necessary education due to an incapacitating illness or other circumstance which existed for a substantial portion of the year in question and which constituted a severe and verifiable hardship such that to comply with the education requirement would have been impossible or unreasonably burdensome. The Commission shall in no case grant an extension of time to satisfy the postlicensing education requirement that extends beyond the end of the third year after initial licensure as a broker. The Commission also shall not grant an extension of time when the reason for the request is a business or personal conflict or when, in the opinion of the Commission, the principal reason for the provisional broker's failure to obtain the required education in a timely manner was unreasonable delay on the part of the provisional broker in obtaining such education. If an extension of time is granted, the provisional broker may retain his or her license on active status until expiration of the extension period, but the license shall be automatically changed to inactive status at the end of the extension period unless the licensee obtains the required postlicensing education prior to that time. If an extension of time is not granted, the provisional broker's license shall be treated as described in Rule .1902(b) of this Section. A request for an extension of time must be submitted on a form prescribed by the Commission.

Authority G.S. 93A-4.

**21 NCAC 58A .1904 DENIAL OR WITHDRAWAL OF POSTLICENSING EDUCATION CREDIT**

(a) The Commission may deny postlicensing education credit claimed by a provisional broker or reported by a school for a provisional broker, and may withdraw postlicensing education credit previously awarded by the Commission to a provisional broker and make appropriate license status changes for that licensee upon finding that:

- (1) The provisional broker or school provided incorrect or incomplete information to the Commission concerning postlicensing education completed by the provisional broker; or
- (2) The provisional broker was mistakenly awarded postlicensing education credit due to an administrative error.

(b) When postlicensing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the provisional broker remains responsible for satisfying the postlicensing education requirement in a timely manner.

(c) A licensee who obtains or attempts to obtain postlicensing education credit through misrepresentation of fact, dishonesty or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-4.

**SUBCHAPTER 58B – TIME SHARES**

**SECTION .0200 - PUBLIC OFFERING STATEMENT**

**21 NCAC 58B .0202 PUBLIC OFFERING STATEMENT SUMMARY**

Every public offering statement shall contain a one page cover prescribed by the Commission and completed by the developer entitled Public Offering Statement Summary. The Public Offering Statement Summary shall read as follows:

**PUBLIC OFFERING STATEMENT**

**SUMMARY**

**NAME OF PROJECT:**

**NAME AND REAL ESTATE LICENSE NUMBER OF SALESPERSON: BROKER:**

This Public Offering Statement contains information which deserves your careful study, as you decide whether or not to purchase a time share.

The Public Offering Statement includes general information about the real estate type, the term, and the size of this time share project. It also includes a general description of the recreational and other facilities existing now, or to be provided in the future. The Public Offering Statement will tell you how maintenance and management of the project will be provided and how the costs of these services will be charged to purchasers. From the Public Offering Statement, you will also learn how the project will be governed and whether purchasers will have a voice in that government. You will also learn that a time share instrument will be recorded to protect your real estate interest in your time share.

The Public Offering Statement contains important information, but is not a substitute for the detailed information contained in the contract of purchase and the legal documents which create and affect the time share program at this project. Please study this Public Offering Statement carefully. Satisfy yourself that any questions you may have are answered before you decide to purchase. If a salesperson or other representative of the developer has made a representation which concerns you, and you cannot find that representation in writing, ask that it be pointed out to you.

**NOTICE**

**UNDER NORTH CAROLINA LAW, YOU MAY CANCEL YOUR TIME SHARE PURCHASE WITHOUT PENALTY WITHIN FIVE DAYS AFTER SIGNING YOUR CONTRACT. TO CANCEL YOUR TIME SHARE PURCHASE, YOU MUST MAIL OR HAND DELIVER WRITTEN NOTICE OF YOUR DESIRE TO CANCEL YOUR PURCHASE TO (name and address of project). IF YOU CHOOSE TO MAIL YOUR CANCELLATION NOTICE, THE NORTH CAROLINA REAL ESTATE COMMISSION RECOMMENDS THAT**

**YOU USE REGISTERED OR CERTIFIED MAIL AND THAT YOU RETAIN YOUR POSTAL RECEIPT AS PROOF OF THE DATE YOUR NOTICE WAS MAILED. UPON CANCELLATION, ALL PAYMENTS WILL BE REFUNDED TO YOU.**

*Authority G.S. 93A-44; 93A-51.*

**SECTION .0500 – HANDLING AND ACCOUNTING OF FUNDS**

**21 NCAC 58B .0501 TIME SHARE TRUST FUNDS**

(a) Except as otherwise permitted by G.S. 93A-45(c), all monies received by a time share developer or a time share salesperson in connection with a time share sales transaction shall be deposited into a trust or escrow account not later than three banking days following receipt and shall remain in such account for ten days from the date of sale or until cancellation by the purchaser, whichever first occurs.

(b) All monies received by a person licensed as a ~~salesperson~~ broker in connection with a time share transaction shall be delivered immediately to his or her project broker.

(c) When a time share purchaser timely cancels his or her time share purchase, the developer shall refund to the purchaser all monies paid by the purchaser in connection with the purchase. The refund shall be made no later than 30 days following the date of execution of the contract. Amounts paid by the purchaser with a bankcard or a credit card shall be refunded by a cash payment or by issuing a credit voucher to the purchaser within the 30-day period.

(d) Every project broker shall obtain and keep a written representation from the developer as to whether or not lien-free or lien-subordinated time share instruments can be recorded within 45 days of the purchaser's execution of the time share purchase agreement. When a lien-free or lien-subordinated instrument cannot be recorded within said time period, on the business day following the expiration of the ten day time share payment escrow period, a project broker shall transfer from his or her trust account all purchase deposit funds or other payments received from a purchaser who has not cancelled his or her purchase agreement, to the independent escrow agent in a check made payable to the independent escrow agent. Alternatively, the check may be made payable to the developer with a restrictive endorsement placed on the back of the check providing "For deposit to the account of the independent escrow agent for the (name of time share project) only."

*Authority G.S. 93A-42(c); 93A-51.*

**SECTION .0600 - PROJECT BROKER**

**21 NCAC 58B .0601 DESIGNATION OF PROJECT BROKER**

The developer of a registered timeshare project shall designate for each project subject to the developer's control a project broker by filing with the Commission an affidavit on the form prescribed. The developer may from time to time change the designated project broker by filing a new designation form

with the Commission within 10 days following the change. A broker licensed under the provisions of Section .1800 of Subchapter 58A shall not be designated as a project broker. Provisional brokers shall not be designated as a project broker.

*Authority G.S. 93A-41(7a); 93A-51; 93A-58(c); 93A-9.*

**21 NCAC 58B .0602 DUTIES OF THE PROJECT BROKER**

(a) The broker designated by the developer of a time share project to be project broker shall assume responsibility for:

- (1) The display of the time share project certificate registration and the license certificates of the real estate ~~salespersons~~ and brokers associated with or engaged on behalf of the developer at the project;
- (2) The determination of whether each licensee employed has complied with Rules .0503 and .0506 of Subchapter 58A;
- (3) The notification to the commission of any change in the identity or address of the project or in the identity or address of the developer or marketing or managing entities at the project;
- (4) The deposit and maintenance of time share purchase or rental monies in a trust or escrow account until proper disbursement is made; and
- (5) The proper maintenance of accurate records at the project including all records relating to the handling of trust monies at the project, records relating to time share sales and rental transactions and the project registration and renewal.

(b) The project broker shall review all contracts, public offering statements and other documents distributed to the purchasers of time shares at the project to ensure that the documents comport with the requirements of the Time Share Act and the rules adopted by the commission, and to ensure that true and accurate documents have been given to the purchasers.

(c) The project broker shall not permit time share sales to be conducted by any person not licensed as a broker ~~or salesperson~~, and shall not delegate or assign his or her supervisory responsibilities to any other person, nor accept control of his or her supervisory responsibilities by any other person.

(d) The project broker shall notify the commission in writing of any change in his or her status as project broker within ten days following the change.

*Authority G.S. 93A-51; 93A-58(c).*

**SUBCHAPTER 58C - REAL ESTATE PRELICENSING EDUCATION**

**SECTION .0100 - SCHOOLS**

**21 NCAC 58C .0101 APPLICABILITY:**

**REQUIREMENT FOR APPROVAL**

This Section applies to all schools, except private real estate schools, offering real estate ~~pre-licensing~~ prelicensing courses prescribed by ~~G.S. 93A-4(a)~~; G.S. 93A-4(a) or postlicensing courses prescribed by G.S. 93A-4(a). In order for courses conducted by a school to be recognized as real estate ~~pre-licensing~~ prelicensing or postlicensing courses by the Commission, the school must obtain approval by the Commission prior to the commencement of any such courses.

*Authority G.S. 93A-4(a),(d).*

**21 NCAC 58C .0102 APPLICATION FOR APPROVAL**

Schools seeking approval to conduct real estate ~~pre-licensing~~ prelicensing or postlicensing courses must make written application to the Commission upon a form prescribed by the Commission. Schools shall submit a separate application for each separate department under which courses are to be conducted.

*Authority G.S. 93A-4(a),(d).*

**21 NCAC 58C .0103 CRITERIA FOR APPROVAL**

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the Commission that:

- (1) The school has submitted all information required by the Commission;
- (2) The school is a North Carolina post-secondary educational institution licensed or approved by the State Board of Community Colleges or the Board of Governors of the University of North Carolina or a North Carolina private business or trade school licensed under G.S. 115D-90; and
- (3) The courses to be conducted comply with the standards described in Section .0300 of this Subchapter.

(b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate or a closely related field may request that appropriate real estate and related courses in its curriculum be approved by the Commission as equivalent to the real estate ~~pre-licensing~~ prelicensing education program prescribed by G.S. 93A-4(a). The Commission may, in its discretion, grant such approval and may exempt such school from compliance with the course standards set forth in Section .0300 of this Subchapter.

*Authority G.S. 93A-4(a),(d).*

**21 NCAC 58C .0104 SCOPE, DURATION AND RENEWAL OF APPROVAL**

- (a) Approval extends only to the courses and location reported in the application for school approval.
- (b) Commission approval of schools shall terminate on December 31 in the next odd-numbered year following the effective date of approval.

(c) Schools must renew their approval to conduct real estate ~~pre-licensing~~ prelicensing and postlicensing courses by satisfying the criteria for original approval described in Rule .0103 of this Section. In order to assure continuous approval, renewal applications shall be filed with the Commission biennially on or before November 15 in the year that approval terminates.

*Authority G.S. 93A-4(a),(d); 93A-75(a).*

**21 NCAC 58C .0105 WITHDRAWAL OR DENIAL OF APPROVAL**

The Commission may deny or withdraw any approval ~~of~~ granted to any school upon finding that such school has:

- (1) refused or failed to comply with any of the provisions of Sections .0100 or .0300 of this Subchapter;
- (2) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate licensing examination questions; or
- (3) compiled a licensing examination performance record for first-time examination candidates which is below 70 percent passing for the previous annual reporting period.

*Authority G.S. 93A-4(a),(d).*

**SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS**

**21 NCAC 58C .0202 ORIGINAL APPLICATION FEE**

The original license application fee shall be two hundred dollars (\$200.00) for each proposed school location and forty dollars (\$40.00) for each real estate ~~pre-licensing~~ prelicensing or postlicensing course for which the applicant requests approval. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Real Estate Commission and is nonrefundable. The school may offer approved courses at any licensed school location as frequently as is desired during the licensing period without paying additional course fees. Requests for approval of additional courses which are submitted subsequent to filling an original license application shall be accompanied by the appropriate fee of forty dollars (\$40.00) per course.

*Authority G.S. 93A-33; 93A-34(b).*

**21 NCAC 58C .0203 SCHOOL NAME**

The official name of any licensed private real estate school must contain the words "real estate" and other descriptive words which clearly identify the school as a real estate school and which distinguish the school from other licensed private real estate ~~schools~~; schools and from continuing education course sponsors approved by the Commission. If the official school name includes the name of a person or business entity that is not an owner of the school, then the school owner must have the express permission of such person or business. The

school name must be used in all school publications and advertising.

Authority G.S. 93A-4(a),(d); 93A-33.

**21 NCAC 58C .0204 COURSES**

Schools shall comply with the provisions of Section .0300 of this Subchapter regarding ~~pre-licensing~~ prelicensing and postlicensing courses.

History Note: Authority G.S. 93A-4(a),(d); 93A-33;

**21 NCAC 58C .0206 ADMINISTRATION**

(a) One person must be designated as the Director of the ~~school, school or branch thereof.~~ The Director is defined as the person responsible for ~~school administrative matters such as program development, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and general supervision of the instructional programs~~ supervision of all school operations related to the conduct of real estate prelicensing and postlicensing courses and compliance with all statutory and rule requirements governing the licensing and operation of the school.

(b) The school director must be possessed of good character and reputation and must satisfy one of the following qualification standards:

- (1) hold a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full-time experience within the past ten years as an instructor or school administrator; or
- (3) possess qualifications which are found by the Commission to be substantially equivalent to those described in Subparagraph (1) or (2) of this Paragraph.

Authority G.S. 93A-4(a),(d); 93A-33.

**21 NCAC 58C .0209 ENROLLMENT CONTRACTS**

Schools shall execute a written contract with each student enrolled and shall provide a copy of such contract to the student. Such contract shall state the amount of tuition and fees paid, ~~the school's policy regarding refund of tuition and fees, and~~ the title and dates of the courses for which the student is ~~enrolled.~~ enrolled and a provision incorporating by reference the school's policies as described in the school's bulletin that is provided to students at the time of enrollment.

Authority G.S. 93A-4(a),(d); 93A-33.

**21 NCAC 58C .0216 CHANGES DURING THE LICENSING PERIOD**

Schools shall obtain advance approval from the Commission for any changes to be made during the licensing period with respect to ~~program structuring, course content, course completion standards,~~ textbooks, facilities, directors, policies and procedures, publications or any other matter subject to regulation by the Commission. Schools are limited to one change in classroom facilities within the same county during

any licensing period. In the event a school desires to make a second change in classroom facilities within the same county, or to relocate such facilities to another county, during any licensing period, it will be necessary for the owner to make application for an original license for the new location.

Authority G.S. 93A-4(a),(d); 93A-33.

**21 NCAC 58C .0217 LICENSE RENEWAL AND FEES**

(a) Private real estate school licenses expire on the next June 30 following the date of issuance. In order to assure continuous licensure, applications for license renewal, accompanied by the prescribed renewal fee shall be filed with the Commission annually on or before June 1. Incomplete renewal applications not completed by July 1 shall be treated as original license applications.

(b) The license renewal fee shall be one hundred dollars (\$100.00) for each previously licensed school location and twenty dollars (\$20.00) for each real estate ~~pre-licensing~~ prelicensing or postlicensing course for which the applicant requests continuing approval. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is nonrefundable. If the applicant requests approval of additional courses for which approval was not granted in the previous year, the fee for such additional courses is forty dollars (\$40.00) per course.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34(b); 93A-35(b).

**SECTION .0300 - PRELICENSING AND POSTLICENSING COURSES**

**21 NCAC 58C .0301 PURPOSE AND APPLICABILITY**

This Section establishes minimum standards for real estate ~~pre-licensing~~ prelicensing and postlicensing courses prescribed by ~~G.S. 93A-4(a).~~ G.S. 93A-4(a) and G.S. 93A-4(a1). Except where a school is approved under Rule .0103(b) of this Subchapter, these course standards must be satisfied in order for a school to be approved or licensed, as appropriate, to conduct real estate ~~pre-licensing~~ prelicensing or postlicensing courses.

Authority G.S. 93A-4(a),(d); 93A-33.

**21 NCAC 58C .0302 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS**

(a) ~~Real estate pre-licensing education programs shall include a salesperson course consisting of at least 67 classroom hours of instruction and a broker course consisting of at least 60 classroom hours of instruction.~~ The real estate prelicensing education program shall consist of a single course consisting of at least 75 classroom hours of instruction. Schools may establish course admission standards that require students to demonstrate to the satisfaction of the school that they possess the basic reading, writing and mathematics skills necessary to be successful in the prelicensing course, and these standards

may include a requirement to complete additional instruction prior to enrollment.

~~(b) Completion of the North Carolina salesperson course within the previous three years, possession of a current North Carolina salesperson license, or possession of a current salesperson or broker license in another state shall be a prerequisite for enrollment in the broker course. The real estate postlicensing education program shall consist of three courses prescribed by the Commission, each consisting of at least 30 classroom hours of instruction, which may be taken by students in any sequence. Licensure as a broker in North Carolina or another state shall be a prerequisite for enrollment in these courses.~~

*Authority G.S. 93A-4(a),(d); 93A-33.*

**21 NCAC 58C .0304 COURSE COMPLETION STANDARDS**

(a) Academic standards for course completion shall reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. A student's grade shall be based solely on his or her performance on examinations and on graded homework and classwork assignments.

(b) Course completion requirements shall include, at a minimum, obtaining a grade of at least 75 percent on a comprehensive final course examination which covers all prescribed subject areas and satisfactorily completing any mandatory graded homework or classwork assignments. Schools and instructors may utilize other course tests in addition to the final course examination provided that a student's grade on the final course examination accounts for at least 75 percent of the student's grade for the course. The development or acquisition of appropriate ~~salesperson prelicensing~~ course examinations shall be the responsibility of approved instructors and schools. ~~The broker course final examinations provided by the Commission shall be utilized by schools and instructors unless the school or instructor has obtained written approval from the Commission to use another final examination which is substantially equivalent to the Commission provided examinations. All Prelicensing~~ course examinations shall be subject to review and approval by the Commission as provided in G.S. 93A-4(a) and (d) and Rule .0304(a) of this Section. Postlicensing course final examinations shall be provided by the Commission and shall be used by approved instructors and schools. Take-home or open-book final course examinations are prohibited. ~~Schools~~ For prelicensing courses, schools may, within 90 days of the course ending date, allow a student one opportunity to make up any missed course final examination or to retake any failed course final examination without repeating the course; however, any makeup or repeat examination must be comparable to the initial examination with regard to the number of questions and overall difficulty, and at least 75 percent of the questions in the makeup or repeat examination shall be different from those used on the initial examination. For postlicensing courses, schools shall, within 90 days of the course ending date, allow a student one opportunity to make up any missed course final examination or to retake any failed

course final examination without repeating the course; however, if a makeup or repeat examination is specifically requested by a student to be taken at the earliest possible opportunity, the school must provide an opportunity for the student to take such examination within seven days of the student's request. Any makeup or repeat postlicensing course final examination shall consist of a different form of the examination than the one previously administered in the student's course.

(c) Schools and instructors shall take appropriate steps to protect the security and integrity of course examinations at all times. These steps shall include, but not be limited to:

- (1) Maintaining examinations and answer keys in a secure place accessible only to the instructor or appropriate school officials;
- (2) Prohibiting students from retaining copies of examinations, answer sheets, and closing statement forms or scratch paper containing notes or calculations that jeopardize examination security; and
- (3) Monitoring students at all times when examinations are being administered.

(d) Any student who is found by an instructor or other school official to have cheated in any manner on any course examination shall be dismissed from the course in which enrolled and shall not be awarded a passing grade for the course or any credit for partial completion of the course. The cheating incident shall be reported in writing to the Commission within 10 days of the incident.

(e) The minimum attendance required for satisfactory course completion shall be 80 percent of all scheduled classroom hours for the course.

*Authority G.S. 93A-4(a),(d).*

**21 NCAC 58C .0305 COURSE SCHEDULING**

(a) All courses must have fixed beginning and ending dates, and schools may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0304(c) of this Section.

(b) ~~Real estate pre-licensing courses~~ Courses may not have class meetings that exceed six classroom hours in any given day and 21 classroom hours in any given seven-day period. However, a school that conducts courses with class meetings that do not exceed a total of 15 classroom hours in any seven-day period may conduct individual class meetings of up to 7 1/2 hours in any given day. A school may request special approval to conduct postlicensing courses that involve an accelerated schedule of up to 30 classroom hours within a seven-day period and the Commission may grant such approval if the school demonstrates to the Commission that the course will be conducted in a manner that will not compromise instructional quality and course standards. When considering such a request, the Commission will take into consideration the proposed class schedule, the school's instructional plan, including a plan for assuring that students

have a reasonable opportunity to perform required out-of-class reading and other assignments, the instructor's experience in teaching prelicensing and postlicensing courses, the license examination performance of the instructor's former prelicensing course students, and similar factors. A school granted approval to conduct postlicensing courses that involve an accelerated schedule that exceeds the basic scheduling restrictions prescribed by this Rule shall assure that such courses are conducted in a manner that fully complies with all applicable Commission rules and the instructional plan submitted to the Commission.

(c) A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.

*Authority G.S. 93A-4(a),(d).*

**21 NCAC 58C .0307 INSTRUCTORS**

(a) Except as indicated in Paragraph (b) of this Rule, all ~~real estate pre-licensing~~ courses must be taught by instructors who have been approved by the Commission in accordance with Section .0600 of this Subchapter.

(b) Guest lecturers who do not possess the qualifications stated in Rule .0603 of this Subchapter may be utilized to teach collectively up to one-third of any course, provided that no one individual guest lecturer may teach more than one-fifth of any course, and provided further that each guest lecturer possesses experience directly related to the particular subject area the guest lecturer is teaching.

*Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.*

**21 NCAC 58C .0309 COURSE COMPLETION REPORTING**

~~Applicants for licensure must provide verification of course completion on an official certificate in a format prescribed by the Commission. Such certificates will not be accepted if they were issued to students prior to the last scheduled class meeting of a course. Certificates of course completion submitted to the Commission must be on the official stationery of the school and must have the original signature or signature stamp of the dean, director, department head or other official responsible for supervising the conduct of the course.~~

(a) Schools shall provide each student who completes a prelicensing or postlicensing course in compliance with Commission rules and school course completion standards a course completion certificate in a format prescribed by the Commission. In addition to information identifying the course, student and instructor, the certificate must include the official letterhead of the school and must have the original signature or a signature stamp in a color other than black of the director, dean or other school official responsible for supervising the conduct of the course.

(b) Schools shall prepare and submit to the Commission, along with the fee prescribed by G.S. 93A-4(a2), accurate reports verifying completion of a postlicensing course for each licensee who completes a postlicensing course in compliance

with Commission rules and school course completion standards. Such reports shall include students' names, students' license numbers, course dates, school and course code numbers and similar course information presented in the format prescribed by the Commission, and shall, in accordance with instructions provided by the Commission, be transmitted electronically via the Internet to the Commission within seven calendar days following the course.

*Authority G.S. 93A-4(a),(d); 93A-33.*

**21 NCAC 58C .0311 INSTRUCTIONAL DELIVERY METHODS**

The principal instructional delivery method utilized in real estate ~~pre-licensing prelicensing and postlicensing~~ courses must provide for the instructor to interact with students either in person in a traditional classroom setting or through an interactive television system or comparable system which permits continuous mutual audio and visual communication between the instructor and all students and which provides for appropriate monitoring and technical support at each site where the instructor or students are located. The use of media-based instructional delivery systems such as videotape or digital video disc (DVD), remote non-interactive television, computer-based instructional programs or similar systems not involving continuous mutual audio and visual communication between instructor and students may be employed only to enhance or supplement personal teaching by the instructor. Such delivery systems may not be used to substitute for personal teaching by the instructor. No portion of a course may consist of correspondence instruction.

*Authority G.S. 93A-3(c); 93A-4(a); 93A-34.*

**SECTION .0600 –PRELICENSING AND POSTLICENSING INSTRUCTORS**

**21 NCAC 58C .0601 PURPOSE AND APPLICABILITY**

This Section prescribes the criteria and procedures for Commission approval of instructors of real estate ~~pre-licensing prelicensing and postlicensing~~ courses and also prescribes performance standards for approved ~~pre-licensing prelicensing and postlicensing~~ instructors.

*Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.*

**21 NCAC 58C .0602 NATURE AND SCOPE OF INSTRUCTOR APPROVAL**

Approval of real estate ~~pre-licensing prelicensing and postlicensing~~ course instructors shall be accomplished ~~separate~~ separately from the approval and licensure of schools to conduct real estate ~~pre-licensing prelicensing and postlicensing~~ courses. Approval of a ~~pre-licensing course~~ instructor to teach prelicensing and postlicensing courses authorizes the instructor to teach ~~both salesperson and broker pre-licensing such~~ courses at schools approved or licensed by the Commission to conduct such courses. ~~An approved pre-licensing course ;~~ however, an approved instructor shall not

independently conduct a ~~pre-licensing~~ prelicensing or postlicensing course. An instructor must obtain written approval from the Commission prior to teaching a ~~pre-licensing~~ prelicensing or postlicensing course for any school and prior to representing to any school or other party that the instructor is approved or may be approved as a ~~pre-licensing~~ prelicensing or postlicensing course instructor.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

**21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL**

(a) An individual seeking original approval as a ~~pre-licensing~~ prelicensing and postlicensing course instructor shall make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee shall be required. All required information regarding the applicant's qualifications shall be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character as set out in G.S. 93A-4(b) and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: a current North Carolina real estate broker license; a current continuing education record; three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years; 120 classroom hours of real estate education excluding company or franchise in-service sales training; and 60 semester hours of college-level education at an institution accredited by a nationally recognized college accrediting body. The Commission shall consider teaching experience at the secondary or post-secondary level in lieu of a portion of the brokerage experience requirement.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of the Commission's new instructor seminar within three years prior to the date of application and shall submit a one-hour video recording which depicts the applicant teaching a real estate ~~pre-licensing~~ prelicensing or postlicensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The new instructor seminar requirement may be waived upon a finding by the Commission that the applicant possesses comparable instructor training, three years full-time experience teaching real estate pre-licensing courses in another state within the previous five years, or other equivalent qualifications. The video recording shall comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a digital video disc (DVD) or videotape. An applicant who is qualified under Paragraph (b)

of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission may extend the six-month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted video recording, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances which are outside the instructor's control or when failure to extend the grace period could result in harm or substantial inconvenience to students, licensees, or other innocent persons. An individual applying for instructor approval who within the previous three years was allowed the six-month grace period to satisfy the requirements stated in this Paragraph, but did not satisfy such requirements within the allowed grace period, shall not be allowed the grace period.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

**21 NCAC 58C .0604 INSTRUCTOR PERFORMANCE**

(a) Instructors shall conduct courses in accordance with the Commission's rules and course syllabi. Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught as evidenced by the ability to teach the subject matter without mistake or inaccuracy, and mastery of the following basic teaching skills:

- (1) The ability to communicate through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate voice inflection, grammar and vocabulary in a manner that enhances learning.
- (2) The ability to present an effective visual image to a class, including appropriate appearance and physical mannerisms.
- (3) The ability to present instruction in, an accurate, logical, orderly and understandable manner that enhances learning, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students.
- (4) The ability to utilize varied instructional techniques in addition to lecture, such as class discussion, role playing or other techniques in a manner that enhances learning.
- (5) The ability to utilize instructional aids, such as an overhead projector, in a manner that enhances learning.

- (6) The ability to maintain an appropriate learning environment and effective control of a class.
- (7) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(b) Instructors shall utilize ~~pre-licensing~~ course examinations that will assure compliance with the course completion standards prescribed in Rule .0304 of this Section. Instructors shall take appropriate steps to protect the security of course examinations and shall not allow students to retain copies of final course examinations.

(c) Instructors shall not obtain or use, or attempt to obtain or use, in any manner or form, North Carolina real estate licensing examination questions.

*Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.*

**21 NCAC 58C .0605 REQUEST FOR EXAMINATIONS AND VIDEO RECORDINGS**

(a) Upon request of the Commission, an instructor shall submit to the Commission copies of final course examinations, with answer keys, used in ~~pre-licensing~~ prelicensing courses taught by the instructor.

(b) Upon request of the Commission, an instructor must submit to the Commission a video recording which depicts the instructor teaching portions of a ~~pre-licensing~~ prelicensing or postlicensing course specified by the Commission and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0604 of this Section.

(c) Any video recording submitted to the Commission in connection with an instructor application must be approximately one hour in length and must depict the instructor teaching one continuous block of instruction on a single topic. Any video recording submitted in connection with an instructor application or in response to a request from the Commission must have been made within 12 months of the date of submission, must be recorded either on a digital video disc (DVD) or on a VHS formatted videocassette, must be unedited, must include a label identifying the instructor and dates of the video-recorded instruction, and must have visual and sound quality sufficient to allow viewers to clearly see and hear the instructor.

*Authority G.S. 93A-4(a),(d); 93A-33; 93A-34;*

**21 NCAC 58C .0606 POSTLICENSING COURSE REPORTS**

The Commission may require an instructor to submit, on a form prescribed by the Commission, periodic reports providing information on student enrollment and course completion for each postlicensing course taught by the instructor.

*Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.*

**21 NCAC 58C .0607 EXPIRATION, RENEWAL, AND REINSTATEMENT OF APPROVAL**

(a) Commission approval of ~~pre-licensing~~ prelicensing and postlicensing instructors shall expire on the third December 31 following issuance of approval, except as otherwise provided in Rule .0603(c) of this Section.

(b) In order to assure continuous approval, approved instructors must file applications for renewal of approval on a form provided by the Commission on or before December 1 immediately preceding expiration of their approval. To qualify for renewal of approval, instructors must demonstrate that they continue to satisfy the criteria for original approval set forth in Rule .0603(b) of this Section and that they have attended, during the immediately preceding approval period, at least three separate real estate instructor educational programs of at least six hours each. When considering an application for renewal of instructor approval, the Commission may recognize experience in teaching real estate ~~pre-licensing~~ prelicensing or postlicensing courses, Commission-approved continuing education courses or comparable courses in lieu of the real estate brokerage experience requirement set forth in Rule .0603(b) of this Section.

(c) In order to reinstate an expired ~~pre-licensing~~ instructor approval, the former instructor must file an application provided by the Commission, must satisfy the criteria for original approval set forth in Rule .0603(b) of this Section, and must demonstrate that he or she has attended at least three separate real estate instructor educational programs of at least six hours each during the previous three years. If an applicant's prior approval has been expired for more than three years, the applicant also must satisfy the criteria for original approval set forth in Rule .0603(c) of this Section. A reinstatement applicant who satisfies the criteria set forth in Rule .0603(b) of this Section but who does not satisfy the criteria set forth in Rule .0603(c) of this Section or who has not attended the aforementioned three real estate instructor educational programs within the previous three years shall be reinstated and granted a six-month grace period to satisfy all remaining requirements. The grace period shall operate in the same manner as the grace period described in Rule .0603(c) of this Section. Any instructor educational programs attended during the grace period to satisfy the reinstatement requirement shall not also be credited toward the instructor educational program attendance requirement described in Paragraph (b) of this Rule when the instructor subsequently applies for renewal of his or her approval.

*Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.*

**21 NCAC 58C .0608 DENIAL OR WITHDRAWAL OF APPROVAL**

(a) The Commission may deny or withdraw approval of any ~~pre-licensing~~ prelicensing and postlicensing instructor approved to teach prelicensing and postlicensing courses upon finding that:

- (1) the instructor or instructor applicant has failed to meet the criteria for approval described in Rule .0603 of this Section or the criteria for renewal of approval



described in Rule .0607 of this Section at the time of application or at any time during an approval period or has refused or failed to comply with any other provisions of this Subchapter;

- (2) the instructor has made any false statements or presented any false, incomplete, or incorrect information in connection with an application for approval or renewal of approval;
- (3) the instructor has failed to submit any report, course examination or video recording the instructor is required to submit to the Commission;
- (4) the instructor has provided false, incomplete, or incorrect information in connection with any report the instructor or a ~~pre-licensing~~ school is required to submit to the Commission;
- (5) the instructor has failed to demonstrate, during the teaching of ~~pre-licensing~~ Commission-approved prelicensing, postlicensing or continuing education courses, those effective teaching skills described in Rule .0604 of this Section;
- (6) the instructor has compiled a licensing examination performance record for first-time examination candidates which is below 70 percent passing for the previous annual reporting period;
- (7) the instructor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another jurisdiction; or
- (8) the instructor has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions.

(b) If a licensee who is an approved ~~pre-licensing~~ prelicensing and postlicensing course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

**SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION**

**SECTION .0100 - UPDATE COURSE**

**21 NCAC 58E .0102 UPDATE COURSE COMPONENT**

(a) To renew a license on active status, a real estate broker ~~or salesperson~~ must complete, within one year preceding license expiration and in addition to satisfying the continuing education elective requirement described in Section .0302 of this Subchapter, a Commission-developed update course consisting of four classroom hours of instruction.

(b) The Commission shall develop annually an update course which shall be conducted by sponsors approved by the Commission under this Subchapter. The subject matter of this course shall be determined by the Commission, which shall produce instructor and student materials for use by course sponsors. The Commission shall prepare a completely new course for each one-year period beginning July 1 and ending the next June 30. Sponsors must acquire the Commission-developed course materials and utilize such materials to conduct the update course. The course must be conducted exactly as prescribed by the rules in this Subchapter and the course materials developed by the Commission. All course materials that are developed by the Commission for use in an update course and that are subject to the protection of federal copyright laws are the property of the Commission. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action. Sponsors must provide licensees participating in their classes a copy of the student materials developed by the Commission. With advance approval from the Commission, course sponsors and instructors may make modifications to the update course when the update course is being promoted to and conducted for a group of licensees that specialize in a particular area of real estate brokerage, provided that the modifications relate to the same general subject matter as is addressed in the prescribed update course and the course as modified achieves the same educational objectives as the unmodified course.

(c) Approval of a sponsor to conduct an update course authorizes the sponsor to conduct the update course using an instructor who has been approved by the Commission as an update course instructor under Section .0200 of this Subchapter. The sponsor may conduct the update course at any location as frequently as is desired during the approval period, provided that no courses may be conducted between June 11 and June 30 of any approval period.

Authority G.S. 93A-3(c); 93A-4A.

**SECTION .0300 - ELECTIVE COURSES**

**21 NCAC 58E .0302 ELECTIVE COURSE COMPONENT**

(a) To renew a license on active status, a real estate broker ~~or salesperson~~ must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.

(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided, however, the sponsor may not conduct any session of an approved course for real estate

continuing education purposes between June 11 and June 30, inclusive, of any approval period.

(c) The sponsor of an approved "distance education" elective course, as defined in Rule .0310 of this Subchapter, shall not permit students to register for any such course between June 11 and June 30, inclusive, of any approval period. The sponsor of any such distance education course shall require students registering for any such course to complete the course within 30 days of the date of registration for the course or the date the student is provided the course materials and permitted to begin work, whichever is the later date, provided that the deadline for course completion in any approval period shall not be later than June 10 of that approval period. The sponsor shall advise all students registering for a distance education course, prior to accepting payment of any course fees, of the deadlines for course completion.

*Authority G.S. 93A-3(c); 93A-4A.*

**21 NCAC 58E .0406 COURSE COMPLETION REPORTING**

(a) Course sponsors must prepare and submit to the ~~Commission~~ Commission, along with the per student fee required by G.S. 93A-4.1(d), reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Such reports shall include students' names, students' license numbers, course date, sponsor and course codes and course information presented in the format prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information in such reports. Such reports shall be transmitted electronically via the Internet. Sponsors must submit these reports to the Commission in a manner that will assure receipt by the Commission within ~~fifteen~~ seven calendar days following the course, but in no case later than June 15 of any approval period for courses conducted during that approval period.

(b) At the request of the Commission, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form provided by the Commission. Sponsors must submit the completed evaluation forms to the Commission with the reports verifying completion of a continuing education course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A .1705 a course completion certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date. The certificate is to be retained by the licensee as his or her proof of having completed the course.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion

of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall not be obligated to submit reports verifying completion of continuing education courses by electronic means, provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a ~~five dollar (\$5.00) per student fee, fee~~ required by G.S. 93A-4.1(d), payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the course, but not later than the last course reporting dates for an approval period specified in Paragraph (a) of this Rule. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

*Authority G.S. 93A-3(c); 93A-4A.*

**21 NCAC 58E .0407 PER STUDENT FEE**

~~Following completion of any approved continuing education update or elective course, the sponsor must pay to the Commission a fee in the amount of five dollars (\$5.00) for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705. This fee must accompany the reports required to be submitted by Rule .0406 of this Section. This fee is not required if the sponsor is a community college, junior college, college or university located in North Carolina and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government.~~

*Authority G.S. 93A-3(c); 93A-4A.*

**SUBCHAPTER 58F - BROKER TRANSITION COURSE**

**SECTION .0100 – REQUIREMENTS**

**21 NCAC 58F .0101 BASIC REQUIREMENT**

A provisional broker who was issued a real estate salesperson license prior to October 1, 2005 that was changed to a broker license on provisional status on April 1, 2006 in accordance with G.S. 93A-4.3(a), shall, as prescribed in G.S. 93A-4.3(b),

complete a broker transition course consisting of 24 classroom hours of instruction prescribed by the Commission not later than April 1, 2008, unless the provisional broker can demonstrate to the Commission not later than April 1, 2008 that he or she possesses four years' full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous six years.

Authority G.S. 93A-4.

**21 NCAC 58F .0102 COURSE CONTENT**

The broker transition course shall consist of instruction on real estate brokerage relationships, real estate broker responsibilities, real estate contracts, and other subjects more specifically described in the Broker Transition Course Syllabus.

Authority G.S. 93A-4.

**21 NCAC 58F .0103 COURSE SPONSORS AND INSTRUCTORS**

Course sponsors and instructors approved by the Commission to conduct the continuing education update course under Subchapter E of this Chapter are authorized to conduct the broker transition course. No separate application for approval or application fee to conduct the broker transition course is required and no separate approval shall be granted.

Authority G.S. 93A-4.

**21 NCAC 58F .0104 COURSE OPERATIONAL REQUIREMENTS**

The broker transition course shall be conducted in accordance with the course operational requirements prescribed for the conduct of continuing education courses in Section .0500, Subchapter E of this Chapter, except that class sessions shall be limited to a maximum of six hours in any given day. There will be no examinations required in order for students to successfully complete the course. Students must attend at least 90 percent of the scheduled classroom hours in order to receive credit for the course.

Authority G.S. 93A-4.

**21 NCAC 58F .0105 COURSE COMPLETION REPORTING AND PER STUDENT FEE**

The provisions of 21 NCAC 58E .0406(a)-(d) relating to continuing education course completion reporting, course evaluations, course completion certificates and reporting non-compliance with participation standards shall also apply to the broker transition course and course sponsors shall, at the time of reporting course completion, pay to the Commission the per student fee prescribed by G.S. 93A-4.3(c).

Authority G.S. 93A-4.

**21 NCAC 58F .0106 WITHDRAWAL OF SPONSOR AND INSTRUCTOR APPROVAL**

The provisions of Commission Rule 21 NCAC 58E .0412 shall apply to any continuing education update course sponsor when conducting the broker transition course and the provisions of Commission Rule 21 NCAC 58E .0205 shall apply to any continuing education update course instructor when conducting the broker transition course. In addition, any violation of this Subchapter by a continuing education update course sponsor or instructor shall be grounds for withdrawal of the approval of a continuing education update course sponsor or instructor.

Authority G.S. 93A-4.

**SUBCHAPTER 58G – NORTH CAROLINA REAL ESTATE COMMISSION ADMINISTRATION**

**SECTION .0100 – REAL ESTATE COMMISSION SERVICE**

**21 NCAC 58G .0101 PER DIEM**

A member of the Real Estate Commission shall receive a per diem payment of two hundred dollars (\$200.00) for each day during which the member is engaged in business for or on behalf of the Real Estate Commission.

Authority G.S. 93A (b),(c).

**TITLE 25 – OFFICE OF STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01D .0106.*

**Proposed Effective Date:** April 1, 2006

**Public Hearing:**

**Date:** November 30, 2005

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

**Location:** Office of State Personnel Conference Room, Administration Bldg., 3<sup>rd</sup> floor 116 West Jones Street, Raleigh, NC

**Reason for Proposed Action:** *The State's Auditor's Office brought to our attention a finding that some employees in one of the State agencies were receiving additional compensation from a foundation for duties performed in their regular employment.*

*We have a rule/policy on Total Compensation and Total Employment that states that an employee cannot receive additional pay for additional work except under the Overtime Policy and the Dual Employment, which is employment in another agency on the employee's own time. It does not address additional compensation for the employee's regular position.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may object to this proposed rule by one of the following methods: 1. A written letter to Peggy*

Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An email to peggy.oliver@ncmail.net. 3. A telephone call to Peggy Oliver at (919)733-7108.

Comments may be submitted to: Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919)733-7108.

Comment period ends: January 17, 2006

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. If the Rules Review Commission receives written and signed objections 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 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)

None

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0100 - ADMINISTRATION OF THE PAY PLAN

25 NCAC 01D .0106 TOTAL COMPENSATION AND

TOTAL EMPLOYMENT

(a) An employee being paid for full-time employment by a State agency employer shall not receive additional compensation from any other State agency employer for additional work performed for the state except as provided under the dual employment policy or and under the overtime policies. Under the dual employment policy, an agency may secure the services of an employee in another agency on a part-time, consulting or contractual basis when the demand for an employee with special skills and abilities is required for efficient operation of a program.

(b) No employee subject to G.S. 126 shall receive compensation above the employee's base salary from the State or from any source for performing the duties of the employee's position except as authorized by this Chapter.

Authority G.S. 126-4.

**Note from the Codifier:** The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

**NC BUILDING CODE COUNCIL**

**Rule-making Agency:** NC Building Code Council

**Rule Citation:** NC Electrical Code, Articles 10.10 Approval, 100 Equipment definition

**Effective Date:** October 26, 2005

**Findings Reviewed and Approved by the Codifier:** October 18, 2005

**Reason for Action:** Approval of electrical equipment is critical to the life-safety of employees and other building occupants. On appeal, the Building Code Council ruled that approval of industrial equipment/machinery is not covered by the Electrical Code. Most local jurisdictions verify or approve industrial equipment/machinery when it is installed in conjunction with new construction. The effect of the Order from this recent appeal will direct the local Code Enforcement Official that approval of industrial equipment/machinery is beyond the scope of the Electrical Code. The Council feels it is imperative to immediately take measures to correct the Code, to require that the Authority Having Jurisdiction approve all industrial equipment and industrial machinery installed in buildings. This Emergency Rule is necessary to correct this deficiency. The danger associated with industrial equipment and industrial machinery are life safety issues. The types of equipment and

machinery involved operate at high voltages and if not properly installed and inspected could result in serious injury and death to those who come in contact with the machinery and equipment, along may those who may work on the equipment and machinery. Approval of equipment and machinery assures that the grounding of the machines is proper, wire sizes are correct for the particular usage, automatic shut off switches are installed where needed and required, among many other issues. Third party testing agencies or professional engineers are usually hired to provide a more in-depth analysis of the equipment that the code enforcement official has the time or expertise to provide.

- 10.10 Approval.** The Authority Having Jurisdiction shall approve industrial equipment or industrial machinery by one of the following methods chosen by the owner or owner's agent:
- (1) Approval by a Licensed Professional Engineer registered in the State of North Carolina.
  - (2) Listing or Labeling by a Third Party Testing Agency approved by the NC Building Code Council.
  - (3) Approval by the local Code Enforcement Official.

Article 100

**Equipment.** A general term including material, fittings, devices, appliances, luminaries (fixtures), apparatus, industrial equipment, industrial machinery, and the like used as a part of, or in connection with, an electrical installation.

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.  
 This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

**TITLE 13 – DEPARTMENT OF LABOR**

**Rule-making Agency:** Department of Labor/Mine and Quarry Bureau

**Rule Citation:** 13 NCAC 06 .0601

**Effective Date:** November 1, 2005

**Date Approved by the Rules Review Commission:** October 20, 2005

**Reason for Action:** Effective September 1, 2005, Senate Bill 622 enacted G.S. 74-24.16(d) which authorizes the Commissioner of Labor to set fees for persons participating in education and training programs provided by the Department of Labor – Mine and Quarry Bureau. This legislation was passed by the North Carolina General Assembly on August 11, 2005 and signed by the Governor on August 13, 2005. The enactment of Senate Bill 622 has reduced the 2005-2006 Budget of the Mine and Quarry Bureau by \$270,000.00 which has resulted in

the loss of one-half of it's budget and caused an immediate transition to the Bureau becoming a receipts funded or fee-based program. The ability to sustain an effective Bureau and minimize the inevitable Budget shortfall relies upon the immediate establishment and collection of fees for persons attending Mine and Quarry Education and Training Programs. Any delay in the effective date of the rule would result in a serious revenue shortfall to the Mine and Quarry Bureau and negate the General Assembly's intent in delegating fee-setting authority to the Commissioner of Labor.

**CHAPTER 6 - MINE AND QUARRY DIVISION**

**SECTION .0600 – FEES**

**13 NCAC 06 .0601 MINE AND QUARRY BUREAU FEE SCHEDULE**

Persons attending education and training classes offered by the N.C. Department of Labor – Mine and Quarry Bureau shall be assessed a fee ~~not to exceed the following:~~ as follows:

Class Description		Fee			
(1)	First Aid and CPR:	\$50.00 per class			
	(a) First Aid Only:	\$40.00 per class			
	(b) CPR Only:	\$25.00 per class			
(2)	Mine Safety and Health Law School and Supervisor Training – 3 Parts:	\$50.00 per part			
(3)	Part 46 or Part 48 Instructors Institute – 3 Parts:	\$50.00 per part			
(4)	Explosives Safety School – 3 Parts:	\$50.00 per part			
(5)	New Miner and Experienced Mine Annual Refresher Training <del>and/or</del> and additional generalized training programs – Fee established by length of training session (in hours) and class size as follows:				
Class Size					
	0-4	5-20	21-40	41-60	61 and Over
Hours	Per Person Fee				
0-2	\$20.00	\$10.00	\$8.00	\$6.00	\$5.00
2-4	\$30.00	\$20.00	\$16.00	\$12.00	\$9.00
4-6	\$40.00	\$30.00	\$25.00	\$20.00	\$15.00
6-8	\$50.00	\$40.00	\$35.00	\$30.00	\$25.00

*History Note:* Authority G.S. 74-24.16(d).  
 Emergency Adoption Eff. September 13, 2005;  
 Temporary Adoption Eff. November 1, 2005.

**Effective Date:** November 1, 2005

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**Rule-making Agency:** Wildlife Resources Commission

**Rule Citation:** 15A NCAC 10F .0371

**Date Approved by the Rules Review Commission:** October 20, 2005

**Reason for Action:** Duke Energy Corporation has already begun major construction activity near its Belews Creek Steam Station in Belews Lake, Stokes County. The activity involves blasting of large chunks of earth, movement of heavy

machinery, much of which hangs over the cove proposed for an exclusionary zone, and movement of tanks containing anhydrous ammonia, which is explosive. Unfortunately, the Corporation was unaware that it required the cooperation of WRC to place buoys or barriers on the waters, and failed to notify the Wildlife Resources Commission in time for WRC to undertake normal rulemaking. However, the dangerous activity is already underway. WRC seeks to enact a temporary rule in order to give enforcement authority to an exclusion zone at the work site and an evacuation zone near the work site.

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

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

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

**15A NCAC 10F .0371 BELEWS LAKE IN STOKES COUNTY**

(a) Regulated Area. This Rule applies only to the areas described in Paragraphs (b) and (c) of this Rule in Belews Lake in Stokes County.

(b) No swimming or boating in exclusionary zone. No swimming or other entry of a person in or upon a boat, raft or

other floating object shall be permitted in the cove containing the power station's plant intake on the western side of Belews Lake approximately 1,000 feet northeast of Belews Creek Steam Station, as marked by warning buoys and signs.

(c) No swimming or boating in evacuation area in event of alarm. In the event of a siren or audible alarm generated by the Belews Creek Steam Station, all persons swimming, boating or occupying a raft or other floating object on the lake shall evacuate the area on the western side of Belews Lake approximately 4,000 feet northeast of Belews Creek Station as marked by warning buoys and signs.

(d) Paragraphs (b) and (c) of this Rule shall not apply to persons who, with consent of Duke Energy Corporation, access the area for the purpose of responding to emergency or maintaining or repairing facilities of Duke Energy Corporation.

(e) Placement and Maintenance of Markers. The Duke Energy Corporation is designated as a suitable entity for placement and maintenance of buoys, barriers and other signs indicating the areas in which boating or swimming are prohibited by this Rule.

*History Note: Authority G.S. 75A-3; 75A-15; Emergency Adoption Eff. August 1, 2005; Temporary Adoption Eff. November 1, 2005.*

**RULES REVIEW COMMISSION**

*This Section contains information for the meeting of the Rules Review Commission on Thursday November 17, 2005, 10:00 a.m. at 1307 Glenwood Avenue, Assembly 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 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jim R. Funderburke - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Thomas Hilliard, III  
Robert Saunders  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
Graham Bell  
Lee Settle  
Dana E. Simpson  
John Tart

**RULES REVIEW COMMISSION MEETING DATES**

December 15, 2005                      January 19, 2006  
February 16, 2006                      March 16, 2006

**RULES REVIEW COMMISSION  
OCTOBER 20, 2005  
MINUTES**

The Rules Review Commission met on Thursday, October 20, 2005, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, Jennie Hayman; Thomas Hilliard, Robert Saunders; Dana Simpson, Lee Settle, and John Tart.

Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

The following people attended:

Joe Moore	NC General Assembly
Richard Slipsky	NC Department of Justice
Al Eisele	DHHS
Nancy Pate	DENR
Sarah Meachani	NC Department of Justice
Connie Devenport-Fleming	WCPSS
Samuel Jackson	DBK-EAST
Frank Crawley	NC Department of Justice
Barry Gupton	Department of Insurance
James Gulick	NC Department of Justice
Don Laton	NC Department of Justice
Erin Gould	Department of Labor
Allie Leni	DHHS
Kim Lovenduski	DHHS
David Ferrell	Vandeventer Black LLP
Lisa Martin	NC Home Builders Association
Satana Deberry	DHHS
Warren Richardson	DENR
Jesse Chavis	RDI
Nadine Pfeiffer	Division of Facility Services
Jeff Horton	Division of Facility Services
Helen Cotton	DENR
Dedra Alston	DHHS



Lorie Pugh	DHHS
Diane Miller	Attorney General's Office
Craig Bromby	Hunton & Williams
Robin Smith	DENR
James Dennik	NC Association of County Commissioners
Paul Meyer	NC Association of County Commissioners
Kaye Holder	DHHS
George Givens	NC General Assembly
Jeff Hudson	NC General Assembly
Rick Zechini	NC Association of Realtors
Denise Stanford	Pharmacy Board
Corey Meness	DHHS
Anita Watkins	NCLM
Alastair Macaulay	NCHBA
Elloit Rushing	NCSOS
Melinda Piason	SELC
Chris Simmons	UFON
Bradley Bennett	DENR/DWQ
Mike Randall	DENR/DWQ
Mercidee Benton	DHHS
Grady McCallie	NC Conservation Network
Mike Nelson	CCNC
Julie Brincefield	OAH
Camille Winston	OAH
Molly Masich	OAH
Jean Stanley	NC Board of Nursing
Paulette Young	NC Board of Nursing
David Kalbackon	NC Board of Nursing
Phillip Hoffman	DHHS/MH/DD/SAS
Cindy Kornegay	DHHS/MH/DD/SAS
Stacy Silvia Overcash	DHHS/MH/DD/SAS
David Cobb	Wildlife Resources Commission
Kelly Douglass	Wildlife Resources Commission
Amy Pickle	Southern Environmental Law Center of NC
Warren Plonk	Office of State Budget and Management
Nathan Knuffman	Office of State Budget and Management
Julian Mann	OAH

#### **APPROVAL OF MINUTES**

The meeting was called to order at 10:10 a.m. with Chairman Hayman presiding.

She reminded the Commissioners of their obligations under the governor's Executive Order #1 to refrain from taking part in consideration of any rules for which they have or may appear to have a conflict of interest.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 18, 2005 meeting. The minutes were approved as written.

#### **FOLLOW-UP MATTERS**

10A NCAC 9 .2608: Child Care Commission – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 27G .1301; .1701-.1708; .1901-.1904: Commission for Mental Health - The Commission objected to rules .1301; .1701-.1708 because they were not adopted in substantial compliance with Part 2 Article 2A of the Administrative Procedure Act. The agency failed to comply with G.S. 150B-21.4 (a), (b), (b1) and (b2) in that it did not prepare a fiscal note with any of the required elements or content and it did not obtain the required certifications. If a fiscal note was prepared, as was asserted by counsel for the agency, then the agency did not comply with G.S. 150B-21.2(c)(8) and notify the public that the rule affected state and local funds and had a substantial economic impact and that a copy of the fiscal note could be obtained from the agency. In fact the agency in its notice said that the rule had no fiscal impact. The Commission approved rules .1901-.1904.

23 NCAC 2E .0306: Board of Community Colleges – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 2H .0126; .0150-.0156; .1014-.1019: Environmental Management Commission – These rules were placed at the end of the meeting.

**LOG OF FILINGS #225**

**Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:**

10A NCAC 13B .3302; .4511: Medical Care Commission – The Commission approved these rules with Commissioner Hilliard being opposed.

11 NCAC 8 .0913: Manufactured Housing Board – This rule was withdrawn by the agency.

15A NCAC 10H .0301; .0302: Wildlife Resources Commission – These rules were withdrawn by the agency and refiled for next month.

Commissioner Simpson did not participate in the discussion nor vote on the Board of Cosmetic Art Examiners rules.

21 NCAC 26 .0211: Board of Landscape Architects – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (2), it is not clear what is meant by "improper and unprofessional practice and results". Item (4) is unclear and probably goes beyond the agency's statutory authority. The Board can act based on "gross incompetency" and if a court has declared a registrant or applicant mentally incompetent. The Board has no authority on its own to declare someone mentally incompetent. It is not clear what would constitute "physically incompetent". It is also unclear what is meant by "habitually addicted to habits of such character as to render the licensee unfit to continue practice. This objection applies to existing language in the rule.

21 NCAC 26 .0306: Board of Landscape Architects – The Commission objected to the rule due to ambiguity. It is not clear what would constitute "cause justifying relicensing or reinstatement". This objection applies to existing language in the rule.

21 NCAC 26 .0510: Board of Landscape Architects – The Commission objected to the rule due to lack of statutory authority, ambiguity and lack of necessity. In (e), there is no authority for the statement that the Board is not required to notify the parties of the reasons of the Board in making its determination. G.S. 150B-42(a) requires agencies to make a written final decision or order including findings of fact and conclusions of law. Subparagraph (c)(2) and Paragraph (g) are partly repetitive but not completely. To the degree one repeats the other, one is not necessary. Where they differ, it is not clear what the Committee can recommend.

**LOG OF FILINGS #226**

10A NCAC 27G .0810: Commission for Mental Health – This rule was withdrawn by the agency.

12 NCAC 9B .0306: Criminal Justice Education and Training Standards Commission – The Commission objected to the rule due to ambiguity. In (b)(1), it is not clear what "formally recognized professions" are acceptable to the Commission. This objection applies to existing language in the rule.

15A NCAC 2G .0601: Environmental Management Commission – The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the Environmental Management Commission to repeal this rule. The pertinent cited authority is authority for the Secretary of Environment and Natural Resources to adopt rules, not the Commission.

15A NCAC 2G .0602: Environmental Management Commission – The Commission objected to the rule due to lack of statutory authority. The wrong agency took action on this rule. The cited authority for this rule was granted to the Secretary of Environment and Natural Resources. There is no authority cited for the Environmental Management Commission to amend this rule.

**TEMPORARY RULES**

**Chairman Hayman presided over the review of the log of temporary rules. All rules were approved unanimously.**

The meeting adjourned for a short break at 11:25 a.m.

The meeting reconvened at 11:50 a.m.

**STORMWATER RULES**

Commissioners Simpson and Saunders recused themselves from any participation in the discussion or votes on the stormwater rules.

Commissioner Hilliard made a motion that any consideration, discussion, or action on the stormwater rules, based on lack of authority for the rules, including lack of authority based on the enactment of S.L. 2004-163 (S.B. 1210) be postponed until the November meeting. He said he was making this motion because only four commissioners would be left to participate since he would be leaving shortly. He also wanted to give the three commissioners not in attendance, the opportunity to participate in that discussion. The motion was seconded by Commissioner Bell and approved by the Commission.

15A NCAC 2H .0126: Environmental Management Commission – The Commission objected to the rule due to ambiguity. In lines 13 and 14 the rule specifies that "if [the rules] overlap to create a conflict ... the more stringent requirements apply." It may not always be clear which set of rules or requirements are the more stringent. It seems that different interest groups might have different perceptions of what is more or less stringent.

15A NCAC 2H .0150: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. Portions of this rule are unclear. The previous rule specifies that in the event of a "rules overlap" (Rule .0126, lines 13 and 14) "the more stringent requirements apply." Aside from the difficulty of determining what the requirement might actually be, there is no reason why there should be any difficulty in defining terms used in this section with the actual definitions that will apply. This rule could specify that the definitions found in this rule apply to this section and that no other definitions apply. Otherwise it is unclear what definitions actually apply if there are conflicting ones. In (2), lines 11 and 12, it is unclear what constitutes a "partially impervious surface." Does "partially impervious" mean a reduction in soil absorption capabilities by a certain, fixed percentage, e.g. 25%, 50%, 75%, or even 5%? By leaving this phrase undefined, the rule creates substantial uncertainty as to whether they cover activities such as building a dirt road or inadvertently compacting soil when using heavy equipment. It is also unclear whether it applies to temporary or permanent "partially impervious" situations such as those occurring during construction activities but removed or corrected upon completion of the construction. In (5), line 26, it is unclear what is meant by "adjoining." Do they have to share a geographic boundary? If so is there any minimum sharing required or would merely touching in one spot satisfy the requirement? In (7), there is no authority for the department to determine the populations without setting out the standards they will use in the rule. It also mentions, in line 34, that they might determine this using "a" measure of housing unit density without specifying what measure or how it might be decided. In a similar fashion, in (14) the rule specifies that the permanent and seasonal populations will be determined from the "most recent data available from local, state or federal sources." This does not require that the data be from any specific source or of any specific quality, reliability, or accuracy. It also makes it too easy to adjust the data, and thus unpredictable, during the course of any application dependent on population data. There are no definitions for "MS4's," (perhaps not necessary since most people using these rules would know what they are); "discharge" (rule .0152); and "local authority" (rule .0154); and perhaps other important terms used in these rules.

15A NCAC 2H .0151: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. In (2)(b), line 33, it is unclear what standards determine, or what constitutes, "potentially discharging" stormwater that could create a water quality violation to sensitive receiving waters. If the standards are set outside rulemaking, there is no authority for that. In (4)(f), lines 28 and 29, the rule specifies that the department shall notify public entities that have been designated (as regulated entities and subject to the NPDES stormwater permit application process) "the date on which the ... permit application must be submitted." It is unclear how this date is determined. If it is determined outside of rulemaking on an ad hoc basis without standards, there is no authority for such determination.

15A NCAC 2H .0152: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. In (c)(5), page 2 lines 18 and 19, it is unclear what the standards are for allowing or requiring the Department to request additional information, what sort of additional information the department may request, or what sort of additional information the Department may use to evaluate the petition. To the extent that this is a waiver of the rules specifying the information that is required for a petition, there are no specific standards set out in the rule for making that waiver. To the extent that either of these are set outside of rulemaking there is no authority for this; it amounts to rulemaking without following the provisions of the APA. In (c)(9)(B), page 3 lines 8 and 9, it is unclear what constitutes "new information" and whether there are, in fact, any limitations on this new information. In other words must the new information be material or relevant to the petition; or must it be more than "any" new information; or must it amount to "substantial," or "likely to change the determination," or some other standard beyond "any."

15A NCAC 2H .0153: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. Paragraph (h) is unclear in either what measures may be required or the standards that will be used either to require them or judge the sufficiency of the measures. To the extent that "required to protect water quality and maintain existing and anticipated uses of these waters" are the standards, these are too vague for rulemaking purposes and duplicative of the statutory mandates to the EMC to set water quality and stormwater runoff standards. To the extent that the standards implied or set out in this rule are actually set outside rulemaking "on a case-by-case basis," there is no authority for such requirements. In (h), line 29, it is also unclear what is meant by or constitutes an "anticipated" use, or how the determination is made, or who makes the determination.

15A NCAC 2H .0154: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of necessity. This rule, if left standing by itself as the only approved rule, would then be unnecessary since there would be no other rule requirements to implement. It would also be unclear as to what "minimum measures" it is referring to without being accompanied by any other rules.

15A NCAC 2H .0155: Environmental Management Commission – Ambiguity and Lack of Authority. It is unclear whether the "best management practices" in items (1) – (9) are intended to require a regulated entity (regulated because it is the owner or operator of an MS4 or other regulated discharge) to simply comply by itself with these certain practices or go beyond that and require other persons to take actions unrelated to the discharge for which the entity is regulated. While it appears that it is the latter intent, this is not abundantly clear. In (1)(a) and (b) it is unclear precisely what constitutes the difference between low and high density developments and what the limits of development are, especially in high density projects within one-half mile of SA waters. In (1)(a) a low density development is one that does not contain more than 12% built-upon areas where the project is within one-half mile of SA waters. If it is "located elsewhere," (line 17) it may not exceed 24% built-upon area. In (b) it becomes a high density project if it exceeds the 12% threshold within the one-half mile area, but still, apparently, may not exceed 24% built-upon area outside the one-half mile line. Including the same 24% built-upon area limitation in both the "low" and "high" density projects without a specific reference as to why the 24% limitation is included in each, makes it unclear whether there was intended any further distinction. Added to this is what would appear to be the effect, unintended -- and perhaps even to the contrary intent of the rulemaker -- that under the strict and literal wording of (1)(b) is the possibility that a project could be a high-density project within one-half mile of SA waters and exceed 24% built-upon area, since the 24% limitation only applies to projects "elsewhere," which is outside the one-half mile limit. (Lines 21 – 23). There is no upper built-upon limitation to high density projects within the one-half mile limit. If, in fact, the interpretation of the last paragraph is correct, then it may be that the rule is not ambiguous. However, if that is intended, then it would seem that the intention could – and should – be more clearly and explicitly expressed. In (1)(b) it is unclear whether the structural stormwater management system standards are found in lines 24 – 27 ("will control and treat a treatment volume that consists of the first inch of stormwater runoff from the entire project site plus the first inch of runoff from any offsite drainage routed to the structures and that will adequately store and discharge the 1-year, 24-hour storm"); or lines 27 – 33 (the "system must meet the following [items] (i) ... [-] ... (iv)"); or whether these are actually the same standards expressed in different terms. In (1)(b)(iii), line 32, and (3), page 2 line 9, the terms "Total Suspended Solids" and "domestic wastewater," respectively are undefined. If these are terms of art or terms that are universally understood without any chance of confusion, then they would be acceptable without further definition. However, if different people might have some different conclusions about what constitutes "total suspended solids" or "domestic wastewater," then the terms are unclear and need to be defined. In (5), page 2 line 16, the term "qualified professional" is undefined and thus it is unclear who or what constitutes a "professional" who is "qualified" to conduct the annual maintenance inspection. In (6)(c), page 2 line 26, it is unclear what constitutes "concentrated" density development. There are no definitions or guidelines established for what separates "concentrated" development from other development. In (6)(d), page 2 line 28, there is no definition, and thus it is unclear, for what constitutes a "vegetated or natural state." Does planting grass or a vegetable or flower garden in an otherwise undeveloped area constitute a "vegetated state?"

15A NCAC 2H .0156: Environmental Management Commission – The Commission objected to the rule due to ambiguity. In (1)(c), line 32, it is unclear what constitutes "substantial justice" and who or what is (are) supposed to be the recipients of this "substantial justice." It is unclear how the "automatic" exceptions in (6) are supposed to be accomplished. There are judgmental standards in these exceptions so it is hard to understand how they are "automatic." It may be that they are not subject to any of the standards found in (1) – (5). That is implied, but it is not clear. Even so, it is not clear how the "automatic" application of this exception is supposed to work.

15A NCAC 2H .1014: Environmental Management Commission – The Commission objected to the rule due to ambiguity. In lines 15 and 16 the rule specifies that "if the rules overlap to create a conflict ... the more stringent requirements ... apply." It may not always be clear which set of rules or requirements are the more stringent. It seems to me that different interest groups might have different perceptions of what is more or less stringent.

15A NCAC 2H .1015: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. Portions of this rule are unclear. The previous rule specifies that in the event of a "rules overlap" (Rule .1014, line 15) "the more stringent requirements in the overlap apply." Aside from the difficulty of determining what the requirement might actually be, there is no reason why there should be any difficulty in defining terms used in this section with the actual definitions that will apply. This rule could specify that the definitions found in this rule apply to this section and that no other definitions apply. Otherwise it is unclear what definitions actually apply if there are conflicting ones. In (5), line 22, it is unclear what is meant by "adjoining." Do they have to share a geographic boundary? If so is there any minimum sharing required or would merely touching in one spot satisfy the requirement? In (7), there is no authority for the department to determine the populations without setting out the standards they will use in the rule. It also mentions that they might determine this using "a measure of housing unit density" (line 30) without specifying what measure or how it might be decided. In a similar fashion, in (13) the rule specifies that the permanent and seasonal populations will be determined from the "most recent data available from local, state or federal sources." This does not require that the data be from any specific source or of any specific quality, reliability, or accuracy. It also makes it too easy to adjust the data, and

thus unpredictable, during the course of any application dependent on population data. There are no definitions for "MS4's," (perhaps not necessary since most people using these rules would know what they are); "discharge" (rule .1017(4)(c) and .1018(7)(c), at least); and "local authority" (rule .1019). There is no definition in this rule for "built-upon area," the way there is in the NPDES set of rules in section .0100. However, that term is used in this set, at least at .1018(1)(a) and (b); (2); and (6)(a) and (b). The fact that it is defined in the other set suggests that it should be defined here. There is no definition for "regulated entity" in the definitions that apply specifically to this set of rules. It is defined in the section .0100 NPDES set of rules. That term is found in rule .1018(7) – (9).

15A NCAC 2H .1016: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. The introductory paragraph of this rule requires "projects ... which ... disturb an acre or more of land [to] ... implement six minimum measures" set out in succeeding rules to reduce discharge of pollutants (lines 6 – 9). This rule was originally written as a rule that applied only to county governments. It is unclear whether the agency now intends to require private developers to fulfill all the minimum measures listed in the cited rules. From the nature of some of the minimum measures it would appear that the EMC did not intend this. In (4)(f), lines 23 and 24, the rule specifies that the department shall notify public entities that have been designated (as regulated entities and subject to the NPDES stormwater permit application process) "the date upon which the Department will require ... permits ... and the forms necessary." It is unclear how the dates and the necessary forms are determined. If it is determined outside of rulemaking and on an ad hoc basis without standards, there is no authority for such determination.

15A NCAC 2H .1017: Environmental Management Commission – The Commission objected to the rule due to ambiguity and lack of authority. In item (1), line 6, it is unclear what constitutes an "appropriate entity" other than county government which could request designation as a State delegate to administer the State stormwater permit program. To make it even less clear, paragraph (3) refers to an "appropriate public entity" (line 15, emphasis added) which raises the issue of whether there could be some non-public entity that might be appropriate, if only there were rules governing the delegation standards. And the remainder of the language in (3) simply refers to an "urbanizing county" and not to any "appropriate entity," public or otherwise. So it is unclear whether the apparent designation approval standards in (3) apply to the designation of an "appropriate entity," or only to the designation of an "urbanizing county" seeking the designated delegation. This rule applies to any person who develops more than one acre of land, whether they are private or governmental entities. It was originally written as a rule that applied only to county governments. It is unclear, in that context, whether the agency now intends to impose any or all of the minimum measures requirements on private entities or projects. Item (7) is unclear in either what measures may be required or the standards that will be used either to require them or judge the sufficiency of the measures. To the extent that "required to protect water quality and maintain existing and anticipated uses of these waters" are the standards, these are too vague for rulemaking purposes and duplicative of the statutory mandates to the EMC to set water quality and stormwater runoff standards. To the extent that the standards implied or set out in this rule are actually set outside rulemaking "on a case-by-case basis," there is no authority for such requirements. In (7), line 31, it is also unclear what is meant by or constitutes an "anticipated" use, or how the determination is made, or who makes the determination.

15A NCAC 2H .1018: Environmental Management Commission – The Commission objected to the rule due to ambiguity. In (1)(a) and (b) it is unclear precisely what constitutes the difference between low and high density developments and what the limits of development are, especially in high density projects within one-half mile of SA waters. In (1)(a) a low density development is one that does not contain more than 12% built-upon areas where the project is within one-half mile of SA waters. If it is "located elsewhere," it may not exceed 24% built-upon area. In (b) it becomes a high density project if it exceeds the 12% threshold within the one-half mile area, but still, apparently, may not exceed 24% built-upon area outside the one-half mile line. Including the same 24% built-upon area limitation in both the "low" and "high" density projects without a specific reference as to why the 24% limitation is included in each, makes it unclear whether there was intended any further distinction. Added to this is what would appear to be the effect, unintended -- and perhaps even to the contrary intent of the rulemaker -- that under the strict and literal wording of (1)(b) is the possibility that a project could be a high-density project within one-half mile of SA waters and exceed 24% built-upon area, since the 24% limitation only applies to projects "elsewhere," which is outside the one-half mile limit. (Lines 23 – 25) There is no upper built-upon limitation to high density projects within the one-half mile limit. (If, in fact, this interpretation of the rule is correct, then it may be that the rule is not ambiguous. However, if that is intended, then it would seem that the intention could – and should – be more clearly and explicitly expressed.) In (1)(b) it is unclear whether the structural stormwater management system standards are found in lines 26 – 29 ("will control and treat a treatment volume that consists of the first inch of stormwater runoff from the entire project site plus the first inch of runoff from any offsite drainage routed to the structures and that will adequately store and discharge the 1-year, 24-hour storm"); or lines 29 – 36 and page 2 line 1 (the "system must meet the following [items] (i) ... [-] ... (iv)"); or whether these are actually the same standards expressed in different terms. In (1)(b)(iii), line 36 and (3), page 2 lines 14 and 15, the terms "Total Suspended Solids"; and "domestic wastewater," respectively, are undefined. If these are terms of art or terms that are universally understood without any chance of confusion, then they would be acceptable without further definition. However, if different people might have some different conclusions about what constitutes "total suspended solids" or "domestic wastewater," then the terms are unclear and need to be defined. In (5), page 2 line 24, the term "qualified professional" is undefined and thus it is unclear who or what constitutes a "professional" who is "qualified" to conduct the annual maintenance inspection. In (6)(c), page 2 line 33, it is unclear what constitutes "concentrated" density development. There are no definitions or guidelines established for what separates "concentrated" development from other development. In (6)(d), page 2 line 36, there is no definition, and thus it is unclear, for what

constitutes a "vegetated or natural state." Does planting grass or a vegetable or flower garden in an otherwise undeveloped area constitute a "vegetated state?" It is unclear whether the agency intends for items (7) – (9) to apply only to "Regulated Entities," which by definition (from rule .1015) are public or governmental entities, or also to private developers who are subject to other portions of these rules. There is also no definition for "regulated entity" in the definitions (rule .1015) that apply specifically to this set of rules. So it is unclear whom these paragraphs apply to.

15A NCAC 2H .1019: Environmental Management Commission – The Commission objected to the rule due to ambiguity. It is unclear how the "automatic" exceptions in (6) are supposed to be accomplished. There are standards in these exceptions that require judgments to be made (and it is unstated by whom), so it is hard to understand how they are "automatic." It may be that they are not subject to any of the standards found in (1) – (5). That is implied, but it is not clear. Even so, it is not clear how the "automatic" application of this exception is supposed to work.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

The Commission discussed no new business.

The meeting adjourned at 1:10 p.m.

The next meeting of the Commission is Thursday, November 17, 2005 at 10:00 a.m.

Respectfully submitted,  
Lisa Johnson

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**LIST OF APPROVED PERMANENT RULES**  
**October 20, 2005 Meeting**

**CHILD CARE COMMISSION**

<u>Special Training Requirements</u>	10A	NCAC	09	.0705
<u>Children's Plan of Care</u>	10A	NCAC	09	.2608

**MEDICAL CARE COMMISSION**

<u>Minimum Provisions of Patient's Bill of Rights</u>	10A	NCAC	13B	.3302
<u>Medication Administration</u>	10A	NCAC	13B	.4511

**HHS-FACILITY SERVICES**

<u>Information Required of Applicant</u>	10A	NCAC	14C	.1602
<u>Definitions</u>	10A	NCAC	14C	.1901
<u>Information Required of Applicant</u>	10A	NCAC	14C	.1902
<u>Definitions</u>	10A	NCAC	14C	.2101
<u>Performance Standards</u>	10A	NCAC	14C	.2103
<u>Information Required of Applicant</u>	10A	NCAC	14C	.2202
<u>Performance Standards</u>	10A	NCAC	14C	.2203
<u>Definitions</u>	10A	NCAC	14C	.2701
<u>Information Required of Applicant</u>	10A	NCAC	14C	.2702
<u>Performance Standards</u>	10A	NCAC	14C	.2703
<u>Support Services</u>	10A	NCAC	14C	.2704
<u>Staffing and Staff Training</u>	10A	NCAC	14C	.2705
<u>Performance Standards</u>	10A	NCAC	14C	.3703
<u>Information Required of Applicant</u>	10A	NCAC	14C	.3802

**MENTAL HEALTH, COMMISSION OF**

<u>Schedule I</u>	10A	NCAC	26F	.0102
<u>Schedule IV</u>	10A	NCAC	26F	.0105
<u>Scope</u>	10A	NCAC	27G	.1901
<u>Staff</u>	10A	NCAC	27G	.1902
<u>Operations</u>	10A	NCAC	27G	.1903
<u>Transfer or Discharge</u>	10A	NCAC	27G	.1904
<u>Resolution of Differences of Opinion</u>	10A	NCAC	28F	.0212

**HEALTH SERVICES, COMMISSION FOR**

<u>Covered Medications</u>	10A	NCAC	39A	.1002
<u>Applications Process</u>	10A	NCAC	39A	.1005
<u>Program Operation</u>	10A	NCAC	39A	.1006
<u>Dosage &amp; Age Requirements for Immunization</u>	10A	NCAC	41A	.0401
<u>Consultant Panel and Medical Review Board Fees</u>	10A	NCAC	41B	.0102
<u>Approved Alcohol Screening Test Devices; Calibration</u>	10A	NCAC	41B	.0503
<u>Authorized WIC Vendors</u>	10A	NCAC	43D	.0706
<u>Declaratory Rulings</u>	10A	NCAC	45B	.0104
<u>Definitions</u>	10A	NCAC	46	.0401
<u>Approval of Construction</u>	10A	NCAC	46	.0402
<u>Inspections and Reports</u>	10A	NCAC	46	.0403
<u>Scoring Approval/Disapproval</u>	10A	NCAC	46	.0404
<u>Sanitation Requirements</u>	10A	NCAC	46	.0501
<u>Procedure When Infection Suspected</u>	10A	NCAC	46	.0502
<u>Severability</u>	10A	NCAC	46	.0503

**INSURANCE, DEPARTMENT OF**

<u>Location and Mailing Address</u>	11	NCAC	01	.0103
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**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Definitions</u>	12	NCAC	09A	.0103
<u>Responsibilities of the School Director</u>	12	NCAC	09B	.0202
<u>Basic Law Enforcement Training</u>	12	NCAC	09B	.0205
<u>Radar Instructor Training Course</u>	12	NCAC	09B	.0210
<u>General Instructor Certification</u>	12	NCAC	09B	.0302
<u>Terms and Conditions of General Instructor</u>	12	NCAC	09B	.0303
<u>Specialized Instructor Certification</u>	12	NCAC	09B	.0304
<u>Terms and Conditions of Specialized Instructor Certification</u>	12	NCAC	09B	.0305
<u>Terms and Conditions of Professional Lecturer</u>	12	NCAC	09B	.0307
<u>Radar Instructor</u>	12	NCAC	09B	.0308
<u>Instructor Certification Renewal</u>	12	NCAC	09B	.0312
<u>Required Annual In-Service Training Topics</u>	12	NCAC	09E	.0102
<u>Instructors Annual In Service Training</u>	12	NCAC	09E	.0104
<u>Minimum training Specifications: Annual In-Service Training</u>	12	NCAC	09E	.0105

**RULES REVIEW COMMISSION**

<u>Annual In-Service Firearms Qualifications</u>	12	NCAC	09E	.0106
<u>In Service Training Coordinator Requirements</u>	12	NCAC	09E	.0109
<u>In Service Training Coordinator Responsibilities</u>	12	NCAC	09E	.0110
<u>General Instructor Certification</u>	12	NCAC	09G	.0308
<u>Terms and Conditions of General Instructor Certification</u>	12	NCAC	09G	.0309
<u>Specialized Instructor Certification</u>	12	NCAC	09G	.0310
<u>Terms and Conditions of Specialized Instructor</u>	12	NCAC	09G	.0311
<u>Instructor Certification</u>	12	NCAC	09G	.0312
<u>Certification of School Directors</u>	12	NCAC	09G	.0405
<u>Corrections Specialized Instructor Training-Controls, Res...</u>	12	NCAC	09G	.0416

**MARINE FISHERIES COMMISSION**

<u>Authorized Gear</u>	15A	NCAC	03O	.0302
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**WILDLIFE RESOURCES COMMISSION**

<u>Turkey</u>	15A	NCAC	10B	.0209
<u>General Regulations Regarding Use</u>	15A	NCAC	10D	.0102

**HEALTH SERVICES, COMMISSION FOR**

<u>Interim Status Stds for Owners-Op</u>	15A	NCAC	13A	.0110
<u>Land Disposal Restrictions-Part 268</u>	15A	NCAC	13A	.0112
<u>Definitions</u>	15A	NCAC	18A	.2801
<u>Approval of Construction and Renovation Plans</u>	15A	NCAC	18A	.2802
<u>Handwashing</u>	15A	NCAC	18A	.2803
<u>Food Supplies</u>	15A	NCAC	18A	.2804
<u>Food Protection</u>	15A	NCAC	18A	.2805
<u>Food Storage and Protection</u>	15A	NCAC	18A	.2806
<u>Food Preparation</u>	15A	NCAC	18A	.2807
<u>Food Service</u>	15A	NCAC	18A	.2808
<u>Food Service Equipment and Utensils</u>	15A	NCAC	18A	.2809
<u>Specifications for Kitchens, Food Preparation Areas and F...</u>	15A	NCAC	18A	.2810
<u>Cleaning and Sanitizing of Equipment and Utensils</u>	15A	NCAC	18A	.2811
<u>Cleaning and Sanitizing of Equipment and Utensils</u>	15A	NCAC	18A	.2812
<u>Mechanical Cleaning and Sanitizing</u>	15A	NCAC	18A	.2813
<u>Food Service Equipment and Utensil Storage</u>	15A	NCAC	18A	.2814
<u>Water Supply</u>	15A	NCAC	18A	.2815
<u>Lead Poisoning Hazards</u>	15A	NCAC	18A	.2816
<u>Toilets</u>	15A	NCAC	18A	.2817
<u>Lavatories</u>	15A	NCAC	18A	.2818
<u>Diapering and Diaper Changing Facilities</u>	15A	NCAC	18A	.2819
<u>Storage</u>	15A	NCAC	18A	.2820
<u>Beds, Cots, Mats, and Linens</u>	15A	NCAC	18A	.2821
<u>Toys, Equipment and Furniture</u>	15A	NCAC	18A	.2822
<u>Personnel</u>	15A	NCAC	18A	.2823
<u>Floors</u>	15A	NCAC	18A	.2824



**RULES REVIEW COMMISSION**

<u>Walls and Ceilings</u>	15A	NCAC	18A	.2825
<u>Lighting and Thermal</u>	15A	NCAC	18A	.2826
<u>Communicable Diseases and Conditions</u>	15A	NCAC	18A	.2827
<u>Handwashing</u>	15A	NCAC	18A	.2828
<u>Wastewater</u>	15A	NCAC	18A	.2829
<u>Solid Wastes</u>	15A	NCAC	18A	.2830
<u>Animal and Vermin Control</u>	15A	NCAC	18A	.2831
<u>Outdoor Learning Environment and Premises</u>	15A	NCAC	18A	.2832
<u>Swimming and Wading Pools</u>	15A	NCAC	18A	.2833
<u>Compliance, Inspections and Reports</u>	15A	NCAC	18A	.2834
<u>Appeals Procedure</u>	15A	NCAC	18A	.2835
<u>Mildly ill Children</u>	15A	NCAC	18A	.2836
<u>Enhanced Filtration and Disinfection</u>	15A	NCAC	18C	.2007

**COSMETIC ART EXAMINERS, BOARD OF**

<u>Inspection of Cosmetic Art Shops</u>	21	NCAC	14F	.0108
<u>Postponement of Re-inspection</u>	21	NCAC	14F	.0112
<u>Equipment and Teachers</u>	21	NCAC	14G	.0107
<u>Cleanliness of Clinic Area: Supplies: Combs and Brushes</u>	21	NCAC	14H	.0112
<u>Footspa Sanitation</u>	21	NCAC	14H	.0120
<u>Live Model/Mannequin Performance Requirement</u>	21	NCAC	14J	.0207

**LANDSCAPE ARCHITECTS, BOARD OF**

<u>Unprofessional Conduct</u>	21	NCAC	26	.0209
<u>Dishonest Practice</u>	21	NCAC	26	.0210

**MEDICAL BOARD**

<u>Administration of Vaccines by Pharmacists</u>	21	NCAC	32U	.0101
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**NURSING, BOARD OF**

<u>Clinical Nurse specialist Practice</u>	21	NCAC	36	.0228
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**PHARMACY, BOARD OF**

<u>Administration of Vaccines by Pharmacists</u>	21	NCAC	46	.2507
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**COMMUNITY COLLEGES, BOARD OF**

<u>Admission to Colleges</u>	23	NCAC	02C	.0301
<u>Human Resources Development Program</u>	23	NCAC	02E	.0306

**BUILDING CODE COUNCIL**

This rule is from the NC Residential Code.

<u>Foam plastic fire safety</u>	050308	Item B-2
Adopt/*		

**RULES REVIEW COMMISSION**

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This rule is from the NC Rehabilitation Code.

Introduction using this code references

050308

Item B-3

Adopt/\*

This item creates a new NC Rehabilitation Code and applies to repairs, renovations, alterations, reconstruction, change of use, and additions to an existing building.

NC Rehabilitation Code

041214

Item B-7

Adopt/\*

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**AGENDA  
RULES REVIEW COMMISSION  
November 17, 2005, 10:00 A.M.**

- I. Review of minutes of last meeting
  - II. Follow-Up Matters
    - A. Commission for Mental Health – 10A NCAC 27G .1301; .1701-.1708; (DeLuca)
    - B. Criminal Justice Education & Training Standards – 12 NCAC 9B .0306 (Bryan)
    - C. Environmental Management Commission – 15A NCAC 2G .0601; .0602 (Bryan)
    - D. Board of Landscape Architects – 21 NCAC 26 .0211; .0306; .0510 (Bryan)
      - Environmental Management Commission – 15A NCAC 2H .0126; .0150-.0156; .1014-.1019 (DeLuca) (Separate Notebook)
  - III. Review of Rules (Log Report #227)
  - IV. Review of Temporary Rules (If any)
  - V. Commission Business
  - VI. Next meeting: December 15, 2005
- 

**Commission Review/Permanent Rules**

*Log of Filings*

*September 21, 2005 through October 20, 2005*

\* Approval Recommended, \*\* Objection Recommended, \*\*\* Other

**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) and maritime (.0500), and ergonomics standards (.0600).

Life Safety Code

13 NCAC 07F .0102

Repeal/\*

**ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission.

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); and transportation conformity (.2000).

<u>Definitions</u>	15A NCAC 02D .0101
Amend/*	
<u>Copies of Referenced Federal Regulations</u>	15A NCAC 02D .0103
Amend/*	
<u>Purpose and Scope</u>	15A NCAC 02D .1201
Amend/*	
<u>Recordkeeping: Reporting: Monitoring</u>	15A NCAC 02D .1404
Amend/*	
<u>Definitions</u>	15A NCAC 02D .1902
Amend/*	
<u>Permissible Open Burning Without an Air Quality Permit</u>	15A NCAC 02D .1903
Amend/*	
<u>Air Curtain Burners</u>	15A NCAC 02D .1904
Amend/*	
<u>Regional Office Locations</u>	15A NCAC 02D .1905
Amend/*	
<u>Delegation to County Governments</u>	15A NCAC 02D .1906
Amend/*	
<u>Purpose, Scope, and Applicability</u>	15A NCAC 02D .2001
Amend/*	
<u>Purpose</u>	15A NCAC 02D .2301
Adopt/*	
<u>Definitions</u>	15A NCAC 02D .2302
Adopt/*	
<u>Applicability and Eligibility</u>	15A NCAC 02D .2303
Adopt/*	
<u>Qualification of Emission Reduction Credits</u>	15A NCAC 02D .2304
Adopt/*	
<u>Creating and Banking Emission Reduction</u>	15A NCAC 02D .2305
Adopt/*	
<u>Duration of Emission Reduction Credits</u>	15A NCAC 02D .2306
Adopt/*	
<u>Use of Emission Reduction Credits</u>	15A NCAC 02D .2307
Adopt/*	
<u>Certificates and Registry</u>	15A NCAC 02D .2308
Adopt/*	
<u>Transferring Emission Reduction Credits</u>	15A NCAC 02D .2309
Adopt/*	
<u>Revocation and Changes of Emission</u>	15A NCAC 02D .2310
Adopt/*	
<u>Monitoring</u>	15A NCAC 02D .2311
Adopt/*	

The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100), the standards and classes (.0200), and the assignments (.0300).

Risk-Based Assessment and Corrective Action for Petroleum... 15A NCAC 02L .0115  
Amend/\*

The rules in Subchapter 2Q are rules relating to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); Title V requirements (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); and exempt categories (.0800).

Required Air Quality Permits 15A NCAC 02Q .0101  
Amend/\*

Definitions 15A NCAC 02Q .0103  
Amend/\*

Copies of Referenced Documents 15A NCAC 02Q .0105  
Amend/\*

Applicability 15A NCAC 02Q .0301  
Amend/\*

Applications 15A NCAC 02Q .0304  
Amend/\*

Application Submittal Content 15A NCAC 02Q .0305  
Amend/\*

Permit Content 15A NCAC 02Q .0508  
Amend/\*

Changes Not Requiring Permit Revisions 15A NCAC 02Q .0523  
Amend/\*

Modifications 15A NCAC 02Q .0706  
Amend/\*

Peak Shaving Generators 15A NCAC 02Q .0808  
Amend/\*

Air Curtain Burners 15A NCAC 02Q .0810  
Adopt/\*

**WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are from the Wildlife Resources Commission.

The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), and controlled fox hunting preserves (.1200).

General Requirements 15A NCAC 10H .0301  
Amend/\*

Minimum Standards 15A NCAC 10H .0302  
Amend/\*\*

**HEALTH SERVICES, COMMISSION FOR**

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation

(18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day-care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

<u>Spas and Hot Tubs</u>	15A NCAC 18A .2532
Amend/*	
<u>Suction Hazard Reduction</u>	15A NCAC 18A .2539
Amend/*	
<u>Grading</u>	15A NCAC 18A .2606
Amend/*	
<u>Shellfish</u>	15A NCAC 18A .2612
Amend/*	

**DIETETICS/NUTRITION, BOARD OF**

The rules in Chapter 17 are from the Board of Dietetics/Nutrition. The rules cover the general provision of licensure (.0100); weight control programs (.0200); dietetic/nutrition students or trainees (.0300); and unlicensed individuals and those who aid in the practice of dietetics/nutrition (.0400).

<u>Electronic Practice</u>	21 NCAC 17 .0403
Adopt/*	

**NURSING, BOARD OF**

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); implementation of Nurse Licensure Compact Act (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Definitions</u>	21 NCAC 36 .0120
Amend/*	
<u>Licensure Without Examination (By Endorsement)</u>	21 NCAC 36 .0218
Amend/*	
<u>Establishment of a Nursing Program Initial Approval</u>	21 NCAC 36 .0302
Amend/*	
<u>Existing Nursing Program</u>	21 NCAC 36 .0303
Amend/*	
<u>Process for Closure of a Program</u>	21 NCAC 36 .0309
Amend/*	
<u>Administration</u>	21 NCAC 36 .0317
Amend/*	
<u>Students</u>	21 NCAC 36 .0320
Amend/*	
<u>Curriculum</u>	21 NCAC 36 .0321

<u>Records and Reports</u> Amend/*	21	NCAC	36	.0323
<u>Experimental Approaches</u> Repeal/*	21	NCAC	36	.0324

**BUILDING CODE COUNCIL**

<u>2006 NC Building Code</u> Adopt/*	041214			Item B-2 B
<u>2006 NC Energy Code</u> Adopt/*	041214			Item B-2 C
<u>2006 NC Fire Code</u> Adopt/*	041214			Item B-2 D
<u>2006 NC Gas Code</u> Adopt/*	041214			Item B-2 E
<u>NC Mechanical Code</u> Adopt/*	041214			Item B-2 F
<u>2006 NC Plumbing Code</u> Adopt/*	041214			Item B-2 G

## 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) 733-2698. 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

*Sammie Chess Jr.  
Beecher R. Gray  
Melissa Owens Lassiter*

*James L. Conner, II  
Beryl E. Wade  
A. B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL AND BEVERAGE COMMISSION</u></b>				
Richard S Blazak, Park View Lounge v. ABC	96 ABC 0053	Gray	07/06/05	
ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
Cameron's One Stop, Sank Cameron v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr	05 ABC 0799	Elkins	07/28/05	
<b><u>BOARD OF LICENSING OF GEOLOGISTS</u></b>				
James W King, PG v Board of Licensing of Geologists	05 BOG 0149	Morrison	08/10/05	
<b><u>AUCTIONEERS LICENSING BOARD</u></b>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
<b><u>COMMERCE, DEPARTMENT OF</u></b>				
Land-of-Sky Regional Council v. Dept of Commerce, Div of Emp. & Trning	96 COM 1921	Gray	07/05/05	
<b><u>CRIME VICTIMS COMPENSATION</u></b>				
Dwight D Hoover Sr. v. Victims Compensation Commission	04 CPS 0988	Conner	07/07/05	
Moreno Edoardo Lovejoy v. Crime Control & Public Safety, Victime Comp. Services Division, Crime Victims Compensation Commission	04 CPS 1176	Wade	09/22/05	
Myrtle Perry v. Crime Victims Compensation Commission	04 CPS 1190	Chess	06/21/05	
Marion A Liles v Dept. of Crime Control & Public Safety, Victims Compensation Service Division	05 CPS 0150	DeLuca	07/29/05	
Cecelia Reid v DCCPS, Div of Vic Comp Svcs, Crime Vic Comp Comm	05 CPS 0220	Lassiter	08/08/05	
Rhonda Lynnette Rhodes v. Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
Brenda Edwards, d/b/a B&H Wrecker Service v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	05 CPS 0510	Lassiter	10/19/05	
Terry Ramey, d/b/a Ramey Wrecker Service v. Dept. of Crime Control & Public Safety, Division Of State Highway Patrol	05 CPS 0511	Lassiter	10/18/05	
Jamaal O Staten v. Crime Victims Compensation Commission	05 CPS 0711	Elkins	07/28/05	
<b><u>BOARD OF ELECTIONS</u></b>				
Republican Governors Association & Holly Lynn Koerber v. State Board of Elections	04 BOE 2051	Morrison	06/30/05	20:02 NCR 100
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
MedVisit, Inc. v. Div. of Medical Assistance (DHR)	94 DHR 0012	Gray	07/12/05	
Patsy Norris v. Department of Human Resources	94 DHR 0895	Gray	07/06/05	
Small World DC II, Trena McDaniel v DHHS, Div of Child Dev.	00 DHR 2202 <sup>2</sup>	Gray	08/08/05	
Trena S McDaniel & Small World DC II v. DHHS, Div of Child Dev.	01 DHR 0321 <sup>2</sup>	Gray	08/08/05	
Richard McKinley Whited v. DHHS	02 DHR 0024	Gray	08/04/05	
Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT	03 DHR 0488	Conner	06/29/05	

**CONTESTED CASE DECISIONS**

Aundria Shante Edwards v DHHS, Division of Facility Services	03 DHR 0806	Gray	08/10/05	
Jamie Kearney v. DHHS	03 DHR 0924	Gray	10/04/05	
Thomas Reiter, a minor, by his mother & legal guardian, Kathryn Reiter	03 DHR 1253	Gray	06/27/05	20:03 NCR 144
Teresa South and Michael South v. DHHS, DMA, Third Party Recovery Section	03 DHR 1515	Gray	10/04/05	
Nina Sherean Hughes v. DHHS, Div of Facility Services	03 DHR 1595	Gray	10/03/05	
Louise Li Lai Fong v. DHHS, Division of Facility Services	03 DHR 1714	Wade	06/27/05	
Lenwood E Hargrove, Wilma Hargrove v. Div. of Medical Assistance	03 DHR 1737	Conner	07/27/05	
Geana E. Anderson v. DHHS, Division of Facility Services	03 DHR 2063	Gray	06/24/05	
Gaile Thomas v. DHHS, Division of Facility Services	04 DHR 0110	Lassiter	06/21/05	
Mecca L Stewart v DHHS, Division of Facility Services	04 DHR 0213	Elkins	08/15/05	
Fatmata Gbondo v. DHHS, DFS	04 DHR 0241	Elkins	10/05/05	
Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services	04 DHR 0294	Chess	05/16/05	
North Brook Rest Home, Inc v. DHHS, Adult Licensure Section	04 DHR 0407	Conner	07/26/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 0539 <sup>1</sup>	Mann	06/03/05	
Jamie Lynn Hensley v. DHHS, Div. of Facility Services	04 DHR 0917	Wade	05/16/05	
Aaron Anderson v. DHHS, Div. of Medical Assistance (DMA)	04 DHR 0929	Gray	08/10/05	
Carla Jean Summers v. DHHS, DFS	04 DHR 1020	Lassiter	09/21/05	
Patricia A. Reece v. DHHS, Division of Facility Services	04 DHR 1062	Mann	07/27/05	20:05 NCR 266
Mario Flores v. DHHS, Division of Facility Services	04 DHR 1110	Mann	08/01/05	
Charleese K Garrison, mother of Jasmine C Garrison v. DHHS, Division of Medical Assistance	04 DHR 1168	Gray	08/03/05	
Carla Jean Summers v. DHHS, DFS	04 DHR 1222	Lassiter	09/19/05	
Betty Louise Bridges v. DHHS, DFS	04 DHR 1300	Conner	09/22/05	20:09 NCR
Starr Meadows v. DHHS, Div. of Medical Assistance	04 DHR 1334	Wade	10/18/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 1413 <sup>1</sup>	Mann	06/03/05	
Wake Forest University Health Sciences (Lessor) and Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessee) v. DHHS, Div. of Facility Services, CON Section and Bio-Medical Applications of NC, Inc. and Total Renal Care of North Carolina, LLC	04 DHR 1406	Conner	05/18/05	
Dawn Allison v. Div. of Medical Assistance	04 DHR 1444	Mann	05/27/05	
Julia Carver Thompson v DHHS	04 DHR 1498	Conner	09/13/05	
Rosa E. Arias v. Patricia M. Epps – HCPR Nurse Investigator, Health Care Personnel Registry	04 DHR 1505	DeLuca	10/07/05	
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS	04 DHR 1526	Gray	10/03/05	
Filippo Porco v. DHHS, Health Care Personnel Registry Investigations	04 DHR 1647	Elkins	09/29/05	
Dorothy S Coleman v DHHS	04 DHR 2247	Elkins	07/28/05	
Maxine L Froneberger v DHHS, Division of Facility Services, Health Care Personnel Registry Section	04 DHR 2286	Chess	08/25/05	
LaKenya S. Perry v Division of Child Development	05 DHR 0112	Gray	08/24/05	
Katherine Lewis (guardian) in lieu of Francis Curran Lewis (son) v. Wilson-Greene Mental Health Center, CAP Program	05 DHR 0117	Wade	10/06/05	
Keith's Kids, Inc, Keith Richardson v DHHS, Div. of Facility Services	05 DHR 0196	Wade	08/31/05	
Tara Sue Clark-Grubb v. Guilford County Dept. of Social Services, Laura Blackwell, Tonya Dupree Freeman, Stacy Taylor-Greene	05 DHR 0243	Conner	06/10/05	
Vicky Richardson v DHHS	05 DHR 0262	Wade	08/10/05	
Teresa Sharon Pyles v. Mecklenburg Co. DSS, Kuralt Centre	05 DHR 0264	Wade	06/20/05	
Belinda Darnell Hawkins v. DHHS, Div of Facility Services	05 DHR 0265	Elkins	06/09/05	
LaQuasha K Massey v. DHHS, Division of Social Services	05 DHR 0294	Lassiter	07/11/05	
Wade R Kearney II v. DHHS, Office of Emer Medical Services	05 DHR 0325	Lassiter	07/25/05	
Agnes Williams v. DHHS, DFS	05 DHR 0366	Lassiter	10/24/05	
Cherry Bruce Kearney, Operator 7 <sup>th</sup> Heaven Day Care v. DHHS, Division of Facility Services	05 DHR 0382	Wade	06/20/05	
DSS, Deloise Bryant v Halifax County Adoption Agency	05 DHR 0388	Lassiter	07/14/05	
Janet Stovall v DHHS	05 DHR 0403	Chess	08/08/05	
Tammy Trejo v. Office of Administrative Hearings	05 DHR 0452	Gray	06/15/05	
Maria Shante Holley v DHHS, DFS	05 DHR 0461	Wade	07/18/05	
Albert Ansah Amoatey v. DHHS	05 DHR 0459	Mann	07/20/05	
Erdem Narter v. DHHS, Division of Facility Services	05 DHR 0463	Mann	06/16/05	
Eric & Carolyn Blue v DHHS	05 DHR 0476	Chess	08/23/05	
Jerry Lemar Pettus v Off. Of Emergency Medical Services	05 DHR 0496	Mann	07/19/05	
Veronica M Black v. DHHS, Division of Facility Services	05 DHR 0533	Gray	08/10/05	
Valerie R McGahee ID #26001205 Elite Land Child Care & Learning Center v DHHS, Division of Child Development	05 DHR 0534	Lassiter	09/12/05	
D'Jetta D Miley for Jordana Correa v. Wake Co. Dept. of Human Services	05 DHR 0570	Lassiter	06/02/05	
William Henry Lane v. DHHS, Div. of Medical Assistance	05 DHR 0571	Chess	05/31/05	
Bennie Frederick, Jr., v. DHHS, Div of Social Services	05 DHR 0572	Wade	09/22/05	
Stephanie Marie Mabe v DHHS	05 DHR 0590	Elkins	08/11/05	
Estate of Alma M Merrill, Kelly Merrill Dozier-heir v. Medicaid, Third Party Recovery Section	05 DHR 0628	Wade	10/17/05	
Denise Warren v Cumberland Co. Department of Social Services	05 DHR 0630	Morrison	08/19/05	
PJ's Child Care Learning Center #2 v DHHS, Div of Child Development	05 DHR 0633	Lassiter	08/10/05	
Candace L Wood on behalf of Caitlyn A Wood v. OPC Men Hlth Area Prog	05 DHR 0649	Conner	08/01/05	
Candace L Wood on behalf of Waylon S Keeter v. OPC Men Hlth Area Prog	05 DHR 0650	Conner	08/01/05	
Candace L Wood on behalf of Caitlyn A Wood v	05 DHR 0651	Conner	07/12/05	



**CONTESTED CASE DECISIONS**

Alamance Caswell MHDDSA			
Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA	05 DHR 0652	Conner	07/12/05
Rose McRae v. DHHS, Division of Health Services	05 DHR 0662	Elkins	07/18/05
Charles Edward Shaw, Jr v Dorothea Dix Hospital	05 DHR 0675	Elkins	09/15/05
Walter G Dunston v. DHHS, Division of Facility Services	05 DHR 0688	Elkins	07/11/05
Pinebrook Residential Facility #1 v DHHS, DFS, Adult Care Licensure Sec.	05 DHR 0704	Conner	07/26/05
Cheryl Delk v John Umstead Hospital	05 DHR 0716	Elkins	08/11/05
Barbara Munch v. DHHS	05 DHR 0725	Morrison	07/22/05
Gwendolyn Bain v. Hoke Co Dept of Social Svcs, Ms Christin Basil	05 DHR 0749	Lassiter	07/22/05
Amy Hallisey, Pharmacist, Target Pharmacy-Lawndale, Greensboro v. DHHS Accounts Receivable, Division of Medical Assistance	05 DHR 0762	Elkins	08/11/05
Lindsey L Shumacher v DHHS, John Umstead Hospital	05 DHR 0772	Elkins	08/11/05
Amanda M Walters v. DHHS	05 DHR 0779	Elkins	07/28/05
Lisa Shull v. DHHS	05 DHR 0782	Mann	09/14/05
Vernie Ross v. DHHS	05 DHR 0814	Mann	09/14/05
Aralyn F Pressley v DHHS, Div. of Facility Services	05 DHR 0800	Morrison	08/17/05
Tamesha Taft v. DHHS	05 DHR 0836	Gray	08/04/05
Linda M Currie v. Medicaid	05 DHR 0854	Gray	07/07/05
Geneva Walton v DHHS, Division of Facility Services	05 DHR 0861	Chess	07/21/05
Claire Diggs v. Moore County, Program Integrity Unit	05 DHR 0915	Gray	08/10/05
Franchesca L Camp v Nurse Aide 1 & Health Care Registry	05 DHR 0919	Lassiter	07/27/05
Benny Brown v. DHHS, Division of Facility Services	05 DHR 0949	Elkins	07/28/05
Clarissa Bailey v DHHS	05 DHR 0961	Conner	08/30/05
LaVyonne Diaz Evans v DHHS, Division of Facility Services	05 DHR 0994	Lassiter	08/16/05
Narell C. Joyner Scholars, Inc v. DHHS	05 DHR 1013	Gray	10/20/05
Michelle A. Galloway v. DHHS, DFS	05 DHR 1042	Gray	10/03/05
Sandra Gregory v. DHHS, Div. of Child Development	05 DHR 1043	Lassiter	10/26/05
Valinda Streater v. DHHS, DFS	05 DHR 1047	Gray	10/06/05
Wakilat Oloko v. DHHS, DFS	05 DHR 1058	Elkins	09/29/05
Priscilla Vann v. Laura Peterson and Dept. of Social Services	05 DHR 1063	Conner	10/26/05
Tracy Anderson v DHHS, Division of Facility Services	05 DHR 1095	Elkins	09/09/05
Roy L. Simpson Jr v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1102	Gray	10/25/05
Tiffany Charles v Office of Administrative Hearings	05 DHR 1105	Gray	09/07/05
Brookside Montessori School v. DHHS, Div of Child Development	05 DHR 1119	Wade	10/12/05
Esther Thompson v. Vance County Dept. of Social Services, Marchita Vann, DHHS, Santana Deberry	05 DHR 1132	Chess	10/03/05
Tammy R. Sykes v. Dare County Social Services, Margaret Scott	05 DHR 1139	Elkins	09/22/05
Juanita Williamson, Wee Ones Child Care 67000753 v. Satana T.Deberry DHHS	05 DHR 1218	Lassiter	10/24/05
Shirley Michelle Reinhardt v. DHHS, DFS	05 DHR 1224	Lassiter	09/29/05
Pamela Jean Slade			

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.ncsoh.com/decisions](http://www.ncsoh.com/decisions).

**DEPARTMENT OF JUSTICE**

Andrew Arnold Powell, Jr. v. Crim Just Educ & Trng Stds Comm.	01 DOJ 1771	Chess	07/19/05	
Carlos Orellana v. Private Protective Services Board	04 DOJ 0813	Conner	08/01/05	
David Upchurch v. Criminal Justice Education and Training Stds. Comm.	04 DOJ 1157	Lassiter	05/13/05	
Phillip William Engle v Sheriffs' Education and Training Stds. Comm.	04 DOJ 1283	Mann	06/28/05	20:03 NCR 148
Edward Keith Royal v. Criminal Justice Education & Training Stds. Comm.	04 DOJ 2194	Gray	06/28/05	
Richard Michael Ashley v. Criminal Justice Education & Stds. Comm	04 DOJ 2256	Wade	10/17/05	
Tabitha Ann Boyland v. Sheriffs' Educ. & Training Standards Comm.	05 DOJ 0156	Elkins	07/08/05	
Shuntaneka Brooks v State Bureau of Investigation	05 DOJ 0296	Lassiter	09/07/05	
Ralph Robert Hines, II v. Criminal Justice Educ. & Training Standards Comm.	05 DOS 0482	Elkins	08/24/05	
George Augustus Pyecha v. Criminal Justice Education & Training Stds Commission	05 DOJ 0483	Chess	09/09/05	
Teddy Lynn Warren v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0505	Conner	06/23/05	
Amanda Gayle Talbert v. Criminal Justice Educ. and Training Stds. Comm.	05 DOJ 0648	Lassiter	06/15/05	
Amanda Gale Hughes v Sheriffs' Educ Trng Stds. Comm.	05 DOJ 0666	Wade	07/18/05	
Jeremy Westbrook v. Alarm Systems Licensing Board	05 DOJ 0693	Lassiter	07/19/05	
Gary Lee King v Private Protective Services Board	05 DOJ 0830	Lassiter	09/12/05	
Kevin Jon Kern v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0928	Lassiter	10/10/05	
Donald Lee Newton v Criminal Justice Educ. & Training Standards Comm.	05 DOJ 0929	Gray	09/12/05	
Robert Baxter Wilkerson III v Private Protective Services Board	05 DOJ 1074	Bryan	08/22/05	
Steven William Neu v Sheriffs' Education & Training Standards Comm.	05 DOJ 1169	Lassiter	09/08/05	
Sybil Yvonne Murrill v. Sheriffs' Education & Training Stds. Comm.	05 DOJ 1188	Lassiter	09/19/05	

**DEPARTMENT OF TRANSPORTATION**

Vernon Park Exxon, Inc., Station No. 14184, and Danny Spence v. DOT, DMV	05 DOT 1054	Chess	09/06/05
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**DEPARTMENT OF STATE TREASURER**

Roy Kevin Tripp v. Dept of St Treasurer, St Retirement Agency	04 DST 1422	Conner	07/27/05
George L Brown v Dept of St. Treasurer, Retirement Systems Division	05 DST 0147	Morrison	07/22/05
Tony M Martin v Dept. of State Treasurer, Retirement Systems Division	05 DST 0253	Lassiter	08/31/05
Robert A. Gabriel, Sr., v. Dept. of State Treasurer	05 DST 0586	Gray	10/21/05

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Robert A. Gabriel v. Dept. of State Treasurer	05 DST 1358	Gray	09/23/05	
<b><u>EDUCATION, STATE BOARD OF</u></b>				
Susan Hebach v. Dept. of Public Instruction	05 EDC 0140	Lassiter	09/27/05	
James H. Ballard v State Board of Education	05 EDC 0948	Conner	09/15/05	
<b><u>ENVIRONMENT AND NATURAL RESOURCES</u></b>				
Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch	94 EHR 0225	Gray	07/06/05	
Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch	94 EHR 0774	Gray	07/06/05	
JFG, Inc, Mr. Wayne Pierce, Pres. v. Onslow Co Health Dept & DEH&NR, Division of Environmental Health	95 EHR 0110	Gray	07/06/05	
Southwinds Homeowners Association v. DEHNR, Div. of Env. Health	95 EHR 0271	Gray	07/06/05	
Sandy Mitchell & E Ward Norris v. Mecklenburg Co Health Dept and DEHNR	95 EHR 0306	Gray	07/06/05	
Ralph K & Carolyn Emery v. Montgomery Co Health & Env. Section	95 EHR 0317	Gray	07/06/05	
Deerfield Shores Utility Co v. Carteret Co Environmental Health Dept.	95 EHR 0354	Gray	07/05/05	
Ron Launder v. Vance Co. Health Department	95 EHR 0515	Gray	07/05/05	
Tall Pines Plantation Property Owners Assoc. Inc. v. DENR	01 EHR 1638	Gray	08/17/05	
Heater Utilities, Inc v. NCDENR, Division of Water Quality	02 EHR 0009	Gray	07/06/05	
Tera B Slaughter v DENR	02 EHR 1286	Conner	08/01/05	
John & Elizabeth Kaylor v. DENR	03 EHR 0046	Conner	06/29/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0112 <sup>3</sup>	Connor	09/12/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0815 <sup>3</sup>	Connor	09/12/05	
Federal Land & Timer Corp v. DENR	03 EHR 1718	Gray	07/28/05	
Terry D. Gregory and wife, Pennie Gregory v. DENR, Div. of Coastal Management and Michael D. Swearingen, Jr.	03 EHR 2201	Gray	09/30/05	20:10 NCR 852
Cynthia Williamson Putnam v DENR	03 EHR 2383	Conner	09/12/05	
Brenda Severt, David and Nancie Wilson v. DENR	04 EHR 0383	Gray	10/25/05	
Rebecca Page v. DENR	04 EHR 0458	Bryan	09/20/05	
Milton T. Gibson v. Cumberland County Health Dept., Environmental Health	04 EHR 0990	Lassiter	10/11/05	
Robert L. Grissett v. DENR	04 EHR 1237	Chess	05/16/05	
Ellen Darrigrand & husband Charles Darrigrand v. DENR, Div/Coastal Mgmt	04 EHR 1469	Mann	06/30/05	20:05 NCR 270
Glenda Daniel v. Halifax Co Health Dept, Env Health Division	04 EHR 1583	Conner	07/27/05	
Matthew and Kathy Johnson v. DENR	04 EHR 2163	Conner	06/01/05	
Affordable Appliance, Jack Steale v. DENR	04 EHR 2164	Conner	05/31/05	
William Nelms v. DENR, Div. of Air Quality	04 EHR 2264	Conner	10/13/05	
Rebecca Page v. DENR	05 EHR 0458	Bryan	09/20/05	
Don R McGee, McGee's Brother's Co. v. DENR, Div. of Air Quality	05 EHR 0509	Mann	09/07/05	
Lynn E. Graham v. Co. of Durham, Engineering Dept.	05 EHR 0878	Gray	10/06/05	
Robert W Hudson v. Division of Marine Fisheries	05 EHR 0886	Morrison	07/05/05	
Daniel J Smith v State of NC Environmental Health	05 EHR 0925	Lassiter	08/08/05	
John C Gallop, Jane Gallop Newbern v. DENR/Div of Coastal Mgmt	05 EHR 0941	Gray	07/29/05	
Robert B. Montouri GC v. New Hanover Co. Health Dept.	05 EHR 1001	Morrison	10/03/05	
Rosalind Nixon, All Good Detail Inc, v. DENR	05 EHR 1215	Lassiter	10/13/05	
<b><u>DEPARTMENT OF INSURANCE</u></b>				
Pentech Infusions, Inc., AS/Assignee of Betty W. Green and Ava Cathey v. Teachers' and State Employees' Comprehensive Major Medical Plan	03 INS 1518	Elkins	10/07/05	
Rachael Elizabeth Ragin v. Teachers' and State Employees' Comprehensive Major Medical Plan	04 INS 1299	Conner	09/26/05	
<b><u>OFFICE OF STATE PERSONNEL</u></b>				
Charles D Bailey v Department of Cultural Resources	02 OSP 0002 <sup>4</sup>	Conner	09/12/05	
Leavander J. Cheeks v Department of Cultural Resources	02 OSP 0002 <sup>4</sup>	Conner	09/12/05	
Vicki B Tamer v. Department of Public Instruction	03 OSP 0243	Gray	08/15/05	
Arlene R Burwell v Department of Corrections	03 OSP 0621	Conner	09/12/05	
Eddie Ray Creech v. Department of Corrections	03 OSP 0831	Wade	05/17/05	
Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05	
Michael B. Carraway v. Wildlife Resources Commission, Div. of Wildlife Management	03 OSP 1545	Gray	09/07/05	
Jack Mason v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1555	Gray	09/07/05	
David Thomas Sawyer v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1556	Gray	09/07/05	
Robert Earl Regan, Jr v DCCPS, State Highway Patrol	03 OSP 2321	Conner	09/12/05	
James A Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	06/28/05	
Willie Steve Tellado v Dept. of Transportation	04 OSP 0858	Wade	07/18/05	
Mona Dale Batten v Columbus Co Department of Social Services	04 OSP 1194	Gray	09/07/05	
Loretta G Hooks v. Department of Corrections	04 OSP 1266	Wade	07/11/05	
Wayne Pettit v Department of Correction	04 OSP 1458	Gray	08/04/05	
Carroll (ED) Swain v. UNC-Chapel Hill	04 OSP 1476	Gray	09/20/05	
Daisy L. Smith v. Cumberland Co Mental Health Center	04 OSP 1558	Elkins	07/28/05	20:05 NCR 291

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Jacqueline Hightower v Wayne Co Dept of Social Services	04 OSP 1563	Lassiter	09/09/05
Shelli Henderson Rice v. ESC of NC	04 OSP 1574	Gray	06/27/05
V Wayne Johnson v Department of Transportation	04 OSP 1716	Elkins	07/06/05
Beverly R Lee v. Employment Security Commission of NC	04 OSP 1742	Conner	08/03/05
Robert D Jones v Hendsen County Dept. of Public Health	04 OSP 2081	Gray	08/01/05
Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director	04 OSP 2117	Wade	10/11/05
Regina C Gaither v. Forsyth Co Department of Social Services	05 OSP 0047	Conner	06/27/05
Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05
Angela Twitty v DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05
Alan Bradford v. Avery Co.	05 OSP 0493	Wade	10/06/05
Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05
Mary K French Fornes v DOC Eastern Correctional Institution	05 OSP 0584	Gray	07/08/05
James R Campbell v Forsyth Co Department of Social Services	05 OSP 0587	Elkins	08/26/05
Gloria Woodard v. Lyndo Tippett, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05
Glendora Key v. UNC at Chapel Hill	05 OSP 0784	Gray	09/23/05
Deborah Faye Murray v NW Peidmont Council of Governments	05 OSP 0802	Chess	07/13/05
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05
Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05
Stacy D Bazemore v NCSU CVM-VTH	05 OSP 0874	Gray	08/01/05
Donna P. Minelli v. DOC, Div. of Community Corrections	05 OSP 0889	Conner	10/21/05
Willie Gadden v. Winston-Salem State University	05 OSP 0904	Chess	10/10/05
Albert Ridley v. Odom Correctional Institution, Lawrence Solomon	05 OSP 0989	Gray	10/25/05
Mark P. Gibbons v. Derrick Lee, DOT Plymouth, NC, Robby Taylor, DOT, Creswell, NC	05 OSP 1080	Elkins	10/12/05
Cindy Owens v Justice Academy	05 OSP 1038	Conner	09/19/05
Thomas M. Chamberlin v. Vance-Granville Community College	05 OSP 1170	Chess	09/30/05
Joe L. Harris, MSW, LCSW v. Alamance Caswell MHDDSA/LME	05 OSP 1221	Chess	10/11/05
Lolita B. Keel v. Dept. of Revenue	05 OSP 1228	Elkins	10/12/05
David N. Smith v. NC School of Science and Math	05 OSP 1236	Chess	10/04/05
Gerald R. Tripp v. NC School of Science and Math	05 OSP 1242	Chess	09/22/05

**SECRETARY OF STATE**

Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05
Barbara Jane Kelly v Secretary of State	05 SOS 0310	Elkins	08/22/05
Richard C Capps v. Dept of Secretary of State	05 SOS 0560	Gray	07/14/05
Silvia Rodriguez v Department of Secretary of State	05 SOS 0926	Lassiter	09/09/05
Curtis Eugene Haynes v. Department of Secretary of State	05 SOS 1031	Wade	10/28/05

**UNC HOSPITALS**

Bhimjibhai Lanani v UNC Hospitals	04 UNC 0008	Conner	09/12/05
Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05
Lenora White v. UNC Hospitals	05 UNC 0574	Bryan	09/13/05
Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue	05 UNC 0608	Conner	07/26/05
Joyce Porter v UNC Hospitals	05 UNC 0623	Elkins	08/11/05
Martin T Myers v UNC Hospitals	05 UNC 0632	Elkins	08/11/05
Bettie Brame v UNC Hospitals	05 UNC 0638	Conner	08/01/05
Joyce Daugherty v. UNC Hospitals	05 UNC 0663	Elkins	08/11/05
Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
Tashuia Williams v UNC Hospitals	05 UNC 0684	Conner	07/26/05
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
De'Juana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05

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1 – Combined Cases  
2 – Combined Cases

**CONTESTED CASE DECISIONS**

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STATE OF NORTH CAROLINA  
COUNTY OF WASHINGTON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
03 EHR 2201

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TERRY D. GREGORY and wife, )  
PENNIE GREGORY, )  
 )  
Petitioners )  
v. )  
 )  
NORTH CAROLINA DEPARTMENT OF )  
ENVIRONMENT AND NATURAL RESOURCES, )  
DIVISION OF COASTAL MANAGEMENT, )  
 )  
Respondent, )  
 )  
and )  
 )  
MICHAEL D. SWEARINGEN, JR. and wife, )  
LINDA SWEARINGEN, )  
 )  
Respondent-Intervenors. )  
 )

DECISION

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This contested case was heard on motions for summary judgment and a motion to dismiss on February 10, 2005, in the Beaufort County Courthouse in Washington, North Carolina; was heard again by evidentiary hearing as an “offer of proof” on April 28, 2005, in the Pitt County Courthouse in Greenville, North Carolina; and finally, it was heard again to complete the evidentiary hearing on July 27, 2005, in the Wayne County Courthouse, on remand from the North Carolina Coastal Resources Commission (CRC). The case was heard each time before Beecher R. Gray, Administrative Law Judge, on a petition for contested case hearing regarding the Division of Coastal Management’s (DCM’s) issuance of an exemption under the Coastal Area Management Act (CAMA) authorizing repair of a boathouse on the Albemarle Sound.

APPEARANCES

Petitioners: I. Clark Wright, Jr.  
WARD and DAVIS, LLP  
Post Office Drawer 1428  
New Bern, North Carolina 28563-1428

Respondent: Meredith Jo Alcoke  
Assistant Attorney General  
N. C. Department of Justice  
400 Commerce Avenue  
Morehead City, NC 28557

Respondent-Intervenor: H. Glenn Dunn  
POYNER & SPRUILL, LLP  
P.O. Box 10096  
Raleigh, NC 27605-0096

PROCEDURAL HISTORY

1. Petitioners filed and served a Motion for Summary Judgment on January 20, 2005. Respondent-Intervenors filed and served a Response to Petitioners' Motion for Summary Judgment and Cross-Motion for Summary Judgment on January 28, 2005. Also on January 28, 2005, Respondent-Intervenors filed a Motion to Dismiss. Respondent-Intervenors filed and served supporting memoranda of law on January 28, 2005 and February 4, 2005; also on February 4, 2005, Petitioners filed a response to all motions, with supporting memorandum of law.

2. In a Decision issued May 6, 2005, the undersigned administrative law judge (ALJ) found as follows:

A. Petitioners' Motion for Summary Judgment was GRANTED, and Respondent-Intervenors' Cross-Motion for Summary Judgment was DENIED on the issue of whether Respondent DCM exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it failed to obtain pre-storm physical values from the local building inspector before determining that some of the structures covered by CAMA General Permit No. 34626-B could be rebuilt as "maintenance and repair" as defined in 15A NCAC 7J .0210.

B. Petitioners' Motion for Summary Judgment was DENIED, and Respondent-Intervenors' Cross-Motion for Summary Judgment was GRANTED on the issue of whether Respondent DCM exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in considering some of the structures (the boathouse and attached catwalks) covered by CAMA General Permit No. 34626-B as exempt repair work, while considering other structures (the pier and T-head) covered by the Permit as storm replacement work.

C. Respondent-Intervenors' Motion to Dismiss on the basis of standing was DENIED.

3. This matter came before the North Carolina Coastal Resources Commission (CRC) for final decision pursuant to N.C.G.S. § 150B-36 at its regularly scheduled meeting on June 17, 2005 in Greenville, North Carolina.

4. The CRC reversed the ALJ's decision on the issue of DCM failing to consult the building inspector, as described in paragraph 2A above. The CRC upheld the ALJ's decision on the issue of DCM considering the pier and boathouse as separate structures, as described in paragraph 2B above. The CRC upheld the ALJ's denial of Respondent-Intervenor's Motion to Dismiss on the basis of standing.

5. The CRC remanded the case to the ALJ for a determination of whether the cost to repair the boathouse and associated catwalks exceeds 50 percent of the physical value of those structures. Specifically, the CRC found that "[b]ecause the CRC determined that Petitioners' motion for summary judgment should be denied, the ALJ never reached the issue of whether the boathouse and catwalks were more than 50% damaged. The issue must be remanded for hearing and decision by the ALJ pursuant to N.C.G.S. § 150B-36(d)."

ISSUE

Whether Respondent DCM exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in determining that Respondent-Intervenors were entitled to repair their storm-damaged boathouse and catwalks as exempt (non-development) work.

STATUTES AND RULES

N.C.G.S. § 113A-103(5)(b)(5)(Coastal Area Management Act (CAMA)– Exemptions from the definition of development)

15A NCAC 7J .0210 (Replacement of existing structures)

TESTIFYING WITNESSES

For Petitioners

Brian Bonney  
Ivan Sawyer  
Kelly Spivey  
Michael Swearingen  
Terry Gregory

For Respondent

Terrence Moore

For Respondent-Intervenors

Stewart Davenport  
Michael Swearingen

EXHIBITS RECEIVED INTO EVIDENCE

Petitioners

- 1 2/29/04 photograph
- 2 2/29/04 photograph
- 3 2/29/04 photograph
- 4 2/29/04 photograph
- 5 2/29/04 photograph
- 6 2/29/04 photograph
- 7 2/29/04 photograph
- 8 2/29/04 photograph
- 9 11/16/03 letter from Bonney  
to "To whom it may concern"
- 10 6/19/03 CAMA permit
- 11 9/26/03 CAMA permit
- 12 7/13/95 CAMA permit
- 13 10/03 enlarged photograph
- 14 10/03 photograph
- 15 10/03 photograph
- 16 10/03 photograph
- 17 9/26/03 DCM photograph
- 18 9/26/03 DCM photograph
- 19 Photograph
- 20 Photograph
- 21 2/98 MAI appraisal report
- 22 2004 tax listing
- 23 3/13/04 worksheet by  
Michael Swearingen
- 24 4/5/04 L&L cost estimates
- 25 7/24/04 CAMA permit
- 26 10/4/03 photograph
- 27 Photograph
- 28 Photograph
- 29 Photograph
- 30 Photograph
- 31 DCM aerial photograph
- 32 Photograph

Respondent

- 1 9/26/03 CAMA storm permit
- 2 Excerpt from CAMA
- 3 15A N.C.A.C. 07J .0210
- 4 CAMA emergency general permit
- 5 Memo from Director Jones
- 6 Excerpt from Disaster  
Response Plan and Procedures  
Manual
- 7 7/8/02 memo from Tyndall to  
I&S Committee
- 8 8/10/04 memo from Tyndall to  
to I&S Committee
- 9 CAMA storm permit to Owens

10 Aerial photograph

Respondent-Intervenor

- 1 Estimates by Davenport
- 2 Estimate by Barber
- 4 Chart Summarizing Estimates

UNDISPUTED FACTS

1. Petitioners Terry D. Gregory and his wife, Pennie R. Gregory, own a vacant riparian lot (Lot 11) on the shoreline of the Albemarle Sound near the town of Roper in Washington County, North Carolina.

2. Respondent-Intervenors Michael D. Swearingen, Jr. and his wife, Linda Swearingen, own the riparian lot (Lot 10) adjacent to the Gregory lot to the west.

3. The waters of the Albemarle Sound are within the Estuarine Waters and Public Trust Areas of Environmental Concern (AEC's) designated by the Coastal Resources Commission (CRC) in Rules 15A NCAC 7H .0206 and .0207.

4. On July 13, 1995, DCM issued Coastal Area Management Act (CAMA) General Permit No. 14648-B to Michael Swearingen, Jr. authorizing the construction of a pier, platform, boathouse, and associated catwalks.

5. The Gregorys' predecessor-in-title at the time signed letters of no objection before General Permit No. 14648-B was issued. They did not file a third party hearing request to challenge the issuance of Permit No. 14648-B.

6. Terry and Pennie Gregory acquired Lot 11 from Jerry and Dorothy Cornwall on July 28, 2003.

7. Hurricane Isabel struck the area on September 18, 2003. Mr. Swearingen's pier and platform were substantially destroyed. His boathouse and catwalks were damaged.

8. After Hurricane Isabel, the Secretary of the Department of Environment and Natural Resources in his discretion authorized the "Emergency General Permit" for "Replacement of Structures" under 15A NCAC 7H .2500.

9. Upon request by Mr. Swearingen, Respondent DCM visited the site on September 26, 2003. On that day, DCM issued a CAMA Emergency General Permit (No. 34626-B) to Michael Swearingen, Jr. authorizing the replacement of the pier and platform.

10. DCM also determined at the same time that the repair of Mr. Swearingen's boathouse and associated catwalk was exempt from CAMA permitting requirements since the work fell within the exemption for maintenance and repair necessary to repair damage caused by the elements under N.C.G.S. § 113A-103(5)(a)(5). DCM did not consult with the local building inspection office to make this determination. The boathouse exemption was noted on the face of the Emergency General Permit.

11. In N.C.G.S. § 113A-103(5)(b)(5), the CAMA provides as follows:

(b) The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

\* \* \*

(5) Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.

12. The requirement to obtain a permit under CAMA extends only to activities that constitute "development" within "areas of environmental concern." N.C.G.S. § 113A-118(a). Certain activities are exempt from the definition of development and no permit is required.

13. The damaged boathouse does not comply with the CRC's current rules because it has a second-story use. Such a second-story use was allowed when the boathouse was built in 1995 but was prohibited in August 1998, when Rule 15A NCAC 7H .1205(1) was amended.

14. Petitioners filed a third party hearing request with DCM on October 15, 2003 requesting permission to file a petition for contested case to challenge CAMA Permit No. 34626 as third parties pursuant to N.C.G.S. § 113A-121.1(b).

15. The Vice-Chairman, Coastal Resources Commission, granted the Petitioners' hearing request only with regard to whether the Swearingen pier, platform, boathouse, and catwalk must be considered a single structure for purposes of applying the Commission's so-called "50 percent rule" in 15A NCAC 7J .0210.

16. Rule 15A NCAC 7J .0210 provides:

Replacement of existing structures damaged or destroyed by natural elements, fire, or normal deterioration is considered development and will require CAMA permits. The proposed work will be considered replacement if the cost of the proposed work exceeds 50 percent of the physical value of the structure at the time of damage. The physical value of the structure shall be determined by the local building inspection office. Replacement of structures can be allowed if they are found to be consistent with current CRC rules.

17. N.C.G.S. § 113A-121.1(a) provides: "[A] person other than a permit applicant or the Secretary (of DENR) who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing . . . ."

18. Under the N.C. Administrative Procedure Act, to initiate a contested case a person must be a "person aggrieved," which is defined as one "directly or indirectly affected substantially in his . . . person, property or employment by an administrative decision." N.C.G.S. § 150B-2(6).

ADDITIONAL FINDINGS OF FACT

1. North Carolina General Statute 150B-36(d) provides that if an agency does not adopt an administrative law judge's decision on summary judgment, it shall remand the case to the ALJ for hearing.

2. Prior to purchasing their lot, Petitioners inspected it and were fully aware of the Swearingens' pier, boathouse and associated catwalks.

3. Terry Moore is the District Manager in the DCM Washington Regional Office. As of 2003, Mr. Moore has been with DCM for approximately 23 years, the majority of which he has served as District Manager for the Washington region. Prior to his employment with DCM, Mr. Moore worked for the Wildlife Resources Commission for ten years. (T pp 320-21) During his time with DCM, Mr. Moore has issued many emergency permits as well as exemptions for docks and boathouses damaged by storms.

4. Prior to working with DCM, Mr. Moore did work as a marine contractor. He has constructed docks and piers for himself as well as for others. In these capacities, he has repaired damaged boathouses by straightening and repairing the pilings and providing other necessary repairs, and therefore has substantial knowledge of construction techniques and repair and replacement method costs. (T pp 336-338)

5. On September 26, 2003, Terry Moore and Field Representative Kelly Spivey responded to Mr. Swearingen's request for a site visit. (T pp 145, 324) They observed the Swearingen boathouse from shore, a distance of approximately 140 feet. They saw that the boathouse was leaning and they observed a cracked piling. They also observed that the roof still was intact, that the sides generally still were intact, and that if the boathouse could be righted, it would perform its intended function. Under the exigencies of making reasonably prompt visits to and decisions about many storm-damaged properties in the coastal area, Field Representatives Moore and Spivey did not observe the damage to the boathouse and catwalks which would have been observable at close range, such as from a boat or in waders. Representatives Moore and Spivey acted in good faith and attempted to respond reasonably as it appeared to them under the existing post-storm work demands. (T pp 325, 331, 389-90)

6. Based on his substantial experience, District Manager Moore advised Mr. Spivey, and they jointly formed a belief that the boathouse could be repaired for less than 50% of its pre-storm value, unless it collapsed during repair, in which case it would have to be "replaced" and would require a CAMA permit. (T p 325-326, 389) District Manager Moore and Field Representative Spivey did not obtain or consider physical data or cost to repair date from any source.

7. Written guidance for replacement and repair of structures issued by DCM and approved by the CRC provides that acceptable estimates of physical value may be obtained from several sources. The guidance document, entitled Substantial Improvement and Substantial Damage Field Guide and written to assist agency staff, provides, pertinent part:



- An independent appraisal by a certified professional appraiser. The appraisal must exclude the value of the land and not use the “income capitalization approach” which bases the value on the property, not the structure.

— Detailed estimates of the structure’s actual cash value – the replacement cost for a structure, minus depreciation percentage based on age and condition. For most situations, the structure’s actual cash value should approximate its market value. One may prefer to use actual cash value as a substitute for physical value, especially where there is not sufficient data or enough comparable sales.

- Property appraisals used for tax assessment purposes with an adjustment recommended by the tax appraiser to reflect the adjusted assessed value.

(R Ex 8, p 4)

PRE-STORM PHYSICAL VALUE OF RESPONDENT-INTERVENORS’ BOATHOUSE

A. Tax Value Method

8. A 2004 tax appraisal of Respondent-Intervenors’ property admitted into evidence in this case states an appraised value of \$3,930 for the boathouse and a replacement cost of \$4,370. Although there was evidence suggesting that property values of waterfront property in the area rapidly are appreciating, that appreciation runs to the underlying land, not the structure. (P Ex 22, R Ex 8, p 4)

B. Professional Appraisal Method

9. A 1998 professional MAI appraisal report of Respondent-Intervenors’ property admitted into evidence in this case, states a value of \$4,000 for the boathouse, pier, and bulkhead together. This report assigned a value of \$2,500 for the bulkhead and pier without the boathouse, leaving an appraised value of \$1,500 for the boathouse alone. The fact that the appraisal report is dated five years prior to Hurricane Isabel tends to show that the boathouse would have a slightly lower appraised value at the time of Isabel because of accrued depreciation to the structure. (P Ex 22, R Ex 7, 8)

C. Actual Cash Value (Construction Cost Less Depreciation) Method

10. Respondent-Intervenors established in this hearing that the turn key construction cost of the pier-boathouse complex when it was built in 1995 was \$22,577.87. (P Ex 23). Respondent DCM’s Field Guide instructs field representatives to subtract accumulated depreciation, based upon age and condition, from construction cost in order to determine actual cash value, an approximation of market value. (R Ex 7, 8)

11. There was testimony from various witnesses in this contested case hearing that the life expectancy of a boathouse, catwalk, pier or dock in this coastal area ranged from 8 years to 35 years. Using a reasonable and conservative life expectancy of 25 years yields an annual depreciation rate of 4%. Respondent-Intervenors’ boathouse complex was approximately 8 years old at the time of Hurricane Isabel with an accrued depreciation factor of 32%. Subtracting the 32% accrued depreciation factor from Respondent-Intervenors’ construction cost of \$22,577.87 yields a pre-storm physical value of the boathouse complex of \$15,352.95. Respondent-Intervenors’ 1995 construction cost figures show \$10, 629.90 for the boathouse and \$2,380.80 for the catwalks for a total of \$13,010.70. To this figure must be added electrical construction costs of \$714 and \$520.37 for a total true cost of \$14,245.07. The calculated value of \$14,245.07 is reduced by the 32% depreciation factor to yield a pre-storm physical value of \$9,686.65. (P ex 23, 24, R Ex 7, 8)

12. Respondent-Intervenors produced expert evidence from Stewart Davenport, a licensed marine contractor with 30 years experience, that the 2004 replacement costs for the boathouse and catwalks were \$15,312 and \$2,304, respectfully for a total of \$17, 616. To this replacement cost, Respondent-Intervenors would add a portion, 10%, of the electrical costs for a total of \$17,808. Respondent-Intervenor Michael D. Swearingen, Jr., a licensed realtor, testified that, based upon his 19 years experience selling real estate in Washington County, the appropriate depreciation rate would be fixed at \$300 per year times 8 years or \$2,400. It is found as fact that the appropriate method to calculate depreciation applicable to this contested case is to apply a depreciation rate derived from life expectancy of the structure to the construction costs of the original structure. (P. Ex. 22; R. Ex. 7, 8)

13. Marine contractor Stewart Davenport provided expert testimony and documentary evidence of the cost to repair the boathouse and the associated catwalks. That figure is \$6,098.

14. Respondent’s Field Guide used by its representatives provides that the representatives should consider only the true market costs, the cost of hiring a contractor at prevailing rates, of making repairs to a damaged structure using market costs of new

materials. The Field Guide also instructs representatives that repair costs should include the cost to repair the structure so as to return it to its pre-storm condition. In this case, that would require the representatives to consider repair costs that included two (2) catwalks and electrical service to the boathouse, including an electric boatlift. Respondent-Intervenors' repair costs produced by contractor Davenport does not represent true market cost as some of the materials used or to be used were salvaged after the storm. While there is no evidence that any bias exists against using salvaged materials, Respondent requires its field agents to consider the true market costs in determining whether the cost to repair is more than 50% of the pre-storm physical value.

15. Using the figure of \$9686.65, the highest appropriate physical value, derived from the actual cash value, construction cost less depreciation method, and using Respondent-Intervenors' cost to repair figure of \$6,098, the percentage of cost to repair versus pre-storm physical value is 62%.

16. Respondent's rule which creates the 50% test for repair or replacement provides that:

Replacement of existing structures damaged or destroyed by natural elements, fire, or normal deterioration is considered development and will require CAMA permits. The proposed work will be considered replacement if the cost of the proposed work exceeds 50 percent of the physical value of the structure at the time of damage. The physical value of the structure shall be determined by the local building inspection office. Replacement of structures can be allowed if they are found to be consistent with current CRC rules. 15A NCAC 7J .0210

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear this case under N.C.G.S. § 113A-121.1 and N.C.G.S. § 150B-23.

2. All parties correctly have been designated and properly are before the Office of Administrative Hearings. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter.

3. Petitioner bears the burden of proof on the issues. Peace v. Employment Sec. Comm'n, 349 N.C. 315, 328, 507 S.E.2d 272, 281 (1998).

4. Under the authority of G.S. 150B-33(a)(9), I find that the phrase "[t]he physical value of the structure shall be determined by the local building inspection office" is void as applied in this contested case because it is not within the statutory authority of the agency and is not reasonably necessary to enable the agency to fulfill the duty delegated to it by the General Assembly to determine whether the boathouse and catwalks are exempt as repair rather than replacement. I find that remainder of the rule is severable and not voided by this decision.

5. Under the facts of this contested case, Respondent's failure to obtain a physical value from the local building inspection office constitutes harmless error because ample evidence exists in this case to demonstrate that Respondent had various other methods from which to derive an appropriate figure representing pre-storm physical value. Respondent's good faith judgment call, made on the scene after a quick visual inspection from 140 feet away, without any development of estimates of construction costs, depreciation, and costs to repair, while laudable under the exigencies of the moment, constitutes error as developed from the evidence produced in this contested case.

6. Under the facts of this contested case, Respondent's decision to issue an exemption to Respondent-Intervenors constituted error and failure to act as required by law and rule.

DECISION

Based on the foregoing findings of fact and conclusions of law, Respondent's decision to issue a repair exemption to Respondent-Intervenors is REVERSED as not supported by the evidence. Petitioners have demonstrated by a preponderance of the evidence that Respondent erred in its decision, that Respondent's grant of the exemption was unlawful and erroneous, and that Petitioners' rights substantially have been prejudiced thereby.

ORDER

It hereby is ordered that the agency serve a copy of its final agency decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C.G.S. § 150B-36(b)(3).

NOTICE

The agency making the final decision in this contested case is the North Carolina Coastal Resources Commission. That Commission 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.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' attorneys of record and to the Office of Administrative Hearings.

This the 30th day of September 2005.

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Beecher R. Gray  
Administrative Law Judge