

NORTH CAROLINA REGISTER

VOLUME 24 • ISSUE 10 • Pages 713 - 814

November 16, 2009

I. IN ADDITION	
Appraisal Board – Notice of Rulemaking Hearing	713
Labor, Department of - Notice of Verbatim Adoption of Federal Standards ..	714
II. PROPOSED RULES	
Agriculture and Consumer Services, Department of	
Agriculture, Board of	715
Community Colleges, Department of	
Community Colleges, Board of	794 – 802
Environment and Natural Resources, Department of	
Coastal Resources Commission	729 – 732
Department	779 – 789
Wildlife Resources Commission	732 – 779
Health and Human Services, Department of	
Medical Assistance, Division of	715 – 719
Insurance, Department of	
Department	719 – 723
Justice	
Private Protective Services Board	723 – 725
Sheriffs' Education and Training Standards Commission	725 – 727
Labor, Department of	
Department	727 – 729
Occupational Licensing Boards and Commissions	
Dental Examiners, Board of	790 – 793
Massage and Bodywork Therapy, Board of	793 – 794
State Personnel, Office of	
State Personnel Commission	802 – 803
III. EMERGENCY RULES	
Commerce, Department of	804 – 806
Health and Human Services, Department of	
Vocational Rehabilitation Services, Department of	806 – 807
IV. TEMPORARY RULES	
Labor, Department of	808 – 810
V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	811 – 814

Contact List for Rulemaking Questions or Concerns

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

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

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

contact: Molly Masich, Codifier of Rules molly.masich@oah.nc.gov (919) 431-3071
Dana Vojtko, Publications Coordinator dana.vojtko@oah.nc.gov (919) 431-3075
Julie Edwards, Editorial Assistant julie.edwards@oah.nc.gov (919) 431-3073
Tammara Chalmers, Editorial Assistant tammara.chalmers@oah.nc.gov (919) 431-3083

Rule Review and Legal Issues

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

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

Fiscal Notes & Economic Analysis

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

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

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

Governor's Review

Eddie Speas eddie.speas@nc.gov
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

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

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2009 – December 2009

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
23:13	01/02/09	12/08/08	01/17/09	03/03/09	03/20/09	05/01/09	05/2010	09/29/09
23:14	01/15/09	12/19/08	01/30/09	03/16/09	03/20/09	05/01/09	05/2010	10/12/09
23:15	02/02/09	01/09/09	02/17/09	04/03/09	04/20/09	06/01/09	05/2010	10/30/09
23:16	02/16/09	01/26/09	03/03/09	04/17/09	04/20/09	06/01/09	05/2010	11/13/09
23:17	03/02/09	02/09/09	03/17/09	05/01/09	05/20/09	07/01/09	05/2010	11/27/09
23:18	03/16/09	02/23/09	03/31/09	05/15/09	05/20/09	07/01/09	05/2010	12/11/09
23:19	04/01/09	03/11/09	04/16/09	06/01/09	06/22/09	08/01/09	05/2010	12/27/09
23:20	04/15/09	03/24/09	04/30/09	06/15/09	06/22/09	08/01/09	05/2010	01/10/10
23:21	05/01/09	04/09/09	05/16/09	06/30/09	07/20/09	09/01/09	05/2010	01/26/10
23:22	05/15/09	04/24/09	05/30/09	07/14/09	07/20/09	09/01/09	05/2010	02/09/10
23:23	06/01/09	05/08/09	06/16/09	07/31/09	08/20/09	10/01/09	05/2010	02/26/10
23:24	06/15/09	05/22/09	06/30/09	08/14/09	08/20/09	10/01/09	05/2010	03/12/10
24:01	07/01/09	06/10/09	07/16/09	08/31/09	09/21/09	11/01/09	05/2010	03/28/10
24:02	07/15/09	06/23/09	07/30/09	09/14/09	09/21/09	11/01/09	05/2010	04/11/10
24:03	08/03/09	07/13/09	08/18/09	10/02/09	10/20/09	12/01/09	05/2010	04/30/10
24:04	08/17/09	07/27/09	09/01/09	10/16/09	10/20/09	12/01/09	05/2010	05/14/10
24:05	09/01/09	08/11/09	09/16/09	11/02/09	11/20/09	01/01/10	05/2010	05/29/10
24:06	09/15/09	08/24/09	09/30/09	11/16/09	11/20/09	01/01/10	05/2010	06/12/10
24:07	10/01/09	09/10/09	10/16/09	11/30/09	12/21/09	02/01/10	05/2010	06/28/10
24:08	10/15/09	09/24/09	10/30/09	12/14/09	12/21/09	02/01/10	05/2010	07/12/10
24:09	11/02/09	10/12/09	11/17/09	01/02/10	01/20/10	03/01/10	05/2010	07/30/10
24:10	11/16/09	10/23/09	12/01/09	01/15/10	01/20/10	03/01/10	05/2010	08/13/10
24:11	12/01/09	11/05/09	12/16/09	02/01/10	02/22/10	04/01/10	05/2010	08/28/10
24:12	12/15/09	11/20/09	12/30/09	02/15/10	02/22/10	04/01/10	05/2010	09/11/10

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.

**NORTH CAROLINA APPRAISAL BOARD
NOTICE OF RULE-MAKING HEARING**

The North Carolina Appraisal Board will hold a public hearing on its proposed rules as published in the North Carolina Register on October 15, 2009 (Volume 24 Issue 8). The hearing will be held on Tuesday, December 15, 2009 at 9:00 am at the Board's offices at 5830 Six Forks Road, Raleigh, North Carolina, 27609. Written comments on the rules will be accepted until December 15, 2009. Questions and comments may be directed to Roberta Ouellette at the above address, by telephone at 919-870-4854 or via email at Roberta@ncab.org.

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

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, 13 NCAC 07F .0501, and 13 NCAC 07F .0502 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910, 1915, and 1917 promulgated as of September 9, 2009, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904-Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions that are effective October 15, 2009 concerning:

- Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment (74 FR 46350 - 46361, September 9, 2009)

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

For additional information, please contact:

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

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

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

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

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rule cited as 02 NCAC 48A .1205.

Proposed Effective Date: March 1, 2010

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than December 1, 2009, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: This rule establishes fees for plant nursery inspection and registration. The proposed changes will implement fee increases mandated by Session Law 2009-451, the Current Operations and Capital Improvements Appropriations Act of 2009, and the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, Section H, G. Plant Industry, 14-Plant Industry Fees.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 ext. 238, fax (919) 716-0090, and email david.mcleod@ncagr.gov

Comment period ends: January 15, 2010

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

facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

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

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1200 - NURSERY CERTIFICATION

02 NCAC 48A .1205 FEES

Schedule of fees for nursery inspection or registration based on acres of salable nursery stock are as follows:

(1)	Certified:	
	First acre or fraction thereof	\$10.00
		<u>\$100.00</u>
	Each additional acre	2.00
		<u>3.00</u>
(2)	Registered	6.00
		<u>20.00</u>
(3)	Institutional	None

A certificate shall not be granted until all fees owed are paid. A charge not to exceed the original inspection fee may be made for each additional inspection necessary to certify all or part of a nursery when such nursery has been found uncertifiable because of plant pest.

Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Medical Assistance intends to amend the rules cited as 10A NCAC 22M .0102, .0201, .0301; 22O .0118 and repeal the rules cited as 10A NCAC 21C .0103; 22O .0407.

Proposed Effective Date: March 1, 2010

Public Hearing:

Date: December 2, 2009

Time: 10:00 a.m.

Location: 1985 Umstead Drive, Raleigh, NC, Kirby Building, Room 132

Reason for Proposed Action:

10A NCAC 21C .0103 – this repeal is necessary because this requirement has been deleted from the pharmacy program.

10A NCAC 22M .0102 – this amendment changes the term for DUR Board membership to read “12 months with the option to renew for two additional one-year periods.” This amendment reflects the pharmacy name change from the NC Pharmacy Association to the NC Association of Pharmacist. The language “if a member resigns before his term expires, a replacement shall be appointed to serve the remainder of that term” is being deleted because the contract covers member resignation.

10A NCAC 22M .0201 – this amendment deletes the statement that “there is no charge for single copies” since this statement had no relevance under patient counseling and add “a recoupment of the total claims may be imposed to the pharmacy for non-adherence to this rule” since patient counseling is a mandatory requirement under SSA 1927, SPA, and the Clinical Coverage Policy, No. 9, Outpatient Pharmacy Program.

10A NCAC 22M .0301 this amendment deletes the sentence, “covered outpatient drugs dispensed by HMOs who have a contract with DMA to provide services to Medicaid recipients for a set monthly fee shall not be subject to the requirements of this Section.” There are no carve-outs from the outpatient pharmacy program, everyone who elects to receive the pharmacy benefit falls under the fee for service category of service.

10A NCAC 22O .0118 – this amendment reflects a new pharmacy services provision for the Focused Risk Management (FORM) program and opt-in program. The FORM program reimburses community pharmacy providers for activities to assure safe, effective, appropriate, and economical use of medications, to identified recipients, in order to improve continuity of care and outcomes. This is an interdisciplinary, team-based approach for coordination of care. All recipients receiving more than 11 prescriptions per month shall opt-in to a single pharmacy of their choice. This Rule is also being amended to include the definition for a covered drug; brand or trade name vs. generic dispensing requirements; noting prescriptions must comply with state and federal laws/regulations; prescriptions must be filed numerically and in chronological order or in accordance with G.S. 90-85.26; authorized refills shall be recorded; credits must be issued for returned medications; allowing DHHS to establish requirements for authorizations, quantity limitations, and reviews for specific drugs, drug classes, brands or quantities; defines days supply, prior authorization program, episodic drugs; pharmacists accept new recipients by their own choice; copayments do apply to prescriptions drugs including same month refills, all provisions stated within this Rule are in accordance with the SPA and Clinical Coverage Policy, No. 9, Outpatient Pharmacy Program.

10A NCAC 22O .0407 – this repeal is necessary because this language is being incorporated within 10A NCAC 22O.0118, Pharmacy Services.

Procedure by which a person can object to the agency on a proposed rule: Should you desire to object to a proposed rule(s) please respond to DMA with the objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains. This must be submitted in writing to Teresa J. Smith, Division of Medical Assistance, Director's Office, 2501 Mail Service Center, Raleigh, NC 27699-2501.

Comments may be submitted to: Teresa J. Smith, physical address: 1985 Umstead Drive, Raleigh, NC 27603, mailing address: 2501 Mail Service Center, Raleigh, NC 27699-2501, fax (919) 733-6608, and email teresa.smith@dhhs.nc.gov

Comment period ends: January 15, 2009

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

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

- State** 10A NCAC 22O .0118
- Local** 10A NCAC 22O .0118
- Substantial Economic Impact** (≥\$3,000,000)
- None** 10A NCAC 21C .0103; 22M .0102, .0201, .0301; 22O .0407

**CHAPTER 21 - MEDICAL ASSISTANCE
ADMINISTRATION**

SUBCHAPTER 21C - BENEFITS

SECTION .0100 - MEDICAID I.D. CARD

10A NCAC 21C .0103 PHARMACY OF RECORD

~~(a) A section of the card shall be designated for retention and use by the pharmacy chosen to provide pharmacy services. It shall identify each eligible client in the case and enables the pharmacist to record the number of prescriptions filled for each client and billed toward the prescription limit for cases subject to the limit (all Medicaid categories except M-QB and M-PW).~~

~~(b) The pharmacy which first sees the client shall retain the pharmacy stub and shall be the pharmacy of record for the month. Any other pharmacist who provides pharmacy services for the month shall notify the pharmacy of record to record any prescriptions to be applied to the limit.~~

(e) ~~The pharmacy stub on replacement cards shall be detached by the county agency.~~

Authority G.S. 108A-54.

CHAPTER 22 – MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22M - DRUG USE REVIEW (DUR)

SECTION .0100 - DRUG USE REVIEW BOARD

10A NCAC 22M .0102 MEMBERSHIP

(a) ~~The term of membership for each DUR Board Member appointment beginning with appointments made in 1995 shall be two years. 12 months with the option to renew for two additional one-year periods.~~ The Board shall consist of the Division of Medical Assistance Drug Use Review ~~Coordinator, Coordinator who has oversight of the DUR Program,~~ five licensed and ~~actively practicing~~ physicians, five licensed and ~~actively practicing~~ pharmacists, and at least two additional individuals with knowledge and expertise in one or more of the following:

- (1) prescribing of Medicaid covered outpatient drugs;
- (2) dispensing and monitoring of Medicaid covered outpatient drugs;
- (3) drug use review, evaluation, and intervention;
- (4) medical quality assurance.

(b) ~~The North Carolina Pharmacy Association, Association of Pharmacists,~~ the North Carolina Medical Society, and the Old North State Medical Society shall be asked by DMA's DUR Coordinator to make nominations for some of the positions on the Board. The Director ~~reserves the right to~~ may accept or reject nominations received.

(c) ~~If a member resigns before his term expires, a replacement shall be appointed to serve the remainder of that term.~~

Authority G.S. 108A-68; Social Security Act Section 1927(g).

SECTION .0200 - PROSPECTIVE DRUG REVIEW

10A NCAC 22M .0201 PATIENT COUNSELING

~~The rules regarding the prospective DUR as established by the NC Board of Pharmacy at 21 NCAC 46 .2504 are applicable to Medicaid, and are incorporated by reference including subsequent amendments.~~

Rule 21 NCAC 46 .2504 as adopted by the North Carolina Board of Pharmacy applies to Medicaid and is incorporated by reference including subsequent amendments. A copy of 21 NCAC 46 .2504 ~~can~~ may be obtained from the N.C. Board of Pharmacy. ~~There is no charge for single copies.~~ If a pharmacy fails to comply with the requirements of 21 NCAC 46 .2504, any claim for reimbursement associated with the pharmacy's non-compliance shall be denied, or if already paid, shall be recouped.

Authority G.S. 108A-68; Social Security Act Section 1927(g).

SECTION .0300 - RETROSPECTIVE DRUG USE REVIEW

10A NCAC 22M .0301 APPLICABILITY

In accordance with the Social Security Act 1927 and the Omnibus Budget Reconciliation Act (OBRA) of 1990, North Carolina established a Drug Use Review (DUR) program, for outpatient drugs to assure that prescriptions dispensed to Medicaid recipients are appropriate, medically necessary, and not likely to result in adverse medical results. The Drug Use Review shall apply to Medicaid covered outpatient drugs. Covered outpatient drugs dispensed by Health Maintenance Organizations who have a contract with the Division of Medical Assistance to provide services to Medicaid recipients for a set monthly fee shall not be subject to the requirements of this Section. The Division of Medical Assistance has the option to may exempt nursing facility patients from the retrospective portion of the Drug Use Review. If a nursing facility is determined to be out of compliance with the drug regimen review procedures prescribed for such facilities in regulations implementing section 1919 of the Social Security Act, currently at section 483.60 of title 42, of the Code of Federal Regulations, the retrospective portion of the Drug Use Review requirements of this Section shall apply. Retrospective DUR is designed for the DUR Board to review Medicaid paid claims to identify prescribing patterns of behavior involving physicians, pharmacists, and recipients such as over treatment, under treatment, treatment failure, drug-drug interactions, adverse effects, therapeutic duplication, iatrogenic effects, drug-disease contraindications, and empiric prescribing.

Authority G.S. 108A-68; Social Security Act Section 1927(g).

SUBCHAPTER 22O - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

10A NCAC 22O .0118 PHARMACY SERVICES

(a) ~~Reimbursement is provided for legend drugs and insulin, drugs, insulin, and over-the-counter (OTC) drugs documented in General Policy A2 on the Division of Medical Assistance (DMA) website. The list of covered OTC drugs is on Attachment A of General Policy No. A-2.~~

- (1) The prescribed drug must have a Federal Drug Administration (FDA) approved indication.
- (2) The prescribed drug must bear the federal legend statement.
- (3) The legend drug must be manufactured by a company that has signed a National Medicaid Drug Rebate Agreement with the Centers for Medicare and Medicaid Services (CMS).
- (4) The OTC drugs selected for coverage by DMA must be manufactured by a company that has signed a National Medicaid Drug Rebate Agreement with CMS.
- (4) Compounded prescriptions are covered according to the criteria specified in Clinical Coverage Policy 9 on the DMA website.
- (5) Reimbursement is not provided for prescribed drugs documented on the CMS Drug Efficacy Study Implementation (DESI) list.

(b) A prescription for a drug designated by a written under its brand or trade name shall be considered to be an order for the drug by its generic name, except when the prescriber personally indicates on the prescription order "dispense as written." filled with a generic version of the drug when one is commercially available unless the prescriber has indicated that the brand name drug is medically necessary for the recipient. The prescriber shall indicate this by writing "medically necessary" on the face of the prescription order for the drug. In accordance with 42 CFR 447.331, the Division may use a certification form and procedures for "medically necessary" brand name drugs.

- (1) The selection of a drug product shall not be more expensive than the brand or trade name originally written by the prescriber.
- (2) The pharmacist shall fill the prescription with the least expensive generic in the pharmacy.

(c) All prescriptions must fully comply with state and federal laws and regulations for legal prescriptions.

(d) All written and non-electronic prescriptions shall be filed numerically and in chronological order, either in normally occurring order with other prescriptions filled by the provider or in a separate file.

(e) Refills of prescriptions shall be recorded by the pharmacy provider.

(f) A credit must be issued by the pharmacy provider for returned medications returned to stock.

(g) The maximum days supply for all drugs is 34-day supply unless the medication meets the criteria for a 90-day supply indicated in Clinical Coverage Policy 9 on the DMA website.

(h) Prior authorization is required for drugs documented on the North Carolina DMA Pharmacy Benefit Management website.

(i) DMA shall impose quantity limitations for drugs that are meant to be used episodically and dispensed in quantities that support less than daily use. Those drugs designated as episodic drugs are defined in Clinical Coverage Policy 9 on the DMA website.

(j) For those recipients who receive more than 11 unduplicated prescriptions per month DMA requires that they be evaluated as part of a Focused Risk Management (FORM) Program. The FORM Program is an interdisciplinary, team-based approach including the pharmacy and the recipient's personal care physician (PDP for coordination of recipient care).

- (1) The pharmacist shall coordinate, integrate, and communicate a comprehensive review plan with the patient's primary care provider.
- (2) The comprehensive review plan shall identify, resolve, and recommend cost-effective, safe, and efficacious drug alternatives; and shall include a list of all medications dispensed at the pharmacy during the review period and a list of recommendations to improve the recipients drug regimen.
- (3) The pharmacy shall communicate the comprehensive review plan to the recipient's PDP for review and coordination of care. The pharmacist shall obtain a written response from the PDP that accepts or modifies the comprehensive review plan. If the PDP fails to provide a response within one month from

the date of the communication, the pharmacy shall document such failure on the comprehensive review plan.

- (4) The first review must be completed within two months of the recipient's identification for the program. Reviews thereafter shall be performed quarterly.
- (5) A professional services fee shall be made to the pharmacy provider on a quarterly basis per intervention per recipient based on the completion of the comprehensive review plan under FORM Program for each identified recipient.
- (6) A failure to perform a required comprehensive review plan or failure to have documentation of the review on file at the time of audit, shall result in the recoupment of professional service fee and payment for all claims that exceed the limit of 11 unduplicated prescriptions per month during those periods of time when a completed comprehensive review plan was not in place.

(k) All recipients receiving more than 11 unduplicated prescriptions per month must participate in the FORM program.

- (1) The recipient shall opt-in (Restricted Pharmacy Services) to a single pharmacy of his/her choice.
- (2) The recipient may elect to change his/her opt-in pharmacy provider by request made to DMA or DMA's fiscal agent from the current pharmacist or from the recipient's primary care provider.
- (3) The following recipients are exempt from mandatory pharmacy opt-in:
 - (A) recipients under the age of 21;
 - (B) recipients residing in a nursing facility or an intermediate care facility for individuals with mental retardation; and
 - (C) recipients residing in an assisted living facility or group home.
- (4) Emergency fills for recipients with an opt-in pharmacy are limited to a four-day supply.

(l) No pharmacist is required to accept a new recipient. Pharmacists may accept new recipients of their choice.

(m) Copayments shall be charged in accordance with 10A NCAC 22D .0101.

Authority G.S. 90-85.26; 108A-25(b); 108A-54; 42 C.F.R. 440.90; 42 CFR 447.331; S.L. 1985, c. 479, s. 86.

SECTION .0400 – LIMITATION OF AMOUNT, DURATION, AND SCOPE OF ASSISTANCE

10A NCAC 22O .0407 PRESCRIBED DRUGS

(a) Coverage of prescribed drugs will be limited to legend drugs and insulin, except those designated by the Food and Drug Administration as not having been shown to be effective. Co-payment must be collected from the recipient on all

~~prescriptions dispensed, including refills. Pharmacists participating in the Medicaid program shall substitute the least expensive generic drugs in stock for brand or trade name drugs in the absence of a prescription specifically to the contrary.~~

~~(b) The pharmacy of choice is that pharmacy selected by a recipient and who, at the time of payment holds the pharmacy stub from his Medicaid identification card. The Division of Medical Assistance will guarantee payment, up to the state's statutory limit, for drugs for eligible recipients in any month only to the pharmacy of choice.~~

~~(c) The recipient may change his pharmacy of choice at any time. A recipient may change his pharmacy by finding a pharmacy which participates in the North Carolina Medicaid Program which is willing to accept him as a client. The new pharmacist may coordinate with the previous pharmacy of choice. Coordination between the pharmacies may be necessary to:~~

- ~~(1) assure the well being of the client by discouraging shopping;~~
- ~~(2) assure the newly chosen pharmacist that the recipient has not reached or exceeded any statutory prescription limit.~~

~~(d) No pharmacist is required to accept a new client. Pharmacists accept new clients by their own choice.~~

~~(e) Recipients identified by 10A NCAC 22F .0600, Recipient, Lock In, must comply with that Rule.~~

Authority G.S. 108A-25(b); 143B-10; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.120; 42 C.F.R. 440.230(d).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend rules cited as 11 NCAC 11F .0307, .0403 and .0801.

Proposed Effective Date: *March 1, 2010*

Public Hearing:

Date: *December 14, 2009*

Time: *10:00 a.m.*

Location: *3rd Floor, Dobbs Bldg., 430 N. Salisbury Street, Raleigh, NC 27603*

Reason for Proposed Action: *To be consistent with the NAIC standards.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on January 15, 2010.*

Comments may be submitted to: *Karen E. Waddell, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 733-4529; fax (919) 733-6495; email karen.waddell@ncdoi.gov*

Comment period ends: *January 15, 2010*

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

Fiscal Impact:

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

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11F - ACTUARIAL

SECTION .0300 - ACTUARIAL OPINION AND MEMORANDUM

11 NCAC 11F .0307 ACTUARIAL MEMORANDUM WITH ASSET ADEQUACY ANALYSIS

(a) General:

- (1) In accordance with G.S. 58-58-50(i) and (j), the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under an opinion prescribed by Rule .0306 of this Section. The memorandum shall be made available for examination by the Commissioner upon request and shall be returned to the company after the examination and shall not be subject to automatic filing with the Commissioner.
- (2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Rule .0303(b) of this Section, with respect to the areas covered in such memoranda, and so state in their memoranda.
- (3) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Board or the standards and requirements of this Section, the Commissioner shall designate a qualified actuary to review the

opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner under G.S. 58-58-50(j). The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the company under this Section for any one of the current year or the preceding three years.

(5) In accordance with G.S. 58-58-50(j), the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Paragraph (c) of this Rule. The regulatory asset adequacy issues summary shall be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) When an actuarial opinion under Rule .0306 of this Section is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Rule .0303(d) of this Section and any additional standards under this Section. It shall specify:

- (1) For reserves:
 - (A) Product descriptions, including market description, underwriting, and other aspects of a risk profile, and the specific risks the appointed actuary deems to be significant;
 - (B) Source of liability in force;
 - (C) Reserve method and basis;
 - (D) Investment reserves;
 - (E) Reinsurance arrangements;
 - (F) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the

guarantees in the asset adequacy analysis;

- (G) Documentation of assumptions to test reserves for the following:
 - (i) Lapse rates (both base and excess);
 - (ii) Interest crediting rate strategy;
 - (iii) Mortality;
 - (iv) Policyholder dividend strategy;
 - (v) Competitor or market interest rate;
 - (vi) Annuitization rates;
 - (vii) Commissions and expenses; and
 - (viii) Morbidity.
 The documentation of assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

(2) For assets:

- (A) Portfolio descriptions, including a risk profile disclosing the quality, distribution, and types of assets;
- (B) Investment and disinvestment assumptions;
- (C) Source of asset data;
- (D) Asset valuation bases; and
- (E) Documentation of assumptions made for:
 - (i) Default costs;
 - (ii) Bond call function;
 - (iii) Mortgage prepayment function;
 - (iv) Determining market value for assets sold due to disinvestment strategy; and
 - (v) Determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

(3) For the analysis basis:

- (A) Methodology;
- (B) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
- (C) Rationale for degree of rigor in analyzing different blocks of business (including in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

- (D) Criteria for determining asset adequacy (including in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and
 - (E) Effect of federal income taxes, reinsurance, and other actuarially or financially relevant factors.
- (4) Summary of any changes in methods, procedures, or assumptions from the prior year's asset adequacy analysis which the appointed actuary considers to be material.
- (5) Summary of results.
- (6) Conclusions.
- (c) The regulatory asset adequacy issues summary shall include:
- (1) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under any tests in the aggregate, the actuary shall describe those tests and the amount of additional reserve as of the valuation date that, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are considered by the appointed actuary to be immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;
 - (2) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are considered by the appointed actuary to be materially different than the assumptions used in the previous asset adequacy analysis;
 - (3) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;
 - (4) Comments on any interim results that may be of concern to the appointed actuary; actuary, such as the effect of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;
 - (5) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and
 - (6) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.
- (d) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied, and shall be signed and dated by the appointed actuary rendering the actuarial opinion.
- (e) The memorandum shall include a statement:
 "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."
- (f) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.
- (g) The appointed actuary shall retain on file, for at least seven years, all documentation necessary to determine the procedures followed, the analyses performed, the bases for the assumptions, and the results obtained.

Authority G.S. 58-2-40; 58-58-50(i); 58-58-50(j).

SECTION .0400 - COMMISSIONER'S RESERVE VALUATION METHOD

11 NCAC 11F .0403 BASIC AND PREMIUM DEFICIENCY RESERVES

(a) At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner for this purpose). If select mortality factors are elected, they may be:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation"; or
- (3) Any other table of select mortality factors adopted by the NAIC after January 1, 2000,

and adopted as a rule by the Commissioner for the purpose of calculating basic reserves.

(b) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner). If select mortality factors are elected, they may be any of the following:

- (1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
- (2) The select mortality factors in the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation";
- (3) For durations in the first segment, X percent of the select mortality factors in the NAIC Model Regulation entitled "Valuation of Life Insurance Policies Model Regulation," subject to the following:

(A) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

~~(B)~~ X shall not be less than 20%;

~~(C)~~ X shall not decrease in any successive policy years;

~~(D)~~(B) X is such that, when using the valuation interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii):

(i) The actuarial present value of future death benefits calculated using the mortality rates resulting from the application of X;

(ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

~~(E)~~(C) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five years after the valuation date;

~~(F)~~(D) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all requirements of this Rule;

~~(G)~~(E) The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of this Rule;

~~(H)~~(F) The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums; and

~~(I)~~(G) If X is less than 100% at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 11 NCAC 11F .0300; ~~and~~

~~(ii)~~ The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary, the effect of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

~~(iii)~~(iii) The appointed actuary shall annually opine for all policies subject to this Section as to whether the mortality rates resulting from the application of X meet the requirements of this Rule. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience;

(4) Any other table of select mortality factors adopted by the NAIC after January 1, 2000, and adopted as a rule by the Commissioner for the purpose of calculating deficiency reserves.

(c) This Rule applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than 10 years, the appropriate 10-year select mortality factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, may be used thereafter through the tenth policy year from the date of issue.

(d) In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium, but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums even if they are not included in the actual calculation of basic reserves.

(e) Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following:

- (1) Reserves calculated ignoring the guarantee;
- (2) Reserves assuming the guarantee was made at issue; or
- (3) Reserves assuming that the policy was issued on the date of the guarantee.

(f) The Commissioner may require that the insurer document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued before January 1, 2000. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 11 NCAC 11F .0300.

Authority G.S. 58-2-40; 58-58-50(d); 58-58-50(k).

SECTION .0800 - PREFERRED CLASS STRUCTURE MORTALITY TABLE

11 NCAC 11F .0801 MODEL REGULATION PERMITTING THE RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

(a) The North Carolina Department of Insurance incorporates by reference, including subsequent amendments and editions, the National Association of Insurance Commissioners Model No. 815, Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities. Copies of Model No. 815 may be obtained from: The National Association of Insurance Commissioners, 2301 McGee Street, Kansas City, MO 64108-1662; the North Carolina Department of Insurance, Actuarial Services Division, 1201 Mail Service Center, Raleigh, NC 27699-1201; and from the Department of Insurance web page at <http://www.ncdoi.com/>.

(b) For purposes of this Rule, Section 2 of Model No. 815 shall read as follows:

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between Preferred and Standard lives in determining minimum reserve liabilities in accordance with G.S. 58-58-50 (c)(2)(a), 11 NCAC 11F .0403(a), and 11 NCAC 11F .0403(b).

(c) For purposes of this Rule, Section 4 of Model No. 815 shall read as follows:

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after January 1, 2005 and before January 1, 2007, these tables may be substituted with the consent of the Commissioner and subject to the conditions of Section 5. In determining such consent, the Commissioner shall consider the consent of the insurance regulator of the company's state of domicile. No such election shall be made until the company demonstrates that at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this regulation, shall be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 11 NCAC 11F .0601, 11 NCAC 11F .0602, 11 NCAC 11F .0603, and 11 NCAC 11F .0604.

(d) For purposes of this Rule, Paragraph C of Section 3, and Paragraph C of Section 5 of Model No. 815 are not applicable.

(e) For purposes of this Rule, Sections 1 and 7 of Model No. 815 are not applicable.

Authority G.S. 58-2-40; 58-58-50(k).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Private Protective Services Board intends to amend the rules cited as 12 NCAC 07D .0404, .0702 and .0807.

Proposed Effective Date: March 1, 2010

Public Hearing:

Date: December 1, 2009

Time: 2:00 p.m.

Location: 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Reason for Proposed Action:

12 NCAC 07D .0404 - The proposed amendment alters the maintenance requirements for reports that are maintained by private investigators.

12 NCAC 07D .0702 - The reason for the proposed rule change is to allow an additional thirty days for renewal of unarmed security guard registrations.

12 NCAC 07D .0807 - This rule discusses the procedure to be applied if an applicant fails the firearms training course. In addition, this rule is amended to allow either duty ammunition or the ballistic equivalent to be used in the firearms training course.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rule change shall be submitted before the end of the comment period in writing to Terry Wright, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.

Comments may be submitted to: Terry Wright, PPSB Director, 1631 Midtown Place, Suite 104, Raleigh, NC 27609

Comment period ends: January 15, 2010

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

Fiscal Impact:

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

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0400 - PRIVATE INVESTIGATOR: COUNTERINTELLIGENCE

12 NCAC 07D .0404 REPORTS

(a) Private investigators shall make and offer to each client a written report containing the findings and complete details of the investigation within 30 days after the completion of the

investigation, a copy of which investigation for which the client has paid the investigator for the services. A copy of the written report shall be retained by the licensee.

(b) Descriptive reports, chronological reports, cover letters, and itemized invoices to the client shall be personally signed by ~~the~~ a licensee. ~~The licensee shall maintain a file copy which shall reflect the names of all participating employees and a description of the work performed by each one. These documents shall be retained by the licensee.~~ licensee who signed the report.

Authority G.S. 74C-5.

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

12 NCAC 07D .0702 FEES FOR UNARMED SECURITY GUARD REGISTRATION

(a) Fees for unarmed security guards are as follows:

- (1) twenty five dollars (\$25.00) non-refundable initial registration fee;
- (2) twenty five dollars (\$25.00) annual renewal, or reissue fee; ~~and~~
- (3) ten dollars (\$10.00) transfer ~~fee.~~ fee; and
- (4) twenty-five dollars (\$25.00) late renewal fee to be paid within 30 days from the date the registration expires and to be paid in addition to the renewal fee.

(b) Fees shall be paid in the form of a check or money order made payable to the Private Protective Services Board.

Authority G.S. 74C-9.

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

12 NCAC 07D .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in 12 NCAC 07D .0707. Private Investigator Licensees applying for an armed security guard firearm registration permit shall first complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in 12 NCAC 07D .0707(a). Private Investigator Licensees applying for an armed security guard firearm registration permit are not required to complete the following training blocks found in the basic training course referenced in 12 NCAC 07D. 0707(a): "Emergency Response," "Communications," "Patrol Procedures," "Note Taking and Report Writing," and "Department." A Private Investigator Licensee applying for an armed security guard firearm registration permit shall meet all additional training requirements set forth in 12 NCAC 07D .0707 as well as the training requirements set forth in this Rule.

(b) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including, familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

(c) In addition to the requirements set forth in Paragraphs (a) and (b) of this Rule and prior to being issued a permit, applicants shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy as referenced above, the student will be given an additional three attempts to qualify on the course of fire they did not pass. Failure to meet the qualification after three attempts shall require the student to repeat the entire Basic Training Course for Armed Security Guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour course.

(d) All armed security guard training required by 12 NCAC 07D shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed security guard firearm registration permit.

(e) All applicants for an armed security guard firearm registration permit must obtain training under the provisions of this Section using their duty weapon and their duty ~~ammunition~~ ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(f) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards which consists of at least four hours of classroom instruction and is a review of the requirements set forth in Paragraphs (b)(1) through (b)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training which shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is

completed at a later time, the shotgun certification shall run concurrent with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Attorney General, a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Paragraphs (h)(1) through (h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed security guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

(l) The armed security officer is required to qualify annually both day and night. If the Security Officer fails to qualify on either course of fire, the Security Officer cannot carry a firearm until such time as they meet the qualification requirements. Upon failure to qualify the firearm instructor must notify the Security Officer that they are no longer authorized to carry a firearm and the Firearm Instructor must notify the employer and the Private Protective Services staff on the next business day.

Authority G.S. 74C-5; 74C-13.

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

Proposed Effective Date: March 1, 2010

Public Hearing:

Date: December 7, 2009

Time: 2:00 p.m.

Location: 114 West Edenton Street, Room G41A, Raleigh, NC 27602

Reason for Proposed Action: Rule .2004 revision sets out topics requiring specific expertise which are limited to individuals holding specific instructor certification. The existing rule needs to be brought into compliance with similar rules in the basic training courses.

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

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

Comment period ends: January 15, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

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

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

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

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

SECTION .2000 – IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2004 INSTRUCTORS

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

- (1) The instructors shall:
(a) hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306;
(b) hold Professional Lecturer Instructor certification issued by either the Commission as set out in either 12 NCAC 10B .0906 or .0916, or the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, or General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302,

- .0304, and .0306, when teaching a legal block of instruction;
(c) hold Professional Lecturer Instructor certification issued by the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, when teaching a medical or psychological block of instruction; or
(d) hold Specific Instructor Certification issued by the Criminal Justice Education and Training Standards Commission when teaching the lesson plans published by the NC Justice Academy as follows:
(i) Firearms must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e);
(ii) Weapons Retention and Disarming Techniques must be taught by Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
(iii) Spontaneous Attack Defense and Subject Control/Arrest Techniques must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(b);
(iv) Handcuffing and Impact Weapons Refresher must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
(v) Wellness and Stress Awareness and Health and Fitness for Detention Officers must be taught by a Physical Fitness Instructor certified in accordance with 12 NCAC 09B .0304(g); and
(vi) Law Enforcement Driver Training (classroom and practical) must be taught by a Specialized Law Enforcement Driver Training Instructor certified in accordance with 12 NCAC 09B .0304(f).

In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise,

which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

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

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

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to amend the rule cited as 13 NCAC 07A .0301 and adopt the rules cited as 13 NCAC 07A .0901-.0905.

Proposed Effective Date: March 1, 2010

Public Hearing:

Date: December 8, 2009

Time: 10:00 a.m.

Location: 4 W. Edenton Street, 2nd Floor, Room 205, Raleigh, NC 27601

Reason for Proposed Action: Effective August 22, 2007, the United States Department of Labor's Occupational Safety and Health Administration ("OSHA") issued Directive Number CPL 02-02-072, which provides guidance to OSHA personnel concerning application of the rules of agency practice and procedure set forth at 29 CFR 1913.10 when accessing personally identifiable employee medical records. Guidance is also provided concerning authorization to conduct limited review of specific employee medical information when OSHA standards require such information and there is a need to gain access for the purpose of determining compliance. However, there are certain provisions of CPL 02-02-072 and 29 CFR 1913.10 that do not comport with current practices of the North Carolina Department of Labor's Occupational Safety and Health Division ("OSHNC"). As a state-plan program, OSHNC must maintain a program that is at least as effective as the federal standards and which appropriately utilizes its authority for access to medical records. Therefore, the North Carolina Department of Labor proposes to amend 13 NCAC 07A .0301 in order to remove the incorporation by reference of 29 CFR 1913.10, and to adopt 13 NCAC 07A .0901-.0905, which are at least as effective as the federal standards referenced above in order to effectively safeguard personally identifiable employee medical records.

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 these rules, which is noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(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 15, 2010.

Comments may be submitted to: Erin T. Gould, 1101 Mail Service Center, Raleigh, NC 27699-1101; phone (919) 733-7885; fax (919) 733-4235; email erin.gould@labor.nc.gov

Comment period ends: January 15, 2010

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

Fiscal Impact:

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

CHAPTER 07 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

SUBCHAPTER 07A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0300 - PROCEDURES

13 NCAC 07A .0301 INCORPORATION BY REFERENCE

(a) The provisions for Occupational Safety and Health Act Operational Procedures - Inspections, Citations and Proposed Penalties - contained in 29 CFR 1903; Recording and Reporting Occupational Injuries and Illnesses - contained in 29 CFR 1904; and Consultative Agreements - contained in 29 CFR 1908; and Rules Concerning OSHA Access to Employee Medical Records - contained in 29 CFR 1913.10, 1908, have been incorporated by

reference in accordance with G.S. 150B-21.6 except that where applicable:

- (1) All references to the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq) shall mean the Occupational Safety and Health Act of North Carolina, G.S. 95, Article 16;
- (2) All references to the Occupational Safety and Health Review Commission shall mean the Safety and Health Review Board as established in G.S. 95-135;
- (3) All references to Area Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, shall mean the North Carolina Department of Labor, Division of Occupational Safety and Health (or OSHA), the name used to denote the office of occupational safety and health;
- (4) All references to the Secretary or Assistant Secretary shall mean the Commissioner of the North Carolina Department of Labor or his authorized representative;
- (5) All references to Area Director, Regional Administrator, or Assistant Regional Director shall mean the Director of the Division of Occupational Safety and Health (North Carolina Department of Labor) or his authorized representative;
- (6) All references to Regional Solicitor or Solicitor of Labor shall mean the Attorney General, Labor Division, North Carolina Department of Justice;
- (7) All references to Compliance Officers shall mean State compliance safety and health officers;
- (8) All references to the Federal Rules of Civil Procedure shall mean the North Carolina Rules of Civil Procedure;
- (9) Within 29 CFR 1903.14, "Citations; notices of de minimis violations", any reference to a notice of de minimis violations is deleted as North Carolina does not have a procedure for issuance of a notice with respect to de minimis violations that have no direct or immediate relationship to safety or health;
- (10) 29 CFR 1903.14a(c)(1) that requires the posting of a petition for modification for a period of 10 working days shall be for a period of 15 working days, and 29 CFR 1903.14a(c)(2) that refers to the failure to file an objection within 10 working days of the date of posting shall be 15 working days of the posting;
- (11) 29 CFR 1903.22, "Definitions", is not incorporated;
- (12) 29 CFR 1908 shall be applicable to private sector consultations, and shall be used as guidance for consultations to state and local

governments in North Carolina under the State Plan.

(b) The Code of Federal Regulations incorporated by reference in this Subchapter shall automatically include any subsequent amendments thereto as allowed by G.S. 150B-21.6.

Authority G.S. 95-133; 150B-21.6.

SECTION .0900 – ACCESS TO EMPLOYEE MEDICAL RECORDS

13 NCAC 07A .0901 SCOPE AND APPLICATION

(a) The provisions of 29 CFR 1913.10 concerning OSH Division access to employee medical records do not apply. Rather, the rules in this Section shall apply to all requests by OSH Division personnel to obtain access to employee medical records in order to examine or copy personally identifiable medical information.

(b) For the purposes of the rules in this Section, "personally identifiable medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title).

(c) The rules in this Section do not apply to access to, or the use of, aggregate employee medical information or medical records on individual employees by OSH Division personnel which is not in a personally identifiable form.

(d) The rules in this Section do not apply to records required by 29 CFR 1904, to death certificates, or to employee exposure records, including biological monitoring records treated by 29 CFR 1910.1020(c)(5) or by specific occupational safety and health standards as exposure records.

(e) The rules in this Section do not apply where OSH Division personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard or with the employee exposure and medical record requirements of 29 CFR 1910.1020. An examination of this nature shall be conducted onsite and, if requested, shall be conducted under the observation of the record holder and the OSH Division personnel shall not record and take offsite any information from these medical records other than documentation of the fact of compliance or non-compliance.

(f) The rules in this Section do not apply to access to, or the use of, personally identifiable medical information obtained in the course of litigation.

(g) Even if not covered by the terms of the rules in this Section, all medically related information reported in a personally identifiable form shall be handled with discretion and care.

Authority G.S. 95-133.

13 NCAC 07A .0902 RESPONSIBLE PERSONS

(a) The Commissioner shall be responsible for the overall administration and implementation of the procedures contained

in the rules in this Section, including making the final determinations concerning:

- (1) Access to personally identifiable medical information; and
- (2) Inter-agency transfer or public disclosure of personally identifiable medical information.

(b) Medical Records Coordinator. The Commissioner shall designate an OSH Division employee to oversee the security procedures established in the rules in this Section.

(c) Medical Records Administrators. The Commissioner shall designate an OSH Division employee at each field location to maintain a log of uses and transfers of personally identifiable medical information for each file, including the name of each person accessing the information. The Medical Records Administrators shall also have primary control of the locked cabinet or vault where such records are stored and shall not allow access to the information contained in the cabinet to any person not authorized by the rules in this Section.

(d) Principal OSH Investigator. The Principal OSH Investigator shall be the OSH Division employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for ensuring that the examination and use of this information is performed in the manner prescribed by the rules in this Section.

Authority G.S. 95-133.

13 NCAC 07A .0903 SECURITY PROCEDURES; RETENTION AND DESTRUCTION OF RECORDS

(a) All medical information obtained pursuant to an investigation that contains direct personal identifiers shall be separated from the rest of the investigation file and coded with a unique identifying number for each employee. The medical information with its numerical code shall thereafter be secured in a locked cabinet or vault.

(b) The photocopying or other duplication of personally identifiable medical information shall be limited to what is necessary to accomplish the purposes for which the information was obtained.

(c) The protective measures established by the rules in this Section shall apply to all worksheets, duplicate copies, or other documents containing personally identifiable medical information.

(d) Transfers of personally identifiable medical information shall be by hand delivery, certified mail, or other equally protective means.

(e) In accordance with the Department records retention schedule, personally identifiable medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained or when the case file is closed.

Authority G.S. 95-133.

13 NCAC 07A .0904 INTRA-AGENCY USE AND TRANSFER

(a) The Medical Records Administrator at each field location shall be primarily responsible for ensuring that personally

identifiable medical information is secured in accordance with these Rules.

(b) The Principal OSH Investigator, the Medical Records Administrator, or the Director or his designee, may permit the examination or use of personally identifiable medical information by OSH Division employees who have a need for access. No OSH Division employee, other than the Principal OSH Investigator, is authorized to examine or otherwise use personally identifiable medical information unless so permitted.

(c) Medical records shall not be transferred to Department employees outside of the OSH Division unless authorized by the Director or his designee.

(d) OSH Division employees and other Department employees are only authorized to use personally identifiable medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained for a secondary purpose.

(e) The examination of personally identifiable medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

Authority G.S. 95-133.

13 NCAC 07A .0905 INTER-AGENCY TRANSFER AND PUBLIC DISCLOSURE

(a) Personally identifiable medical information shall not be transferred to another agency except as noted in Paragraph (c) of this Rule, or disclosed to the public (other than the affected employee or the original record holder) except when required by law or approved by the Commissioner or his designee.

(b) The Commissioner or his designee shall not approve a request for an inter-agency transfer or for the public disclosure of personally identifiable medical information which the affected employee has not consented to unless there are compelling circumstances affecting the health or safety of an individual or the public.

(c) Upon approval of the Commissioner or his designee, personally identifiable medical information may be transferred to:

- (1) The North Carolina Attorney General's Office; or
- (2) The North Carolina Occupational Safety and Health Review Commission when an employer files a notice of contest pursuant to G.S. 95-137.

Authority G.S. 95-133.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .2302-.2305.

Proposed Effective Date: March 1, 2010

Public Hearing:

Date: January 13, 2010

Time: 4:30 p.m.

Location: North Raleigh Hilton, 3415 Wake Forest Rd., Raleigh, NC 27609

Reason for Proposed Action: *The Coastal Resources Commission (CRC) is proceeding with rule making in order to make changes to its General Permit for the replacement of existing bridges. These amendments are intended to streamline the process under which the Department of Transportation (DOT) replaces two-lane bridges on secondary roads.*

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

Comments may be submitted to: *James Gregson, 400 Commerce Ave., Morehead City, NC 28557, phone (252) 808-2808 and fax (252) 247-3330.*

Comment period ends: *January 15, 2009*

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

Fiscal Impact:

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

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .2300 - GENERAL PERMIT FOR REPLACEMENT OF EXISTING BRIDGES AND CULVERTS IN ESTUARINE WATERS, ESTUARINE AND PUBLIC TRUST SHORELINES, PUBLIC TRUST AREAS, AND COASTAL WETLANDS

15A NCAC 07H .2302 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management (Division) and ~~complete an application form requesting approval for development provide:~~

~~(b) The applicant shall provide:~~

- (1) information on site location, detailed project description, and his/her name, address and telephone number;
- (2) a dated ~~sealed~~ plat(s) showing existing and proposed development that follows the criteria outlined in 15A NCAC 7J .0203, a completed ~~Form DCM MP-5~~; development; and confirmation that:
 - (A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
 - (B) the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. ~~DCM Division~~ staff shall review all comments. If ~~DCM the Division~~ determines that:
 - (i) the comments are relevant to the potential impacts of the proposed project; and
 - (ii) the permitting issues raised by the comments ~~are worthy of require a~~ more detailed review, the applicant shall be notified that he/she shall submit an application for a major development permit.

~~(e)(b)~~ Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit shall be completed within ~~one year~~ two years of permit issuance or the general authorization shall expire and a new permit shall be required to begin or continue construction. For North Carolina Department of Transportation projects identified in the Transportation Improvement Program this permit shall not expire pursuant to G.S. 136-44.7B.

~~(d)(c)~~ No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative. Written authorization to proceed with the proposed development may be issued during this visit if other approval procedure criteria have been met.

Authority G.S. 113A-107; 113A-118.1; 113A-124.

15A NCAC 07H .2303 PERMIT FEE

The applicant shall pay a permit fee of four hundred dollars (\$400.00). This fee shall be paid by inter-departmental fund transfer, check or money order made payable to the ~~Department~~ Department of Environment and Natural Resources.

Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124.

15A NCAC 07H .2304 GENERAL CONDITIONS

(a) Projects authorized by this permit shall be demolition, removal, and replacement of existing bridges and culverts along the existing alignment and conforming to the standards in this Rule. This permit shall be applicable only to single bridge and culvert projects and shall not authorize temporary fill causeways or temporary bridges that may be associated with bridge replacement projects.

(b) The permittee shall allow authorized representatives of the Department of ~~Environment, Health, Environment~~ Environment and Natural Resources (~~DEHNR~~) (Department) to make periodic inspections at any time deemed necessary in order to ~~be sure~~ ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in this Rule.

(c) This general permit shall not be applicable to proposed construction where ~~DEHNR believes~~ the Department determines that authorization may be warranted, but that the proposed activity might significantly affect the quality of human environment or unnecessarily endanger adjoining properties.

(d) This general permit shall not be applicable to proposed construction where ~~DEHNR determines, after any necessary investigations,~~ the Department determines that the proposed activity would ~~adversely affect areas which possess~~ have significant adverse impacts on water quality or historic, cultural, scenic, ~~conservation,~~ fisheries, or water quality or recreational values/resources.

(e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC guidelines, and local land use ~~plans current at the time of authorization.~~ plans.

(g) This permit shall not apply to projects that require work channels.

(h) Review of individual project requests shall be coordinated with ~~appropriate~~ the Division of Marine Fisheries or the Wildlife Resources Commission personnel. ~~Commission.~~ This may result in a construction moratorium during periods of significant biological productivity or critical life stages.

(i) Development under this permit shall be carried out within ~~existing~~ Department of Transportation (DOT) right-of-ways or on lands under the ownership of the applicant in the case of a non-DOT project.

(j) Bridge and culvert replacements shall be designed to minimize any adverse impacts to potential navigation or use of the waters by the public.

(k) This permit shall apply only to projects involving ~~repair or~~ replacement of bridges and culverts currently serving their intended function.

Authority G.S. 113A-107; 113A-118.1; 113A-124.

15A NCAC 07H .2305 SPECIFIC CONDITIONS

(a) This general permit ~~is~~ shall be applicable to bridge replacement projects spanning no more than ~~250~~ 400 feet of estuarine water, public trust area, and coastal wetland AECs.

(b) Existing roadway deck width shall not be expanded to create additional ~~lanes.~~ lanes, with the exception that an existing one lane bridge may be expanded to two lanes where the Department of Environment and Natural Resources determines that authorization may be warranted and the proposed project does not significantly affect the quality of the human and natural environment or unnecessarily endangers adjoining properties.

(c) Replacement of existing bridges with new bridges shall not reduce vertical or horizontal navigational clearances.

~~(d) Bridge replacement projects shall not increase the vertical clearance to more than five feet above normal water level (NWL) or normal high water (NHW), or by vertical clearance to more than 25 percent over the existing clearance, whichever is greater.~~

~~(e)(d)~~ All demolition debris shall be disposed of in highground locations, landward of all wetlands and the normal water level or normal high water level, and shall employ soil stabilization measures to prevent entry of sediments in the adjacent water bodies or wetlands.

~~(f)(e)~~ Bridges and culverts shall be designed to allow passage of anticipated high water flows.

~~(g)(f)~~ Measures sufficient to restrain sedimentation and erosion shall be implemented at each site. ~~These measures shall be coordinated through the North Carolina Division of Land Resources.~~

~~(h)(g)~~ Limits of excavation and fill: Bridge or culvert replacement activities involving excavation or fill in wetlands, public trust areas, and estuarine waters shall meet the following conditions:

- (1) Replacing bridges with culverts shall not be allowed in primary nursery ~~areas.~~ areas as defined by the Marine Fisheries or Wildlife Resources Commissions.
- (2) The total area of public trust area, estuarine waters, and wetlands to be excavated or filled shall not exceed 2,500 square feet except that the coastal wetland component shall not exceed ~~500~~ 750 square feet.
- (3) Culverts shall not be used to replace bridges with open water spans greater than 50 feet.
- (4) There shall be no temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands.
- (5) No excavated or fill material shall be placed ~~at any time~~ in any wetlands or surrounding waters outside of the alignment of the fill area indicated on the work plat(s).
- (6) All excavated materials shall be confined above NWL or NHW and landward of any wetlands behind ~~adequate~~ dikes or other retaining structures to prevent spill-over of solids into any wetlands or surrounding waters.

- ~~(7)~~ Placement of fill shall be restricted to the widening of the approaches, or that which is necessary to install culvert(s).
- ~~(8)~~(7) No bridges with a clearance of four feet or greater above the NWL or NHW shall be allowed to be replaced with culvert(s) unless the culvert design maintains the existing water depth, vertical clearance and horizontal clearance.
- ~~(9)~~(8) If a bridge is being replaced by a culvert(s) then the width of the waterbody shall not be decreased by more than 40 percent.
- ~~(10)~~(9) Culvert inverts shall be set at least one foot below normal bed elevation to allow for fish passage. All pipe and culvert inverts placed within the Public Trust and/or the Estuarine Waters AEC's shall be buried at least one foot below normal bed elevation to allow for passage of water and aquatic life. Culverts placed in wetlands are not subject to this requirement.

Location: Southwestern Community College, 447 College Dr., Sylva, NC 28779

Date: January 14, 2010

Time: 7:00 p.m.

Location: Mt. Airy High School Auditorium, 1011 North South St., Mt. Airy, NC 27030

Date: January 19, 2010

Time: 7:00 p.m.

Location: Swain Auditorium, 100 Court St., Edenton, NC 27932

Date: January 20, 2010

Time: 7:00 p.m.

Location: Courthouse, Craven County Courthouse, 302 Broad St., New Bern, NC 28560

Date: January 21, 2010

Time: 7:00 p.m.

Location: Nash Community College, 522 North Old Carriage Rd., Rocky Mount, NC 27804

Reason for Proposed Action:

15A NCAC 10B .0101 – Modify standards for importation of imported waterfowl to conform to standards of the National Poultry Improvement Plan (NPIP).

15A NCAC 10B .0106 – Add conditions for municipalities seeking depredation permits and modify requirements for the sale of certain furbearing animals.

15A NCAC 10B .0113 – Modify terms for obtaining Bonus Antlerless Deer Harvest Report Card.

15A NCAC 10B .0118 – Delete tagging requirements for the sale of certain furbearing animals.

15A NCAC 10B .0121 – Add Eurasian collared dove (*Streptopelia decaocto*) to the list of birds that are not wild birds.

15A NCAC 10B .0126 – Provide for an exemption for the requirement for a hunting license by a government or non-profit entity conducting an organized hunting event.

15A NCAC 10B .0202 – Modify the bear season for Hertford County.

15A NCAC 10B .0206 – Modify the season for gray and red squirrel.

15A NCAC 10B .0222 – Add hunting season for armadillo.

15A NCAC 10B .0302 – Add hunting season for armadillo.

15A NCAC 10B .0402 – Remove the tagging requirement for imported bobcat and otter furs.

15A NCAC 10B .0403 – Remove the fees for bobcat and otter fur tags.

15A NCAC 10B .0404 – Remove tagging requirement for bobcat and otter.

15A NCAC 10B .0405 – Remove tagging requirement for imported bobcat and otter fur or carcass.

15A NCAC 10B .0406 – Deregulate tagging requirements for bobcat or otter fur or carcass.

15A NCAC 10C .0205 – Modify designated trout waters.

15A NCAC 10C .0305 – Modify open seasons, creel limits, and size limits for fish.

Authority G.S. 113A-107; 113A-118.1; 113A-124.

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 .0126, .0222 and amend the rules cited as 15A NCAC 10B .0101, .0106, .0113, .0118, .0121, .0202, .0206, .0302, .0402-.0406; 10C .0205, .0305, .0401-.0402; 10D .0102-.0104; 10E .0101-.0102, .0104; 10H .0101, .0104, .0904; 10I .0105; 10J .0102.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: January 4, 2010

Time: 7:00 p.m.

Location: Bladen Community College, 7418 Hwy 41 West, Dublin, NC 28332

Date: January 6, 2010

Time: 7:00 p.m.

Location: Graham Middle School Auditorium, 311 E Pine St., Graham, NC 27253-3226

Date: January 7, 2010

Time: 7:00 p.m.

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

Date: January 12, 2010

Time: 7:00 p.m.

Location: Municipal Auditorium, 401 South College St., Morganton, NC 28655

Date: January 13, 2010

Time: 7:00 p.m.

15A NCAC 10C .0401 – Modify provisions for taking of grass carp.

15A NCAC 10C .0402 – Add provisions for taking of crabs in inland waters by means of float lines.

15A NCAC 10D .0102 – Modify game land use regulations to better accommodate disabled sportsmen.

15A NCAC 10D .0103 – Modify game land use provisions on specified game lands.

15A NCAC 10D .0104 – Modify specified designated trout waters.

15A NCAC 10E .0101 – Define "public fishing and boating access area."

15A NCAC 10E .0102 – Require posting of regulations on public fishing and boating access areas.

15A NCAC 10E .0104 – Prohibit the feeding or release of animals or birds, domesticated animals and feral animals on public fishing or boating access areas without prior written authorization of the Wildlife Resources Commission.

15A NCAC 10H .0101 – Require controlled hunting preserve operators who release birds to report the numbers of birds released by species and the counties where those birds were released.

15A NCAC 10H .0104 – Require that only healthy and disease free birds be released by controlling hunting preserve operators while eliminating certain disease testing requirements.

15A NCAC 10H .0904 – Eliminate certain testing requirements for waterfowl raised by game bird propagators.

15A NCAC 10I .0105 – Delete Elk from the species of special concern list.

15A NCAC 10J .0102 – Prohibit release of animals or birds; domesticated animals, except hunting dogs where otherwise permitted for hunting or training purposes; and feral animals on conservation areas without prior written authorization of the Wildlife Resources Commission.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing or via electronic mail during the comment period to C. Norman Young, Jr., North Carolina Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001, Phone (919)716-6813, nyoung@ncdoj.gov.

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

Comment period ends: January 22, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written

objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

NOTE to Rule .0101: Italicized portion of the noticed text was noticed for hearing in the NC Register Volume 24, Issue 09, November 2, 2009 and is NOT a part of this proposed amendment.

15A NCAC 10B .0101 IMPORTATION OF WILD ANIMALS AND BIRDS

(a) Before any live wild bird or wild animal is imported into North Carolina for any purpose, a permit shall be obtained from the Executive Director of the North Carolina Wildlife Resources Commission authorizing the importation, using application forms provided by the Commission.

(b) ~~No deer, Deer,~~ elk, or other species in the family Cervidae may only be imported into the state of North Carolina from a herd in which Chronic Wasting Disease (CWD) has not been detected for at least five years and has been managed using standards equivalent to, or more stringent than, the criteria specified in 15A NCAC 10H .0301 and 15A NCAC 10H .0302. The individual state, Canadian province or country of origin must have CWD monitoring requirements that are at least as stringent as those described in this Rule, 15A NCAC 10H .0301 and 15A NCAC 10H.0302. The originating individual state's, Canadian province's or country's CWD monitoring program must be jointly reviewed by Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel before approval of any importation of cervids into North Carolina. There shall be no importation from individual states, Canadian provinces or countries in which CWD has been detected for any purpose until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any eervid herd or farm on which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.

(c) Cervids imported into North Carolina shall be individually identified by tags provided by the Wildlife Resources Commission that shall be affixed by the licensee to each cervid as set forth in these Rules.

(d) Waterfowl imported into North Carolina must be received from facilities or individuals who are certified under the National Poultry Improvement Plan (NPIP) as pullorum-typhoid and avian influenza negative. If the source birds are not part of NPIP, they must be tested pullorum-typhoid and avian influenza negative by NPIP standards within 30 days prior to entry into North Carolina. Health certificates for imported waterfowl shall be available for inspection by authorized Commission personnel upon request. ~~shall be tested for Avian Influenza (AI) and Exotic Newcastle Disease (END) by use of serological screening methods and according to the following sample sizes:~~

- ~~<100 birds – test 95% of source flock or shipment~~
- ~~101-200 birds – test 44% of source flock or shipment~~
- ~~201-300 birds – test 26% of source flock or shipment~~
- ~~301-400 birds – test 18% of source flock or shipment~~
- ~~401-500 birds – test 14% of source flock or shipment~~
- ~~>500 birds – test 58 individuals from source flock or shipment.~~

~~(e) Waterfowl that have tested positive in seriological tests shall be tested further by virus isolation/polymerase chain reaction (PCR) tests and identification techniques.~~

~~(f) Cloacal swabs pooled into groups of no more than five samples for testing shall be used for virus isolation or PCR tests for AI and END.~~

~~(g) Final virus isolation/PCR tests that are required because of positive results of serological tests shall be conducted within 10 days prior to release of birds.~~

~~(h) The Wildlife Resources Commission shall not accept Directigen® test results for AI tests on captive reared waterfowl.~~

~~(i) Test results shall not be used to accept or reject any individual bird(s) from shipments or flocks that have positive results on any assay.~~

~~(j) All test results shall be submitted directly from the testing lab to the Wildlife Resources Commission, Division of Wildlife Management.~~

~~(k) Neither permit nor license shall be issued until tests are negative for AI and END.~~

Authority G.S. 113-134; 113-274; 113-291.3; 113-292; 106.549-97(b).

NOTE to Rule .0106: Italicized text was approved by the Rules Review Commission on April 16, 2009 and is awaiting legislative review in the 2010 session of the General Assembly based on the receipt of ten or more objections.

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS OR ACCIDENTALLY

(a) Depredation Permit:

- (1) Endangered or Threatened Species. No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I by reason of depredations to property. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others

without a permit. Any endangered or threatened species which may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102.

- (2) Other Wildlife Species. Except as provided in Subparagraph (1) of this Paragraph, the Executive Director or an agent of the Wildlife Resources Commission may, upon application of a landholder and after such investigation of the circumstances as he may require, issue a permit to such landholder to take any species of wildlife which is or has been damaging or destroying his property provided there is evidence of property damage in excess of fifty dollars (\$50.00). No permit may be issued for the taking of any migratory birds and other federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation ~~permit~~ permit, if required, has been issued. The permit shall name the species allowed to be taken and, in the discretion of the Executive Director or an agent, may contain limitations as to age, sex or any other condition within the species so named. The permit may be used only by the landholder or another person named on the permit.

- (3) Special Circumstances. In addition to the circumstances described in Subparagraph (2) of this Paragraph, the Executive Director or his designee may issue a permit to a person or persons for the taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. Municipalities seeking such a depredation permit must apply to the Executive Director using a form supplied by the Commission which will request at a minimum, but not limited to, the following information:

- (A) the name and location of the municipality; and
- (B) the acreage of the affected property; and
- (C) a map of the affected property; and
- (D) the nature of the overabundance or the threat to public safety and any previous actions taken by the municipality to ameliorate the problem; and
- (E) in the case of deer overabundance or a threat to public safety from deer, the years in which the municipality participated in the Urban Archery Season. If the municipality has not

participated in the Urban Archery Season, the municipality must explain why.

~~Municipalities must first attempt to use the Urban Archery Season to remedy an overabundance of deer before the Executive Director or his designee will issue a depredation permit for deer overabundance.~~

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

(b) Term of Permit. Each depredation permit issued by the Executive Director or an agent shall have entered thereon a date or time of expiration after which date or time the same shall become invalid for any purpose, except as evidence of lawful possession of any wildlife that may be retained thereunder.

(c) Manner of Taking:

(1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of firearms.

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

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

(d) Disposition of Wildlife Taken:

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

- their possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (6) of this Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of in a safe and sanitary manner.
- (2) Deer. The edible portions of up to five deer may be retained by the landholder for consumption but must not be transported from the property where the depredations took place without a valid depredation permit. ~~*The landholder may give a second party the edible portions of the deer taken under the depredation permit. The receiver of the edible portions must hold a copy of the depredation permit. An enforcement officer, if so requested by the permittee, shall provide the permittee a written authorization for the use by a charitable organization of the edible portions of the carcass.*~~ The nonedible portions of the carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition. When a deer is accidentally killed on a road or highway by reason of collision with a motor vehicle, the law enforcement officer who investigates the accident shall, upon request of the operator of the vehicle, provide such operator a written permit authorizing him to possess and transport the carcass of such deer for his personal and lawful use, including delivery of such carcass to a second person for his private use or the use by a charitable organization upon endorsement of such permit to such person or organization by name and when no money or other consideration of value is received for such delivery or endorsement.
- (3) Fox. Any fox killed accidentally shall be disposed of in the manner provided by Subparagraph (1) or (6) of this Paragraph. Any fox killed under a depredation permit may be disposed of in the same manner or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer. ~~*Any live fox taken under a depredation permit may be sold to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).*~~
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal either accidentally or for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping
- ~~license, license, provided further that, bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.~~
- (5) Animals Taken Alive. Wild animals in the order Carnivora and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Animals transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit must have the depredation permit in their possession.
- (6) A person killing a wild bird or wild animal accidentally with a motor vehicle or finding a dead wild bird or wild animal which was killed accidentally may possess that wild bird or wild animal for a period not to exceed 10 days for the purpose of delivering it to a licensed taxidermist for preparation. The licensed taxidermist may accept the wild bird or wild animal after satisfying himself that the animal was killed accidentally. The taxidermist shall certify and record the circumstances of acquisition as determined by the injuries to the animal. Licensed taxidermists shall keep accurate records of each wildlife specimen received pursuant to the rule as required by 15A NCAC 10H .1003 of this Chapter. Upon delivery of the finished taxidermy product to the person presenting the animal, the taxidermist shall give the person a receipt indicating the sex and species, date of delivery, circumstances of initial acquisition and the name, address, and signature of the taxidermist. The receipt shall be permanently affixed to the back or bottom of the finished product and shall be retained by the person for as long as the mounted specimen is kept. Mounted specimens possessed pursuant to this Rule may not be sold and, if such specimens are transferred by gift or inheritance, the new owner must retain the permit to document the legality of possession. This provision does not allow possession of accidentally killed raptors; nongame migratory birds; species listed as endangered, threatened, or of special concern under 15A NCAC 10I .0103, .0104, and .0105 of this Chapter; black bear or wild turkey.
- (7) Edible portions of wild boar taken under depredation permit may be retained by the landowner for consumption or, if stipulated on the permit, donated to a charitable food organization.
- (e) Reporting Requirements. Any landholder who kills a deer, bear or wild turkey under a currently valid depredation permit

shall report such kill on the form provided with the permit and mail the form immediately upon the expiration date to the Wildlife Resources Commission. The killing and method of disposition of every game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, without a permit, shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in this State the fur dealer is required to report the source of acquisition and no report is required of the seller.

History Note: Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337.

15A NCAC 10B .0113 BIG GAME KILL REPORTS

(a) Upon killing a bear, deer, wild boar, or wild turkey and before moving the animal from the site of kill, the successful hunter shall validate the Big Game Harvest Report Card furnished with the big game hunting license by cutting or punching out the validation box that correctly identifies the big game animal harvested. In lieu of the Big Game Harvest Report Card, antlerless deer may be recorded as outlined above on the Bonus Antlerless Deer Harvest Report Card acquired from the Wildlife Resources Commission or a Wildlife Service Agent.

(b) Before any harvested bear, deer, wild boar, or wild turkey is skinned, dressed, or dismembered for consumption and within 24 hours of the kill, the animal must be registered with a Wildlife Cooperator Agent or registered through the Electronic Big Game Reporting System. Deer harvested during the urban deer season specified in 15A NCAC 10B .0203(e) shall be registered through the Electronic Big Game Reporting System and shall not be registered with a Wildlife Cooperator Agent. The hunter may field dress the animal at the site of kill or before registering it by bleeding and removing the digestive, respiratory, and circulatory organs; but, the hunter may not mutilate the carcass in a manner that obscures its species identity, age, or sex. When the kill occurs in a remote area, which prevents the animal from being transported as an entire carcass, the animal may be skinned and quartered before being registered. When a hunter harvests a big game animal in a remote area and plans to remain in the remote area for longer than a day, the 24-hour time limit to register the kill is extended until the hunter leaves the area. Upon leaving the remote area, the hunter shall register the kill within 24 hours.

(c) When a hunter registers a kill with a Wildlife Cooperator Agent, the Wildlife Cooperator Agent shall issue an authorization number that includes the date of kill to the big game hunter. The hunter shall record the authorization number given by the Wildlife Cooperator Agent or obtained through the Electronic Big Game Reporting System in the space provided immediately adjacent to the validation box that has been cut or punched out on the Big Game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card. The record entered on the Big game Harvest Report Card or the Bonus Antlerless Deer Harvest Report Card shall thereafter constitute authorization for

the continued possession of the carcass. Possession of a harvested bear, deer, wild boar, or wild turkey without the validated Big game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card where applicable, including the authorization number obtained from a Wildlife Cooperator Agent or through the Electronic Big Game Reporting System is unlawful.

(d) Persons who kill a big game animal and leave it unattended shall identify the carcass with their name, their hunting license number, and the date of kill. Once an unattended animal is registered the animal need only be identified with the authorization number received by registering the kill. It is unlawful for a person to possess a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card on which the species validation box has been cut or punched out, but on which the authorization number received by registering the kill has not been recorded, unless the animal is in the person's possession or is identified as described in this Paragraph and not more than 24 hours have passed since the harvest.

(e) Persons who are by law exempt from the big game hunting license shall obtain a Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card for License Exempt Hunters from a Wildlife Service ~~Agent~~Agent at no cost. Upon harvesting a bear, deer, wild boar, or wild turkey, the exempt person shall validate the Big Game Harvest Report Card or Bonus Antlerless Deer Harvest Report Card and register the kill as provided by this Rule.

(f) Persons who use special tags issued pursuant to G.S. 113-291.2(e) to validate the harvest of a deer shall follow the tagging and reporting requirements set forth by statute and are not obligated to take any action under this Rule.

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

15A NCAC 10B .0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums and raccoon which have been lawfully taken by any hunting ~~method~~method, upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossum and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B .0106(d)(4).

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

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

(d) The pelt, or feathers of deer, elk, fox, pheasant, quail, rabbit or squirrel (fox and gray), may be bought or sold for the purpose of making fishing flies provided the source of these animals can be documented as being legally obtained from out of state

sources or from lawfully operated commercial breeding facilities. The buying and selling of migratory game birds shall be in accordance with C.F.R. 50, part 20.91(j).

Authority G.S. 113-134; 113-273; 113-291.3; 113-337.

15A NCAC 10B .0121 WILD BIRDS DEFINED

The English sparrow (*Passer domesticus*), Eurasian collared dove (*Streptopelia decaocto*), pigeon (*Columba livia*), mute swan (*Cygnus olor*), and 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.

15A NCAC 10B .0126 STATE HUNTING LICENSE EXEMPTIONS

(a) Any governmental or non-profit entity conducting an organized hunting event may obtain from the Commission, subject to the discretion of the Executive Director or his designee, an exemption which allows all participants in the event to hunt without first obtaining hunting licenses, but the participants must:

- (1) comply with the hunter safety requirements of G.S. 113-270.1A or be accompanied by a properly licensed adult who maintains a proximity to the license exempt individual which enables the adult to monitor the activities of, and communicate with, the individual at all times; and
- (2) report all big game harvested as proscribed in Rule .0113 of this Section; and
- (3) obtain a certificate of participation in federal Harvest Information Program, if hunting migratory game birds; and
- (4) obtain a federal Migratory Bird Hunting and Conservation Stamp, if the participant is 16 years of age or older and hunting waterfowl.

(b) The governmental or non-profit agency requesting a state hunting license exemption shall apply using a form provided by the Commission and submit that form to the Chief of the Division of Wildlife Management not less than 21 days prior to the organized hunting event, subject to the following conditions:

- (1) The person in charge of the event must be on-site at all times and have a copy of the exemption available for inspection on request by Commission personnel; and
- (2) The exemption shall be limited to the immediate location of the event and shall remain in effect for the time period specified on the exemption.

Authority G.S. 113-134; 113-270.2; 113-276; 113-276.1.

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 Halifax, ~~Hertford~~, Martin and Northampton counties.
 - (3) Second Monday in November to January 1 in all of Bladen, Carteret, Cumberland, Duplin, New Hanover, Onslow, Pamlico, Pender and Sampson counties.
 - (4) First Monday in December to the third Saturday thereafter 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, Camden, Chowan, Craven, Dare, Hyde, Jones, Pasquotank, Tyrrell, and Washington counties.
 - (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, Currituck, Gates, Hertford ~~Gates~~ and Perquimans counties.
 - (7) Second Monday in November to the following Saturday in Greene, Lenoir and Pitt 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 except by permit only
 - 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--Panther town-Bonas Defeat bear sanctuary
 Macon County--Standing Indian bear sanctuary
 Macon County--Wayah bear sanctuary
 Madison County--Rich Mountain bear sanctuary
 McDowell and Yancey counties--Mt. Mitchell bear sanctuary except by permit only
 Mitchell and Yancey counties--Flat Top bear sanctuary
 Wilkes County--Thurmond Chatham bear sanctuary

(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 NCAC 10B .0113.

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

15A NCAC 10B .0206 SQUIRRELS

(a) Open Seasons:

- (1) Gray and Red Squirrels: the Monday on or closest to October 15 to the last day of February. October 1 to the second Saturday in February 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:

- (1) Gray and Red Squirrels: daily bag limit is eight; there are no season and no possession limits.
- (2) Fox Squirrels: In those counties listed in Subparagraph (a)(2) of this Rule, the daily bag limit is one; the possession limit is two, and the season limit is 10.

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

15A NCAC 10B .0222 ARMADILLO

- (a) No closed season.
- (b) No bag limit restrictions.

Authority G.S. 113-134; 113-291; 113-291.2.

SECTION .0300 - TRAPPING

15A NCAC 10B .0302 OPEN SEASONS

General. Following are the seasons for taking fur-bearing animals as defined in G.S. 113-129(7a), coyotes, armadillos, and groundhogs, and groundhogs apply as indicated, all dates being inclusive:

- (1) November 1 through the last day of February except for that part of the state described in Subparagraph (2) of this Paragraph.

(2) December 1 through the last day of February in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties.

(3) 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.

(4) Nutria may be trapped east of I-77 at any time.

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.

SECTION .0400 - TAGGING FURS

15A NCAC 10B .0402 TAGGING FURS

~~(a)~~ Except as provided in Rule .0404 and .0405 of this Section, it is unlawful to transport or to buy, sell, barter, trade, or otherwise transfer possession or ownership of the carcass or pelt of any ~~bobcat, otter or fox~~ without having affixed to such carcass or pelt an individual tag provided by the North Carolina Wildlife Resources Commission. Each such tag shall bear a serial number.

~~(b) It is unlawful for any person to import into this State the carcass or pelt of any otter or bobcat which has not been previously affixed with a tag required and supplied by the state in which the animal was taken.~~

Authority G.S. 113-134; 113-273; 113-276.1; 50 C.F.R. 23; 87 Stat. 884.

15A NCAC 10B .0403 APPLICATION FOR TAGS

(a) Fur tags shall be distributed in response to applications made on forms supplied by the Commission.

~~(b) The fees to be charged for each fur tag are as follows:~~

Species	_____	Fee
Bobcat	_____	2.20
Otter	_____	2.20

~~(e)~~(b) Foxes shall be tagged in accordance with G.S. 113-291.4(g). The carcasses or pelts of foxes lawfully taken and lawfully tagged in an area of open fox season, and those taken under a depredation permit, and those taken under a local law that permits foxes to be sold may be sold; provided that this Paragraph shall not authorize the sale of carcasses or pelts of foxes taken under a depredation permit in any county in which the sale of foxes or parts thereof is prohibited by local law.

Authority G.S. 113-134; 113-270.1; 113-273; 113-276.1; 113-291.4.

NOTE to Rule .0404: Italicized text was approved by the Rules Review Commission on April 16, 2009 and is awaiting legislative review in the 2010 session of the General Assembly based on the receipt of ten or more objections.

15A NCAC 10B .0404 TRAPPERS AND HUNTERS

(a) Every fox taken in an area of open season as provided by G.S. 113-291.4 shall be tagged at the scene of taking.

(b) Every person taking any ~~bobcat or otter in this State, or any~~ foxes under a depredation permit, general statute, rule, or local law that permits taking, shall obtain and affix the proper tag to each carcass or pelt before selling or transferring the same to any person or transporting the same for any purpose, except that:

- (1) A person may transport the same from the place of taking to his North Carolina residence and from his North Carolina residence to a fur tag agent or taxidermist's place of business.
- (2) A person may transport the same from the place of taking to the nearest place in this State where the appropriate tag may be obtained.
- (3) The carcass, pelt or mounted specimen is exempt from tagging requirements while in the taxidermist's place of business or after the mount is completed.
- (4) A licensed trapper may take live foxes during any legal trapping season, except foxes taken under G.S. 113-291.4, without tagging them and sell them to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).

~~(5) A person may take live foxes pursuant to a valid depredation permit issued under G.S. 113-274(c)(1a), without tagging them and sell them to a licensed controlled hunting preserve for fox in accordance with G.S. 113-273(g).~~

No carcass or pelt of any ~~bobcat, otter or~~ fox taken within this State may be removed from the state without a proper fur tag having been affixed thereto, except a licensed taxidermist may ship the same to a tannery for processing. Any carcass or pelt remaining in a person's possession after the end of the season, except those in a licensed taxidermist's place of business or his taxidermy preservation facility, shall be properly tagged by him within 10 days following the close of such season.

(c) In any case where the taking of foxes with weapons or traps and the sale thereof is authorized by local legislation, except live foxes taken by licensed trappers who live-trap foxes for sale during any open ~~season, season or persons who take live foxes pursuant to a depredation permit in accordance with Rule .0409 of this Section,~~ the hunter or trapper taking any such fox shall, in the absence of a specific provision to the contrary, obtain and affix the carcass or pelt with a proper tag before selling or transferring the same to any other person, or transporting the same for any purpose than as authorized by Paragraph (a) of this Rule.

Authority G.S. 113-134; 113-276.1; 113-291.4; S.L. 1985, chs. 108, 179, 180, 664 and 722.

15A NCAC 10B .0405 FUR DEALERS

(a) It is unlawful for any fur dealer licensed or otherwise authorized to deal in furs in this State, or any person or agent acting in his behalf, to buy or accept delivery from any person the carcass or pelt of any ~~bobcat, otter or~~ fox taken within the State which has not been previously affixed with a tag provided

by the North Carolina Wildlife Resources Commission as required by this Section.

~~(b) It is unlawful for any fur dealer to import into this State the carcass or pelt of any otter or bobcat which has not been previously affixed with a tag required and supplied by the state in which the animal was taken.~~ It is unlawful for any fur dealer, or agent of a fur dealer, to import into this State or to accept delivery of a carcass or pelt of any fox from a source located in any other state which does not by law or regulation require tagging of such carcasses or pelts, or a carcass or pelt of any fox which has not been tagged in accordance with the tagging requirements of the state from which it is imported, unless documentation of the date and hour of the arrival of such carcass or pelt at such fur dealer's place of business is available for inspection and such carcass or pelt is affixed with a fur tag provided by the North Carolina Wildlife Resources Commission within seven days after the date and hour of such arrival. No such carcass or pelt shall be resold or removed from such fur dealer's place of business without having been tagged as required by this Section.

(c) Any fur dealer or agent of a fur dealer authorized to do business in this State may import and accept delivery in this State of the carcass or pelt of any ~~bobcat, otter or~~ fox which has been affixed with a tag when and as required by the laws or regulations of the state from which such carcass or pelt is imported.

(d) Except as provided by Paragraph (b) of this Rule, it is unlawful for any fur dealer licensed to do business in this State to have in possession the carcass or pelt of any ~~bobcat, otter or~~ fox which has not been affixed with a fur tag provided by the North Carolina Wildlife Resources Commission or a tag required by the laws or regulations of the state from which the same was imported.

(e) Each fur dealer licensed to do business in this State shall maintain records of all acquisitions of carcasses and pelts of beaver, bobcat, mink, muskrat, nutria, opossum, otter, raccoon, skunk, weasel, and foxes. Such records shall consist of receipts, copies of receipts, or other written evidence of the transactions showing the sources and numbers of acquisition. Each fur dealer shall provide the Wildlife Resources Commission with monthly reports, made on forms supplied by the Commission, summarizing all acquisitions of carcasses and pelts of such animals, except those which have been acquired from and reported by other fur dealers licensed by the State. The reports shall include all such acquisitions made during each month beginning with October and ending with March of the following year; shall distinguish between acquisitions made within the State and those made from without the State; and, if acquired from within the State, shall indicate the counties in which the animals were taken. The report covering each month shall be mailed or delivered to the Commission on or before the 15th day of the next succeeding month. The records required by this Paragraph and the inventory of carcasses and pelts on hand shall be made available for inspection by any officer or representative of the Wildlife Resources Commission upon request at all reasonable times. In the case of nonresident fur dealers licensed to do business in this State, the records and reports required by this Paragraph shall apply only to carcasses or pelts of animals acquired from within this State, and no reports are required from

nonresident fur dealers who acquire pelts only from other fur dealers licensed in the State.

(f) The tagging requirements of Paragraph (a) of Rule .0402 of this Section and of Paragraphs (b) and (d) of this Rule shall not apply to the pelts or furs of foxes that are imported into this State by a fur dealer operating under a currently valid North Carolina Fur-Dealer Station License at a fixed place of business or to such pelts or furs delivered to the place of business of such fur dealer by a seller from another state provided that the following conditions are satisfied:

- (1) the nonresident seller is a licensed fur dealer in the state from which the pelts or furs originated;
- (2) the resident dealer has available for inspection a dated, signed bill of sale indicating the precise number of green pelts and dry pelts of fox purchased in each lot of imported fur; the accurate name, address, and fur dealer license number of the seller; and the date of arrival of the lot of pelts at the licensed place of business;
- (3) imported green pelts of fox are kept separate from the green pelts of native fox during processing and are readily identifiable as to imported lot number and bill of sale;
- (4) imported dry pelts of fox are not batched with native dry pelts of fox unless such pelts are marked in a manner that readily identifies them as to imported lot number and bill of sale;
- (5) such imported, untagged pelts of fox are imported, processed, and stored only for sale and export to buyers in other states; and
- (6) such imported, untagged pelts of fox are not held on the premises for longer than twenty-one (21) days from the date of arrival without having been tagged as required by Rule .0402(a) of this Section.

Authority G.S. 113-129; 113-134; 113-273; 113-291.3; 113-291.4; 50 C.F.R. 23; 87 Stat. 884.

15A NCAC 10B .0406 MISUSE OF TAGS

- (a) It is unlawful for any person to use or affix a fur tag which is valid for one season to the carcass or pelt of any ~~bobcat, otter or~~ fox taken or acquired during any subsequent season.
- (b) It is unlawful for any person to affix any fur tag to the carcass or pelt of any species of animal other than that for which its use is authorized and it is unlawful to buy or sell any ~~bobcat, otter or~~ fox carcass or pelt which has an unauthorized tag so affixed.
- (c) It is unlawful for any person to sell or transfer any unused fox tag to any other person. ~~It is unlawful for any person to sell any unused fur tag for a price greater than the fee listed for such tag in Paragraph (e) of Rule .0403 of this Section.~~
- (d) It is unlawful for any person to reuse a fur tag or to remove the same from the pelt to which affixed prior to delivery to a manufacturer or fur processor.
- (e) It is unlawful to counterfeit or modify any fur tag.

Authority G.S. 113-134; 113-135; 113-135.1; 113-273; 113-276.1; 113-291.4.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

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

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (a)(1)(A) through (Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. ~~Otherwise, Wild Trout rules 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 confluence with North Fork New River)
Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)
Big Laurel Creek
Three Top Creek (portion not on game lands)
South Fork New River (not trout waters)
Cranberry Creek (Alleghany County line to South Fork New River)
Nathans Creek
Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
Roan Creek
Beaver Creek
Pine Swamp Creek (all forks)
Old Fields Creek
Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)
North Toe River (headwaters to Mitchell County line, except where posted against trespass)

Squirrel Creek
Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line, including portions of tributaries on game lands)

Wildcat Lake
Catawba River (not trout water)

Johns River (not trout water)
Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]

Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]

Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]

Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]

Boyde Coffey Lake
Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]

(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 (portion within Linville Gorge Wilderness Area, including tributaries, and portion below Lake James powerhouse from upstream bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:
 - Catawba River (not trout water)
 - Johns River (not trout water)
 - Wilson Creek (~~Lost Cove Creek~~) (game lands portion downstream of Lost Cove Creek to Brown Mountain Beach dam, except where posted against trespass) [Delayed Harvest Regulations apply to ~~portions~~ game lands portion between Lost Cove Creek and Phillips Branch. See Subparagraph (a)(5) of this Rule.]
 - 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~~) (Happy Valley Ruritan Community Park to SR 1515)
 - Buffalo Creek (mouth of Joes Creek to McCloud Branch)
 - Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)
 - (G) Cherokee County:
 - Hiwassee River (not trout water)
 - Shuler Creek (Joe Brown Highway (SR 1325) bridge to Tennessee line)
 - Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 - Valley River (headwaters to US 19 business bridge in Murphy)
 - Hyatt Creek (including portions of tributaries on game lands)
 - Junaluska Creek (Ashturn Creek to

- Valley River, including portions of tributaries on game lands)
- (H) Clay County:
 Hiwassee River (not trout water)
 Fires Creek (~~first bridge above the lower game land line on US Forest Service road 442~~ foot bridge in the US Forest Service Fires Creek Picnic Area to SR 1300)
 Tusquitee Creek (headwaters to lower SR 1300 ~~bridge, including portions of Bluff Branch on game lands~~ bridge)
 Nantahala River (not trout water)
 Buck Creek (game land portion downstream of US 64 bridge)
- (I) Graham County:
 Little Tennessee River (not trout water)
 Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 Cheoah River (not trout water)
 Yellow Creek
 Santeetlah Reservoir (not trout water)
 West Buffalo Creek
 Little Buffalo Creek
 Santeetlah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek)
 (Big) Snowbird Creek (old railroad junction to SR 1127 bridge, including portions of tributaries on game lands)
 Mountain Creek (game lands boundary to SR 1138 bridge)
 Long Creek (portion not on game lands)
- Tulula Creek (headwaters to lower bridge on SR 1275)
~~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 upstream US 19-23 bridge)
 Cold Springs Creek (including portions of tributaries on game lands)
 Jonathan Creek (upstream SR 1302 bridge to Pigeon River, except where posted against trespass)
 Richland Creek (Russ Avenue (US 276) bridge to US 23-74 bridge)
~~West Fork Pigeon River (triple arch bridge on NC 215 to Queen Creek including portions of tributaries within this section located on game lands, except Middle Prong.)~~
~~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.]~~
West Fork Pigeon River (Tom Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
 (Rocky) Broad River (~~one half mile north of Bat Cave~~ Rocky River Lane to Rutherford County line)
 Green River - upper (mouth of Joe Creek to mouth of Bobs Creek)

Green River - lower (Lake Summit Dam to I-26 bridge)
(Big) Hungry River
Little Hungry River
French Broad River (not trout water)
Cane Creek (SR 1551 bridge to US 25 bridge)
Mud Creek (not trout water)
Clear Creek (SR 1591 bridge at Jack Mountain Lane to SR 1582)
Mills River (not trout water)
North Fork Mills River (game lands portion below the Hendersonville watershed dam). [Delayed Harvest Regulations apply. 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)
Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
Cullowhee Creek (Tilley Creek to Tuckasegee River)
Bear Creek Lake
Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Wolf Creek Lake
Balsam Lake
Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
Tanasee Creek Lake

(M) Macon County:

Little Tennessee River (not trout water)
Nantahala River (Nantahala Dam to Swain County line)

[Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]

Queens Creek Lake
Burningtown Creek (including portions of tributaries on game lands)
Cullasaja River Sequoyah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]

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

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

(N) Madison County:

French Broad River (not trout water)
Shut-In Creek (including portions of tributaries on game lands)
Spring Creek (junction of NC 209 and NC 63 to lower ~~US Forest Service boundary line, including portions of tributaries on game lands~~) US Forest Service road 223
Meadow Fork Creek
Roaring Fork (including portions of tributaries on game lands)
Little Creek
Max Patch Pond
Big Laurel Creek (Mars Hill Watershed boundary to the SR 1318 bridge, also known as Big Laurel Road bridge, downstream of Bearpen Branch)
Big Laurel Creek (NC 208 bridge to US 25-70 bridge)

- [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Spillcorn Creek (entire stream, excluding tributaries)
 Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
 Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
 [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Mill Creek (headwaters to confluence with Big Creek)
 Puncheon Fork (Hampton Creek to Big Laurel Creek)
 Big Pine Creek (SR 1151 bridge to French Broad River)
 Ivy Creek (not trout waters)
 Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
- (O) McDowell County:
 Catawba River (Catawba Falls Campground to Old Fort Recreation Park)
 Buck Creek (portion not on game lands, not trout water)
 Little Buck Creek (game land portion including portions of tributaries on game lands)
 Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch. [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 North Fork Catawba River (headwaters to SR 1569 bridge)
 Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
 Mill Creek (upper railroad bridge to I 40 bridge, except where posted against trespass) [Delayed Harvest Regulations apply to that portion between US 70 bridge and I 40 bridge. See Subparagraph (a)(5) of this Rule.]
- (P) Mitchell County:
 Nolichucky River (not trout water)
 Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)
 Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)
 Cane Creek (SR 1219 to NC 226 bridge)
 Cane Creek (NC 226 bridge to NC 80 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Grassy Creek (East Fork Grassy Creek to mouth)
 East Fork Grassy Creek
 North Toe River (Avery County line to SR 1121 bridge)
 North Toe River (US 19E bridge to NC 226 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Q) Polk County:
 Broad River (not trout water)
 North Pacolet River (~~Pacolet Falls~~ Joels Creek 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 the natural gas pipeline crossing) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove Creek. See Subparagraph (a)(5) of this Rule.]
- (R) Rutherford County:
 (Rocky) Broad River (Henderson County line to US 64/74 bridge,

- except where posted against trespass)
- (S) Stokes County:
 - Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:
 - Yadkin River (not trout water)
 - Ararat River (SR 1727 bridge downstream to the NC 103 bridge)
 - Stewarts Creek (not trout water)
 - Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
 - Fisher River (Cooper Creek) (Virginia State line to Interstate 77)
 - Little Fisher River (Virginia State line to NC 89 bridge)
 - Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
 - Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah Reservoir
 - Fontana Reservoir (not trout water)
 - Alarka Creek (game lands boundary to Fontana Reservoir)
 - Nantahala River (Macon County line to existing Fontana Reservoir water level)
 - Tuckasegee River (not trout water)
 - Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
 - Connelly Creek (including portions of
- (V) Transylvania County:
 - tributaries on game lands)
 - French Broad River (junction of west and north forks to US 276 bridge)
 - Davidson River (Avery Creek to lower US Forest Service boundary line)
 - East Fork French Broad River (Gladly Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Little River (confluence of Lake Dense outflow to 100 yards downstream of Hooker Falls) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Middle Fork French Broad River
 - West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
 - New River (not trout waters)
 - North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
 - Maine Branch (headwaters to North Fork New River)
 - South New Fork River (not trout water)
 - Meat Camp Creek
 - Norris Fork Creek
 - Howard Creek (downstream from lower falls)
 - Middle Fork New River (Lake Chetola Dam to South Fork New River)
 - Yadkin River (not trout water)
 - Stony Fork (headwaters to Wilkes County line)
 - Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 - Watauga River (adjacent to the intersection of SR 1557 and SR 1558 to NC 105 bridge)

and SR 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Beech Creek
Buckeye Creek Reservoir
Coffee Lake
Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)

Laurel Creek
Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)

Dutch Creek (second bridge on SR 1134 to mouth)

(X) Wilkes County:

Yadkin River (not trout water)
Roaring River (not trout water)

East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]

Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Middle Prong Roaring River (headwaters to second bridge on SR 1736)

Bell Branch Pond
Boundary Line Pond
West Prong Roaring River (not trout waters)

Pike Creek
Pike Creek Pond
Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)

Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River) [Delayed Harvest Regulations apply.

See Subparagraph (a)(5) of this Rule.]

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

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

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

Darnell Creek (North Prong Reddies River) (downstream

ford on SR 1569 to confluence with North Fork Reddies River)

Lewis Fork Creek (not trout water)

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

Fall Creek (except portions posted against trespass)

(Y) Yancey County:

Nolichucky River (not trout water)

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

Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)

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

North Toe River (not trout water)

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

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

in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.

- (A) Alleghany County:
Big Sandy Creek (portion on Stone Mountain State Park)
Stone Mountain Creek (that portion on Stone Mountain State Park)
- (B) Ashe County:
Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (C) Avery County:
Birchfield Creek (entire stream)
Cow Camp Creek (entire stream)
Cranberry Creek (headwaters to US 19E/NC 194 bridge)
Elk Hollow Branch (entire stream)
Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Gragg Prong (entire stream)
Horse Creek (entire stream)
Jones Creek (entire stream)
Kentucky Creek (entire stream)
North Harper Creek (entire stream)
Plumtree Creek (entire stream)
Roaring Creek (entire stream)
Rockhouse Creek (entire stream)
South Harper Creek (entire stream)
Webb Prong (entire stream)
Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (D) Buncombe County:
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 Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.

- (F) Caldwell County:
Nettle Branch (game land portion)
Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
Rockhouse Creek (entire stream)
- (G) Cherokee County:
Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:
Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Little Buffalo Creek (entire stream)
South Fork Squally Creek (entire stream)
Squally Creek (entire stream)
- (I) Haywood County:
Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]
Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Jackson County:
Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
Gage Creek (entire stream)
North Fork Scott Creek (entire stream)

- Shoal Creek (Glenville Reservoir pipeline to mouth) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- Tanasee Creek (entire stream)
- West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (K) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (L) Mitchell County:
Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
- Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
- Wiles Creek (game land boundary to mouth)
- (M) Transylvania County:
All waters located on Gorges State Park
- Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (N) Watauga County:
Dugger Creek (portions on Laurelmor development, including tributaries. Anglers must check in at Laurelmor security office on Triplett Rd. prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]
- Dutch Creek (headwaters to second bridge on SR 1134)
- Howards Creek (headwaters to lower falls)
- Laurel Creek (portions on Laurelmor development, including tributaries. Anglers must check in at Laurelmor security office on Triplett Rd. prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]
- Watauga River (Avery County line to steel bridge at Riverside Farm Road)
- Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)
- (O) Wilkes County:
Big Sandy Creek (portion on Stone Mountain State Park)
- Dugger Creek (portions on Laurelmor development, including tributaries. Anglers must check in at Laurelmor security office on Triplett Rd. prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]
- Garden Creek (portion on Stone Mountain State Park)
- Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
- Widow Creek (portion on Stone Mountain State Park)
- (P) Yancey County:
Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)
- Licksillet Creek (entire stream)
- Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No ~~fish~~trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
- Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:

- Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
Flat Creek
- (F) McDowell County:
Tuckasegee River (upstream of Clarke property)
- (G) Watauga County:
Newberry Creek (game land portion)
- Dugger Creek (portions on Laurelmor development, including tributaries. Anglers must check in at Laurelmor security office on Triplett Rd. prior to fishing)
- (H) Wilkes County:
Laurel Creek (portions on Laurelmor development, including tributaries. Anglers must check in at Laurelmor security office on Triplett Rd. prior to fishing)
- Dugger Creek (portions on Laurelmor development, including tributaries. Anglers must check in at Laurelmor security office on Triplett Rd. prior to fishing)
- Harris Creek (portion on Stone Mountain State Park)
- (I) 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~~ Release/Artificial Flies 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~~)
- (headwaters to Upper Creek, including tributaries)
- Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
- (B) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Caldwell County:
Wilson Creek (~~portion from (game lands portion downstream of Lost Cove Creek to Phillips Branch)~~)
- (D) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (E) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (F) Jackson County:
Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)
- (G) Macon County:
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- (H) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)

- (I) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch
Mill Creek (US70 bridge to I 40 bridge)
- (J) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)
North Toe River (US 19E bridge to NC 226 bridge)
- (K) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (L) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
- (M) Transylvania County:
East Fork French Broad River (Glady Fork to French Broad River)
Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)
- (N) Watauga County:
Watauga River (adjacent to intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)
- (O) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].
- (A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
North Shoal Creek (game land portions)
- ~~Tellico River (Fain Ford to Tennessee state line excluding tributaries)~~
- (B) Graham County:
Deep Creek
Long Creek (game land portion)
Franks Creek
- (C) Haywood County:
Hemphill Creek (including tributaries)
Hurricane Creek (including portions of tributaries on game lands)
- (D) Jackson County:
Buff Creek
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)
Shoal Creek (Glenville Reservoir pipeline to mouth)
West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)
- (E) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
- (F) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
- (G) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)
- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:
- Burke County
Catawba River (Muddy Creek to City of Morganton water intake dam).
Regulation: The daily creel limit is 7 trout and only one of which may be

PROPOSED RULES

- 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. 113-272; 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:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	2 (exc. (21))	30 in. (exc. (21))	ALL YEAR
<u>Muskellunge</u>	<u>1</u>	<u>42 in.</u>	<u>ALL YEAR</u>
Pickereel: Chain and Redfin	None	None	ALL YEAR
Walleye	8 (exc. (9))	None (exc. (9))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. (8&10))	ALL YEAR (exc. (17))
Smallmouth and Spotted	5 (exc. (22))(21))	12 in. (excs. (8,10&22)) (8,10&21))	ALL YEAR
<u>Roanoke and Rock Bass</u>	<u>None</u> (exc. (24))	<u>None</u> (exc. (24))	<u>ALL YEAR</u>
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	8	14 in.	ALL YEAR
Red drum (channel)	1	18 in.	ALL YEAR

PROPOSED RULES

bass, red fish, puppy drum)		(exc. (19))	
Striped Bass and their hybrids	8 aggregate	16 in.	ALL YEAR
(Morone Hybrids)	(excs. 1,2,5,6,11,&13)	(excs.1,2,5,6,11&13)	(excs. 6,13&15)
Shad: (American and hickory)	10 aggregate	None	ALL YEAR
Kokanee Salmon	(exc. (23) (22))		(exc. (18))
Crappie and sunfish	7	None	ALL YEAR
	None	None	ALL YEAR
	(excs. 4,12&16)	(exc. (12))	(exc. (4))
 NONGAME FISHES	 None	 None	 ALL YEAR
	(excs. 14,20&24)	(excs. 14,20&23)	(excs. 14,20&23) (exc. (7))

(b) Exceptions

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

- (5) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95, subject to the exceptions listed in this Paragraph, the daily creel limit for striped bass and their hybrids is two fish in aggregate. The minimum length limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed. In these waters, the season for taking and possessing striped bass is closed from May 1 through September 30. In the inland fishing waters of the Cape Fear River and its tributaries, the season for taking and possessing striped bass is closed year-round. In the Pee Dee River and its tributaries from the South Carolina line upstream to Blewett Falls Dam, the season for taking and possessing striped bass and their hybrids is open year-round, the daily creel limit is three fish in aggregate and the minimum length limit is 18 inches.
- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.

- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, Lake Raleigh in Wake County, Randleman Reservoir in Randolph and Guilford counties, Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95 (except Tar River Reservoir in Nash County), South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. ~~In B. Everett Jordan Reservoir, in Falls of the Neuse Reservoir to Lake Michie Dam on the Flat River and to the mouth of Cub Creek on Eno River,~~ Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed. In Lake Norman the minimum size limit for black bass is 14 inches.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir and in the Roanoke River and its tributaries downstream of Roanoke Rapids dam and in the Cashie, Middle, and Eastmost rivers and their tributaries. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: all public waters west of Interstate 77, South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and Roanoke River and tributaries below Roanoke Rapids dam, as listed above. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) Size and creel limits on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake

Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.

- (17) In Sutton Lake, no largemouth bass shall be ~~retained~~-possessed from December 1 through March 31.
- (18) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be ~~retained~~-possessed.
- (20) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other inland fishing waters east of Interstate 95.
- ~~(21)~~ ~~On the French Broad River between the Wilson Road bridge (SR 1540) at Pisgah Forest and the US 64 bridge near Etowah, a daily creel limit of one fish and a minimum size limit of 46 inches apply to muskellunge.~~
- ~~(22)~~(21) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) no smallmouth bass between 14 and 20 inches in length shall be possessed and only one smallmouth bass greater than 20 inches may be possessed in the daily creel limit. No minimum size limit shall apply to smallmouth bass less than 14 inches in length in this section of New River.
- ~~(23)~~(22) In the inland waters of Roanoke River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad. In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American shad may be possessed.
- ~~(24)~~(23) In Lake Norman and Badin Lake the daily creel limit for blue catfish greater than 32 inches in length is one fish.
- (24) In all public fishing waters east of Interstate 77, the minimum length for Roanoke and rock bass is eight inches and the daily creel limit is two fish in aggregate.

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

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

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

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

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

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

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

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

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

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net;
- (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;
- (5) a hand-held line with a single bait attached; ~~or~~
- (6) a single, multiple-bait line for taking crabs not to exceed 100 feet in length, marked on each end with a solid float no less than five inches in diameter, bearing legible and indelible identification of the user's name and address, and under the immediate control and attendance of the person using the device; with a limit of one line per person and no more than one line per vessel; or
- ~~(6)~~(7) a collapsible crab trap with the largest open dimension not greater than 18 inches and which by design is collapsed at all times when in the water, except when it is being retrieved or lowered to the bottom, with a limit of one trap per person.

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

(c) Game fishes 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 or personal consumption subject to the following restrictions:

- (1) No more than 50 eels, none of which may be less than six inches in length, shall be taken or possessed from inland fishing waters; and
- (2) No herring (alewife and blueback) that are greater than six inches in length shall be taken or possessed from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River

including Drowning Creek, and in all other inland fishing waters east of Interstate 95.

- (3) No more than 50 crabs per person per day or 100 per vessel per day with a minimum carapace width of five inches (point to point.)

(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 and the Catawba River upstream of 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 has identified the following areas on game lands that have additional restrictions on entry or usage:

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all

use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.

- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.
- (7) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.

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

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, unless the device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle

ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule 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. Furthermore, only shotguns with any size shot and archery equipment as defined in 15A NCAC 10B .0116 may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

- (d) Game Lands License: Hunting and Trapping
 - (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses. A field trial participant is defined as a Judge, Handler, Scout or Owner.
 - (2) Exceptions
 - (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
 - (B) The resident and nonresident sportsman's licenses include game lands use privileges.
 - (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
 - (D) On the game lands described in Rule .0103(e)(2) of this Section, the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident Handler, Scout or Owner participating therein may 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 written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

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

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;

- (3) in posted "safety zones" located on any game land;
- (4) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County; and
- (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 driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (k) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in Paragraph (n) of this Rule. ~~that paragraph.~~

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

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

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

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

- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) deafness.

On game lands where the privileges described in Paragraph (n) of this Rule apply, Participants-participants in the program who also hold a disabled access permit, except those qualifying by deafness, may operate electric wheel chairs, all terrain vehicles or other passenger vehicles: vehicles

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

~~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 card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their able-bodied companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

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

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

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game ~~lands-lands, or parts thereof,~~ 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 disabled persons as defined in Paragraph (k) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

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

(p) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" 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 or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except that activities which have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting

range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms 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 Rule 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.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

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

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

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition 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. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

(1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.

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

(3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons.

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

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

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

(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

PROPOSED RULES

- 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) Bachelor Bay Game Land in Bertie, Martin and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) 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 Sept. 1 through Feb. 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (7) Brinkleyville Game Land in Halifax County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable deer with visible antlers season.
 - (C) Horseback riding, including all equine species, is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- (8) Brunswick County Game Land in Brunswick County ~~County~~: Permit Only Area
- (A) Hunting is by permit only.
 - (B) The use of dogs for hunting deer is prohibited.
- (9) Buckhorn Game Land in Orange County
- (A) Hunting is by permit only.
 - (B) Horseback riding, including all equine species, is prohibited.
- (10) Buckridge Game Land in Tyrrell County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.
- (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 third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (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 last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas, New Year's and Martin Luther King, Jr. Days and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a

- special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding, 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.
 - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
 - (H) The use of bicycles is restricted to designated areas, except that this restriction shall not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
 - (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
 - (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road and south of NC 210 to the Black River.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- Deer of either sex may also be taken the Thursday and Friday preceding the Central muzzle-loading season with any legal weapon by participants in the Disabled Sportsman Program who acquire special hunt permits.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
 - (D) The area encompassed by the following roads is permit-only for ~~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.
 - (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
 - (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (18) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
 - (D) Horseback riding, 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.
- (E) Target shooting is prohibited.
- (20) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three days during the December bear season. except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season shall be the same as the season dates for the Gates County bear season.
- (D) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.
- (23) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (24) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Dove hunting is by permit only from opening day through the following Saturday of the first segment of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (26) Currituck Banks Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.
- (C) Licensed hunting guides may accompany the permitted individual 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.
- (27) Dare Game Land in Dare County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) No hunting on posted parts of bombing range.
- (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dover Bay Game Land in Craven County
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (29) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
- (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- (C) Participants of the Disabled Sportsman Program who acquire special hunt permits may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the season described in 15A NCAC 10B .0203(b)(1)(B).
- (30) Elk Knob Game Land in Watauga County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding, including all equine species, is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek and Hobucken.
- (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
- (F) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 to the end of February and April 1- May 15 to individuals that possess a valid hunting opportunity permit.
- (33) 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, including all equine species, is prohibited.
- (34) 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.
- (35) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl season.
- (D) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November

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

- July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (G) The use of bicycles is restricted to designated areas, except that this restriction shall not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season
- (C) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Use of centerfire rifles 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.
- (F) Hunting on posted waterfowl impoundments is by permit only.
- (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
- (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding, including all equine species, is prohibited.
- (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (D) Target shooting is prohibited.
- (50) Mitchell River Game Land in Surry County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
- (C) Horseback riding, including all equine species, is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.

PROPOSED RULES

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

- prohibited from September 1 through May 15.
- ~~(61)~~(62) Pungo River Game Land in Hyde County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - ~~(62)~~(63) Rhodes Pond Game Land in Cumberland and Harnett counties
 - (A) Hunting is by permit only.
 - (B) Swimming is prohibited on the area.
 - ~~(63)~~(64) Roanoke River Wetlands in Bertie, Halifax, Martin and Northampton counties
 - (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
 - (C) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
 - ~~(64)~~(65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
 - ~~(65)~~(66) Robeson Game Land in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - ~~(66)~~(67) Rockfish Creek Game Land in Hoke County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
 - ~~(67)~~(68) Rocky Run Game Land in Onslow County: Hunting is by permit only.
 - ~~(68)~~(69) Sampson Game Land in Sampson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - ~~(69)~~(70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
 - (A) Three Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program who acquire special hunt permits, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, raccoon and squirrel seasons indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
 - (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
 - (E) Wild turkey hunting is by permit only.
 - (F) Dove hunting on the field trial grounds is prohibited from the third Sunday in September through the remainder of the hunting season.

- (G) Opossum, raccoon and squirrel (fox and gray) hunting on the field trial grounds 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 permit-only ~~for 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 SR 1001 and west of US15/501, west of SR1328 and north of Gardner Farm Lane and that part east of SR1328 and north of Scotland Lake Lane.~~
- (I) Horseback riding on field trial grounds from October 22 through March 31 shall be prohibited unless riding in authorized field trials.
- (J) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- ~~(70)~~(71) Sandy Creek Game Land in Nash and Franklin Counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding, including all equine species, is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
- ~~(71)~~(72) Sandy Mush Game Land in Buncombe and Madison counties.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
 - ~~(B)~~(C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
 - ~~(C)~~(D) Dogs shall only be trained on Mondays, Wednesdays and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
- (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- ~~(72)~~(73) Second Creek Game Land in Rowan County-hunting is by permit only.
- ~~(73)~~(74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding, including all equine species, is prohibited.
- ~~(74)~~(75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
 - (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.
 - (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.
- ~~(75)~~(76) Stones Creek Game Land in Onslow County
 - (A) Six-Day per Week Area.
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season
 - (C) Swimming in all lakes is prohibited.
 - (D) Waterfowl on posted waterfowl impoundments may be taken only on the following days:

- (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- ~~(76)~~(77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
- (A) Hunting and trapping is by Permit only.
 - (B) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
 - (C) Entry is prohibited on scheduled hunt or trapping days except for:
 - (i) hunters or trappers holding special hunt or trapping permits; and
 - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- ~~(77)~~(78) Sutton Lake Game Land in New Hanover and Brunswick counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Target shooting is prohibited.
- ~~(78)~~(79) Tar River Game Land in Edgecombe County -
- hunting is by permit only.
- ~~(79)~~(80) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding including all equine species is prohibited.
- ~~(80)~~(81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program who acquire special hunt permits may also take either-sex deer with bow and arrow on the Saturday prior to the season described in 15A NCAC 10B .0203(b)(1)(B).
 - (C) Horseback riding is prohibited except on designated trails May 16 through
- August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 – August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- ~~(81)~~(82) Tillery game Land in Halifax County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding, including all equine species, is prohibited.
 - (D) The use of dogs for hunting deer is prohibited.
 - (E) Wild turkey hunting is by permit only.
- ~~(82)~~(83) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program who acquire special hunt permits may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the bow and arrow season described in 15A NCAC 10B .0203(b)(1)(B).
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(83)~~(84) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- ~~(84)~~(85) Vance Game Land in Vance County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles and handguns for hunting deer is

- prohibited on the Nutbush Peninsula tract.
- (85)(86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (86)(87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
 - (E) The Huggins Tract and Morton Tracts have is a Restrictive Firearms zone with the following restrictions:
 - (i) Access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
 - (ii) Hunting is by permit only; and
 - (iii) The use of dogs for hunting deer is prohibited.
 - (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only
 - (B) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.

- (i) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.
- (j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
 - Bertie, Halifax and Martin counties-Roanoke River Wetlands
 - Bertie County-Roanoke River National Wildlife Refuge
 - Bladen County—Suggs Mill Pond Game Lands
 - Burke County—John's River Waterfowl Refuge
 - Dare County-Dare Game Lands (Those parts of bombing range posted against hunting)
 - Dare County--Roanoke Sound Marshes Game Lands
 - Davie-Hunting Creek Swamp Waterfowl Refuge
 - Gaston, Lincoln and Mecklenburg counties-Cowan's Ford Waterfowl Refuge
 - Henderson and Transylvania counties--Dupont State Forest Game Lands
- (k) Free-ranging swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons, except in Cherokee, Clay, Graham, Jackson, Macon, and Swain counties. Dogs may not be used to hunt free-ranging swine except on game lands which allow the use of dogs for hunting deer or bear and during the applicable deer or bear season.
- (l) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where specifically prohibited in Paragraph (h) of this Rule.
- (m) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken will be clearly identified on each permit. If the hunt has a limited weapon choice, the allowed weapons will be clearly stated on each permit.

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

15A NCAC 10D .0104 FISHING ON GAME LANDS

- (a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0404(b)(c)(d) and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on gamelands with the

exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.

(b) Designated Public Mountain Trout Waters

(1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to the natural gas pipeline crossing.

(2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to the Tennessee state line, Nolichucky River, Mill Ridge Pond Cheoah River downstream of Santeetlah Reservoir, Little River from 100 yards downstream of Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn Lake, the portion of West Fork Pigeon River below Lake Logan, North Fork Catawba River downstream of the mouth of Armstrong Creek, and Green River downstream of the natural gas pipeline ~~crossing~~, crossing, and Spring Creek below US Forest Service road 223.

Dupont State Forest Game Lands in Henderson and Transylvania counties
Three Top Mountain Game Land in Ashe County

Nantahala National Forest Game Lands in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties.

Pisgah National Forest Game Lands in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey counties.

Thurmond Chatham Game Land in Wilkes County

Toxaway Game Land in Transylvania County

South Mountains Game Land in Cleveland and Rutherford counties.

Cold Mountain Game Land in Haywood County

Green River Game Land in Henderson and Polk counties.

(3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

(c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.

SUBCHAPTER 10E - FISHING AND BOATING ACCESS AREAS

15A NCAC 10E .0101 DEFINITION

For the purpose of these Regulations the term "~~fishing~~" public fishing and boating access area" or "~~access area~~" is defined to mean any area of land which adjoins or abuts on the public waters of the state; which is owned, ~~leased~~ leased, cooperatively managed, or controlled by the North Carolina Wildlife Resources Commission; which is developed and maintained for the purpose of providing ingress to and egress from public ~~waters~~; waters and public fishing opportunities; and which is posted with a sign or signs designating the same as ~~an access area~~ a public fishing or boating access area. Public fishing areas include Community Fishing Program waters and other cooperatively managed public waters developed for public fishing.

Authority G.S. 113-134; 113-264; 113-305.

15A NCAC 10E .0102 REGULATIONS POSTED

The Executive Director of the Commission shall cause to be prepared signs or notices containing these Regulations or the essential substance thereof and shall cause at least one of such signs to be posted at some conspicuous place on each public fishing and boating access area in the State.

Authority G.S. 113-134; 113-264; 150B-2(8a).

15A NCAC 10E .0104 USE OF AREAS REGULATED

(a) No person shall leave any vehicle, boat trailer or other obstruction on any public fishing or boating access area in such a location, position or condition that it will prevent or impede the use by other persons of any ramp or other facility constructed for the purpose of launching or landing boats or fishing. No person shall leave parked any vehicle, boat, boat trailer or other object at any place on any public fishing or boating access area other than on such place or zone as is designated as an authorized parking zone and posted or marked as such.

(b) No person shall possess a loaded firearm on any public fishing or boating access area. No person shall operate a vehicle

on any public fishing or boating access area in a manner so as to endanger life or property.

(c) No person, when using any public fishing or boating access area, shall deposit any debris or refuse anywhere on the grounds of the area. No person, when using any public fishing or boating access area, 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. At any time when all designated parking zones on any public fishing or boating access area are fully occupied, any person may enter and use such facilities, provided such person makes other arrangements for parking and violates none of the provisions of this Regulation or the signs or markings made or posted pursuant hereto.

(d) No person shall operate a motorboat in the public waters of North Carolina within 50 yards of a Commission-owned or managed boat launching ramp at greater than "no wake" speed. For the purpose of this Regulation, "no wake" speed shall mean idling speed or a slow speed creating no appreciable wake.

(e) Except where facilities are provided, it is unlawful to use any boating access area for purposes other than the launching of boats and parking vehicles and boat trailers. All other uses--including swimming, skiing, camping, building fires, operating concessions or other activities not directly involved with launching of boats--are expressly prohibited, except that those activities including fish weigh-ins 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.

(f) Except where facilities are provided and approved uses are posted, it is unlawful to use any public fishing area for purposes other than fishing. All prohibited uses and activities shall be posted including possession of loaded firearms, swimming, launching or mooring jet skis or boats, skiing, building fires, operating concessions, or other activities not directly associated with fishing.

(g) Size and creel regulations for game and nongame fishes that differ from the general statewide regulations shall be posted at public fishing areas, Community Fishing Program waters, and other cooperatively managed public waters.

(h) It is unlawful to feed or release animals or birds, domesticated animals and feral animals on public fishing or boating access areas without prior written authorization of the Wildlife Resources Commission.

Authority G.S. 113-134; 113-264; 75A-14.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0100 - CONTROLLED HUNTING PRESERVES FOR DOMESTICALLY RAISED GAME BIRDS

15A NCAC 10H .0101 LICENSE TO OPERATE

(a) A controlled hunting preserve license shall entitle the holder or holders thereof, and their guests of that preserve to take or kill by shooting only, and without regard to sex or bag limits, starting October 1 and ending March 31, domestically-raised pheasants, chukar partridges, Hungarian partridges, Mallard

ducks (as defined by the United States Fish and Wildlife Service) or other domestically raised game birds, except wild turkey. A controlled hunting preserve license also authorizes the holder or holders to purchase, possess, propagate, sell, transport and release propagated migratory game birds and their eggs, and propagated upland game birds, except wild turkey, subject to the limitations and conditions in Section .0900 of this Subchapter. Application for controlled hunting preserve licenses shall be made on standard forms obtainable from the commission. Applicants must be prepared to show proof of ownership of the land contained in the proposed hunting preserve or proof that they have this land under lease for the duration of the license period.

(b) Controlled hunting preserve operators who release birds must report for the time period of the license the numbers of birds released by species and the counties where those birds were released using a reporting mechanism supplied by the Commission in order to renew their licenses.

Authority G.S. 113-134; 113-273.

15A NCAC 10H .0104 QUALITY OF BIRDS RELEASED

(a) All birds purchased or raised for release on hunting preserves shall be healthy and free from disease. Possession of unhealthy or diseased birds shall be grounds for revocation or denial of a controlled hunting preserve license.

~~(b) Waterfowl shall be tested for Avian Influenza (AI) and Exotic Newcastle Disease (END) by use of serological screening methods and according to the following sample sizes:~~

~~<100 birds—test 95% of source flock or shipment~~

~~101-200 birds—test 44% of source flock or shipment~~

~~201-300 birds—test 26% of source flock or shipment~~

~~301-400 birds—test 18% of source flock or shipment~~

~~401-500 birds—test 14% of source flock or shipment~~

~~>500 birds—test 58 individuals from source flock or shipment.~~

~~(c) Waterfowl that have tested positive in seriological tests shall be tested further by virus isolation/polymerase chain reaction (PCR) tests and identification techniques.~~

~~(d) Cloacal swabs pooled into groups of no more than five samples for testing shall be used for virus isolation or PCR tests for AI and END.~~

~~(e) Final virus isolation/PCR tests that are required because of positive results of serological tests shall be conducted within 10 days prior to release of birds.~~

~~(f) The Wildlife Resources Commission shall not accept Directigen® test results for AI tests on captive reared waterfowl.~~

~~(g) Test results shall not be used to accept or reject any individual bird(s) from shipments or flocks that have positive results on any assay.~~

~~(h) All test results shall be submitted directly from the testing lab to the Wildlife Resources Commission, Division of Wildlife Management.~~

~~(i) Neither permit nor license shall be issued until tests are negative for AI and END.~~

Authority G.S. 113-134; 113-273.

SECTION .0900 – GAME BIRD PROPAGATORS

15A NCAC 10H .0904 DISPOSITION OF BIRDS OR EGGS

(a) **Diseased Birds.** No game bird propagator licensed under this Section shall knowingly sell or otherwise transfer possession of any live game bird that shows evidence of any communicable disease, except that such transfer may be made to a qualified veterinarian or pathologist for examination and diagnosis. Disposition of any game bird having a communicable disease in a manner not likely to infect wild game bird populations shall be the responsibility of the licensee.

~~(b) Waterfowl shall be tested as follows:~~

- ~~(1) Waterfowl shall be tested for Avian Influenza (AI) and Exotic Newcastle Disease (END) by use of serological screening methods and according to the following sample sizes:
 <100 birds — test 95% of source flock or shipment
 101-200 birds — test 44% of source flock or shipment
 201-300 birds — test 26% of source flock or shipment
 301-400 birds — test 18% of source flock or shipment
 401-500 birds — test 14% of source flock or shipment
 >500 birds — test 58 individuals from source flock or shipment.~~
- ~~(2) Waterfowl that have tested positive in seriological tests shall be tested further by virus — isolation/polymerase chain reaction (PCR) tests and identification techniques.~~
- ~~(3) Cloacal swabs pooled into groups of no more than five samples for testing shall be used for virus isolation or PCR tests for AI and END.~~
- ~~(4) Final virus isolation/PCR tests that are required because of positive results of serological tests shall be conducted within 10 days prior to release of birds.~~
- ~~(5) The Wildlife Resources Commission shall not accept Directigen® test results for AI tests on captive-reared waterfowl.~~
- ~~(6) Test results shall not be used to accept or reject any individual bird(s) from shipments or flocks that have positive results on any assay.~~
- ~~(7) All test results shall be submitted directly from the testing lab to the Wildlife Resources Commission, Division of Wildlife Management.~~
- ~~(8) Neither permit nor license shall be issued until tests are negative for AI and END.~~

~~(c)~~(b) **Sale of Live Birds or Eggs.** Subject to the limitations set forth in Rule .0901 of this Section, any healthy game birds which are authorized to be propagated under this Section, or the eggs thereof, may be sold or transferred alive by any licensed game bird propagator to any other licensed game bird propagator. Licensed game bird propagators may also sell or transfer healthy live game birds to licensed controlled shooting preserve operators or to any person who holds a valid state license or permit to possess the same. Upon any such sale or transfer, a receipt or other written evidence of the transaction shall be prepared in duplicate showing the date, the names and license or permit numbers of both parties, and the species and quantity of the game birds or eggs transferred. A copy of such receipt or writing shall be retained by each of the parties as a

part of his records as provided by Rule .0906 of this Section. Any live migratory waterfowl sold or transferred to any person for use in training retrievers or conducting retriever trials must be marked by one of the methods provided by 50 C.F.R. 21.13. Each pheasant sold or transferred for such purposes shall be banded prior to the transfer with a metal leg band which is imprinted with the number of the propagator's license.

~~(c)~~(c) **Sale of Dead Game Birds as Food.** Subject to the limitations and conditions indicated in Rule .0901 of this Section and to any applicable laws and regulations relating to pure foods, public health and advertising, game birds produced by game bird propagators licensed under this Section may be killed at any time in any manner, except by shooting during the closed season on the species concerned, and sold for food purposes as provided by the following Subparagraphs:

- (1) **Sale Direct to Consumer.** Unprocessed dead game birds may be sold directly to a consumer when accompanied by a receipt showing the name of the consumer, the name and license number of the propagator, and the quantity and species of the game birds sold. A copy of such receipt shall be retained by the propagator as part of his records. No such bird shall be resold by any such consumer.
- (2) **Sale To or Through a Processor.** Game birds may be sold to any commercial food processor who holds a permit to possess them or delivered to such a processor for processing and packaging prior to sale. In either case, the transfer shall be evidenced by a duplicate receipt identifying the processor by name and permit number and the propagator by name and license number, and indicating the number and species of birds transferred. A copy of such receipt shall be retained by each of the parties as part of his records. The processed carcasses of the birds shall be enclosed in a wrapper or container on the outside of which is indicated the number and species of birds contained, the license number of the propagator, and the fact that such birds were domestically raised. When so packaged, such processed game birds may be sold at wholesale or at retail through ordinary channels of commerce. This Paragraph shall not apply to dead quail marketed for food purposes under the regulations of the North Carolina Department of Agriculture.
- (3) The eggs of propagated game birds may not be sold for food purposes.

Authority G.S. 113-134; 113-273; 50 C.F.R., Part 21.13.

SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

SECTION .0100 - ENDANGERED AND THREATENED SPECIES

15A NCAC 10I .0105 SPECIAL CONCERN SPECIES LISTED

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

(1) Amphibians:

- (a) Crevice salamander (*Plethodon longicrus*);
- (b) Dwarf salamander (*Eurycea quadridigitata*);
- (c) Eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*);
- (d) Four-toed salamander (*Hemidactylium scutatum*);
- (e) Longtail salamander (*Eurycea longicauda longicauda*);
- (f) Mole salamander (*Ambystoma talpoideum*);
- (g) Mountain chorus frog (*Pseudacris brachyphona*);
- (h) Mudpuppy (*Necturus maculosus*);
- (i) Neuse River waterdog (*Necturus lewisi*);
- (j) River frog (*Rana heckscheri*);
- (k) Southern zigzag salamander (*Plethodon ventralis*);
- (l) Weller's salamander (*Plethodon welleri*).

(2) Birds:

- (a) American oystercatcher (*Haematopus palliatus*);
- (b) Bachman's sparrow (*Aimophila aestivalis*);
- (c) Black-capped chickadee (*Poecile atricapillus*);
- (d) Black rail (*Laterallus jamaicensis*);
- (e) Black skimmer (*Rynchops niger*);
- (f) Brown creeper (*Certhia americana nigrescens*);
- (g) Cerulean warbler (*Dendroica cerulea*);
- (h) Common tern (*Sterna hirundo*);
- (i) Glossy ibis (*Plegadis falcinellus*);
- (j) Golden-winged warbler (*Vermivora chrysoptera*);
- (k) Henslow's sparrow (*Ammodramus henslowii*);
- (l) Least bittern (*Ixobrychus exilis*);
- (m) Least tern (*Sterna antillarum*);
- (n) Little blue heron (*Egretta caerulea*);
- (o) Loggerhead shrike (*Lanius ludovicianus*);
- (p) Olive-sided flycatcher (*Contopus cooperi*);
- (q) Painted bunting (*Passerina ciris*);
- (r) Red crossbill (*Loxia curvirostra*);
- (s) Snowy egret (*Egretta thula*);
- (t) Tricolored heron (*Egretta tricolor*);
- (u) Vesper sparrow (*Poecetes gramineus*);

(3) Crustacea:

- (v) Wilson's plover (*Charadrius wilsonia*);
- (w) Yellow-bellied sapsucker (*Sphyrapicus varius appalachiensis*).
- (a) Broad River spiny crayfish (*Cambarus spicatus*);
- (b) Carolina skistodiaptomus (*Skistodiaptomus carolinensis*);
- (c) Carolina well diacyclops (*Diacyclops jeannelli putei*);
- (d) Chowanoke crayfish (*Orconectes virginensis*);
- (e) Graceful clam shrimp (*Lynceus gracilicornis*);
- (f) Greensboro burrowing crayfish (*Cambarus catagius*);
- (g) Hiwassee headwaters crayfish (*Cambarus parrishi*);
- (h) Little Tennessee River crayfish (*Cambarus georgiae*);
- (i) North Carolina spiny crayfish (*Orconectes carolinensis*);
- (j) Oconee stream crayfish (*Cambarus chaugaensis*);
- (k) Waccamaw crayfish (*Procambarus braswelli*).

(4) Fish:

- (a) Atlantic sturgeon (*Acipenser oxyrinchus*);
- (b) Bluefin killifish (*Lucania goodei*);
- (c) Blue Ridge sculpin (*Cottus caeruleomentum*);
- (d) Blueside darter (*Etheostoma jessiae*);
- (e) Broadtail madtom (*Noturus sp.*) (Lumber River and its tributaries and Cape Fear River and its tributaries);
- (f) Carolina darter (*Etheostoma collis*);
- (g) Cutlip minnow (*Exoglossum maxillingua*);
- (h) Freshwater drum (*Aplodinotus grunniens*) (French Broad River);
- (i) Highfin carpsucker (*Carpiodes velifer*) (Cape Fear River and its tributaries);
- (j) Kanawha minnow (*Phenacobius teretulus*);
- (k) Lake sturgeon (*Acipenser fulvescens*);
- (l) Least killifish (*Heterandria formosa*);
- (m) Longhead darter (*Percina macrocephala*);
- (n) Mooneye (*Hiodon tergisus*);
- (o) Mountain madtom (*Noturus eleutherus*);
- (p) Olive darter (*Percina squamata*);
- (q) Pinewoods darter (*Etheostoma mariae*);
- (r) River carpsucker (*Carpiodes carpio*);

- | | |
|---|---|
| <p>(s) Riverweed darter (<i>Etheostoma podostemone</i>);</p> <p>(t) Sandhills chub (<i>Semotilus lumbee</i>);</p> <p>(u) Sharpnose darter (<i>Percina oxyrhynchus</i>);</p> <p>(v) Smoky dace (<i>Clinostomus</i> sp.) (Little Tennessee River and tributaries);</p> <p>(w) Striped shiner (<i>Luxilus chrysocephalus</i>);</p> <p>(x) Tennessee snubnose darter (<i>Etheostoma simoterum</i>);</p> <p>(y) Thinlip chub (<i>Cyprinella zanema</i>) (Lumber River and its tributaries and Cape Fear River and its tributaries);</p> <p>(z) Waccamaw killifish (<i>Fundulus waccamensis</i>);</p> <p>(aa) Wounded darter (<i>Etheostoma vulneratum</i>);</p> <p>(bb) Yellowfin shiner (<i>Notropis lutipinnis</i>) (Savannah River and its tributaries);</p> <p>(5) Mammals:</p> <p>(a) Allegheny woodrat (<i>Neotoma magister</i>);</p> <p>(b) Buxton Woods white-footed mouse (<i>Peromyscus leucopus buxtoni</i>);</p> <p>(c) Coleman's oldfield mouse (<i>Peromyscus polionotus colemani</i>);</p> <p>(d) Eastern big-eared bat (<i>Corynorhinus rafinesquii macrotis</i>);</p> <p>(e) Eastern small-footed bat (<i>Myotis leibii leibii</i>);</p> <p>(f) Elk (<i>Cervus elaphus</i>);</p> <p>(g)(f) Florida yellow bat (<i>Lasiurus intermedius floridanus</i>);</p> <p>(h)(g) Pungo white-footed mouse (<i>Peromyscus leucopus easti</i>);</p> <p>(i)(h) Southeastern bat (<i>Myotis austroriparius</i>);</p> <p>(j)(i) Southern rock shrew (<i>Sorex dispar blitchi</i>);</p> <p>(k)(j) Southern rock vole (<i>Microtus chrotorrhinus carolinensis</i>);</p> <p>(l)(k) Southern water shrew (<i>Sorex palustris punctulatus</i>);</p> <p>(m)(l) Star-nosed mole (<i>Condylura cristata parva</i>).</p> <p>(6) Mollusks:</p> <p>(a) Appalachian gloss (<i>Zonitoides patuloides</i>);</p> <p>(b) Bidentate dome (<i>Ventridens coelaxis</i>);</p> <p>(c) Black mantleslug (<i>Pallifera hemphilli</i>);</p> <p>(d) Blackwater ancyliid (<i>Ferrissia hendersoni</i>);</p> <p>(e) Blue-foot lancetooth (<i>Haplotrema kendeighi</i>);</p> <p>(f) Cape Fear spike (<i>Elliptio marsupiobesa</i>);</p> | <p>(g) Dark glyph (<i>Glyphyalinia junaluskana</i>);</p> <p>(h) Dwarf proud globe (<i>Patera clarki clarki</i>);</p> <p>(i) Dwarf threetooth (<i>Triodopsis fulciden</i>);</p> <p>(j) Fringed coil (<i>Helicodiscus fimbriatus</i>);</p> <p>(k) Glossy supercoil (<i>Paravitrea placentula</i>);</p> <p>(l) Great Smoky slitmouth (<i>Stenotrema depilatum</i>);</p> <p>(m) High mountain supercoil (<i>Paravitrea andrewsae</i>);</p> <p>(n) Honey glyph (<i>Glyphyalinia vanattai</i>);</p> <p>(o) Lamellate supercoil (<i>Paravitrea lamellidens</i>);</p> <p>(p) Mirey Ridge supercoil (<i>Paravitrea clappi</i>);</p> <p>(q) Notched rainbow (<i>Villosa constricta</i>);</p> <p>(r) Open supercoil (<i>Paravitrea umbilicaris</i>);</p> <p>(s) Pink glyph (<i>Glyphyalinia pentadelphia</i>);</p> <p>(t) Pod lance (<i>Elliptio folliculata</i>);</p> <p>(u) Queen crater (<i>Appalachina chilhoweensis</i>);</p> <p>(v) Rainbow (<i>Villosa iris</i>);</p> <p>(w) Ramp Cove supercoil (<i>Paravitrea lacteodens</i>);</p> <p>(x) Saw-tooth disc (<i>Discus bryanti</i>);</p> <p>(y) Spike (<i>Elliptio dilatata</i>);</p> <p>(z) Spiral coil (<i>Helicodiscus bonamicus</i>);</p> <p>(aa) Velvet covert (<i>Inflectarius subpalliatius</i>);</p> <p>(bb) Waccamaw amnicola (<i>Amnicola</i> sp.);</p> <p>(cc) Waccamaw lampmussel (<i>Lampsilis crocata</i>);</p> <p>(dd) Waccamaw siltsnail (<i>Cincinnati</i> sp.);</p> <p>(ee) Wavy-rayed lampmussel (<i>Lampsilis fasciola</i>).</p> <p>(7) Reptiles:</p> <p>(a) Carolina pigmy rattlesnake (<i>Sistrurus miliarius miliarius</i>);</p> <p>(b) Carolina watersnake (<i>Nerodia sipedon williamengelsi</i>);</p> <p>(c) Diamondback terrapin (<i>Malaclemys terrapin</i>);</p> <p>(d) Eastern smooth green snake (<i>Opheodrys vernalis vernalis</i>);</p> <p>(e) Eastern spiny softshell (<i>Apalone spinifera spinifera</i>);</p> <p>(f) Mimic glass lizard (<i>Ophisaurus mimicus</i>);</p> <p>(g) Northern pine snake (<i>Pituophis melanoleucus melanoleucus</i>);</p> <p>(h) Outer Banks kingsnake (<i>Lampropeltis getula sticticeps</i>);</p> |
|---|---|

- (i) Southern hognose snake (*Heterodon simus*);
- (j) Stripeneck musk turtle (*Sternotherus minor peltifer*);
- (k) Timber rattlesnake (*Crotalus horridus*).

Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

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. 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 is 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 are not 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 15A NCAC 10B .0110, .0302, and .0303, trapping of fur-bearing 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; and
- (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.

(m) It is unlawful to possess or consume any type of alcoholic beverage on public use areas of the Nona Pitt Hinson Cohen Wildlife Conservation Area.

(n) It is unlawful to release animals or birds; domesticated animals, except hunting dogs where otherwise permitted for hunting or training purposes; and feral animals on conservation areas without prior written authorization of the Wildlife Resources Commission.

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 Department of Environment and Natural Resources intends to amend the rules cited as 15A NCAC 12A .0101, .0104-.0105; 12B .0104, .0201, .0203-.0204, .0301, .0401, .0501-.0502, .0601-.0602, .0701, .0802, .1001, .1003-.1004, .1101, .1105, .1201, .1205-.1206.

Proposed Effective Date: March 1, 2010

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): A public hearing may be demanded by submitting a written request within 15 days after the notice of text is published to Michael D. Lambert, Division of Parks and Recreation, 1615 Mail Service Center, Raleigh, NC 27699-1615, email mike.lambert@ncdenr.gov

Reason for Proposed Action: The Division of Parks & Recreation has not amended its administrative rules in approximately 5 years, and many have not been amended in over 20 years. The following rule amendments help in the following ways: to address operational and management issues within current state park managed areas that have changed over time with an enormous increase in public visitation since these rules were implemented, to include specific issues with natural and cultural resource protection and preservation, public safety and quality of experiences by the public. Additionally these rule amendments would include; adding new state park units, state trails and natural areas to the list of protected areas under the Division's stewardship to include future additions or acquisitions; to address operational issues at newly acquired parks with current long term commercial leases; to address the results of a recent civil lawsuit against the Division regarding public meetings & assemblies; to address changes in the camping and reservation rules to reflect a new contract/implementation of a web based central reservation

system now in operation and to raise fees to help off-set the reduction of general fund appropriations per the NC General Assembly Session Law 2009-451, Conference Report on the Continuation, Capital & Expansion Budget.

Procedure by which a person can object to the agency on a proposed rule: Any objections to these rules may be submitted in writing via mail, delivery service, or email to Michael D. Lambert, Division of Parks and Recreation, 1615 Mail Service Center, Raleigh, NC 27699-1615, email mike.lambert@ncdenr.gov.

Comments may be submitted to: Michael D. Lambert, 1615 Mail Service Center, Raleigh, NC 27699-1615, phone (919) 715-7602, fax (919) 715-3085, and email mike.lambert@ncdenr.gov

Comment period ends: January 15, 2010

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

Fiscal Impact:

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

CHAPTER 12 – PARKS AND RECREATION AREA RULES

SUBCHAPTER 12A - ORGANIZATION AND DUTIES

15A NCAC 12A .0101 ORGANIZATION AND PURPOSE

The Division of Parks and Recreation manages State Parks and Recreation Areas, plans for a balanced park and recreation system, protects the natural diversity of the state; and, promotes and assists in the provisions of recreation and leisure opportunities at all service levels - local, state, federal, commercial, private. These Rules govern the access to and usage of, State Parks and Recreation Areas by visitors. Park employees, their agents and contractors are exempt from the provisions of these Rules when performing management duties. Persons may contact the Division at the following address: Director-Division of Parks and Recreation

Department of Natural Resources and Community Development
 Environment and Natural Resources
 Post Office Box 27687 1615 Mail Service Center
 Raleigh, North Carolina 27611 27699-1615

Authority G.S. 113-8; 113-35.

15A NCAC 12A .0104 DIRECTORY OF STATE PARKS AND RECREATION AREAS

The following represents a complete list of state parks and recreation areas under the stewardship of the Department:

- (1) ~~natural and scenic rivers:~~
 - (a) ~~South Fork of the New River, Alleghany and Ashe Counties;~~
 - (b) ~~Linville River, Avery County;~~
- (2) ~~natural areas:~~
 - (a) ~~Bushy Lake Natural Area, Cumberland County;~~
 - (b) ~~Dismal Swamp Natural Area, Camden County;~~
 - (c) ~~Hemlock Bluffs Natural Area, Wake County;~~
 - (d) ~~Masonboro Island State Natural Area, New Hanover County;~~
 - (e) ~~Theodore Roosevelt Natural Area, Carteret County;~~
 - (f) ~~Weymouth Woods Sandhills Nature Preserve, Moore County;~~
 - (g) ~~Mitchell's Mill Natural Area, Wake County;~~
- (3) ~~state parks:~~
 - (a) ~~Bay Tree Lake State Park, Bladen County;~~
 - (b) ~~Boone's Cave State Park Area, Davidson County;~~
 - (c) ~~Carolina Beach State Park, New Hanover County;~~
 - (d) ~~Chowan Swamp State Park, Gates County;*~~
 - (e) ~~Cliffs of the Neuse State Park, Wayne County;~~
 - (f) ~~Crowder's Mountain State Park, Gaston County;~~
 - (g) ~~Eno River State Park, Durham and Orange Counties;~~
 - (h) ~~Fort Macon State Historic Park and Recreation Area, Carteret County;~~
 - (i) ~~Goose Creek State Park, Beaufort County;~~
 - (j) ~~Hammocks Beach State Park, Onslow County;~~
 - (k) ~~Hanging Rock State Park, Stokes County;~~
 - (l) ~~Joekey's Ridge State Park, Dare County;~~
 - (m) ~~Jones Lake State Park, Bladen County;~~
 - (n) ~~Lake Waccamaw State Park, Columbus County;~~

- (o) ~~Medoc Mountain State Park, Halifax County;~~
- (p) ~~Merehants Millpond State Park, Gates County;~~
- (q) ~~Morrow Mountain State Park, Stanly County;~~
- (r) ~~Mount Jefferson State Park, Ashe County;~~
- (s) ~~Mount Mitchell State Park, Yancey County;~~
- (t) ~~Pettigrew State Park, Tyrrell and Washington Counties;~~
- (u) ~~Pilot Mountain State Park, Surry and Yadkin Counties;~~
- (v) ~~Raven Rock State Park, Harnett County;~~
- (w) ~~Singletary Lake State Park Group Camp, Bladen County;~~
- (x) ~~South Mountain State Park, Burke County;~~
- (y) ~~Stone Mountain State Park, Alleghany and Wilkes Counties;~~
- (z) ~~William B. Umstead State Park, Wake County;~~
- (4) ~~state recreation areas:~~
 - (a) ~~Duke Power State Recreation Area, Iredell County;~~
 - (b) ~~Kerr Lake State Recreation Area, Vance and Warren Counties;~~
 - (c) ~~Jordan Lake State Recreation Area, Chatham County;~~
 - (d) ~~Falls of the Neuse State Recreation Area, Wake County.~~

* Interim use as state game land.

State parks and recreation areas under the stewardship of the Department include the following, plus any additional units authorized by the General Assembly pursuant to G.S. 113-44.14:

- (1) state rivers:
 - (a) Linville River, Avery County; 1975
 - (b) New River, Alleghany and Ashe Counties; 1975
 - (c) Horsepasture River, Transylvania County; 1985
 - (d) Lumber River, Scotland, Hoke, Robeson, and Columbus Counties; 1989
- (2) state natural areas:
 - (a) Mount Jefferson State Natural Area, Ashe County; 1956
 - (b) Weymouth Woods Sandhills Nature Preserve, Moore County; 1963
 - (c) Theodore Roosevelt State Natural Area, Carteret County; 1971
 - (d) Chowan Swamp State Natural Area, Gates County; 1973
 - (e) Hemlock Bluffs State Natural Area, Wake County; 1976
 - (f) Masonboro Island State Natural Area, New Hanover County; 1976

- (g) Mitchell's Mill State Natural Area, Wake County; 1976
 - (h) Bushy Lake State Natural Area, Cumberland County; 1977
 - (i) Baldhead Island State Natural Area, Brunswick County; 1979
 - (j) Run Hill State Natural Area, Dare County; 1995
 - (k) Occoneetchee Mountain State Natural Area, Orange County; 1997
 - (l) Bullhead Mountain State Natural Area, Alleghany County; 2000
 - (m) Lea Island State Natural Area, Pender County; 2000
 - (n) Beech Creek Bog State Natural Area, Watauga County; 2002
 - (o) Lower Haw River State Natural Area, Chatham County; 2003
 - (p) Pineola Bog State Natural Area, Avery County; 2006
 - (q) Sugar Mountain Bog State Natural Area, Avery County; 2006
 - (r) Sandy Run Savannas State Natural Area, Pender and Onslow Counties; 2006
 - (s) Bear Paw State Natural Area, Avery County; 2008
 - (t) Yellow Mountain State Natural Area, Mitchell and Avery Counties; 2008
- (3) state parks:
- (a) Mount Mitchell State Park, Yancey County; 1916
 - (b) Fort Macon State Park, Carteret County; 1924
 - (c) Hanging Rock State Park, Stokes County; 1935
 - (d) Morrow Mountain State Park, Stanley County; 1935
 - (e) Pettigrew State Park, Tyrrell and Washington Counties; 1936
 - (f) Jones Lake State Park, Bladen County; 1939
 - (g) Singletary Lake State Park, Bladen County; 1939
 - (h) Cliffs of the Neuse State Park, Wayne County; 1945
 - (i) William B. Umstead State Park, Wake County; 1945
 - (j) Hammocks Beach State Park, Onslow County; 1961
 - (k) Lake Norman State Park, Iredell County; 1962
 - (l) Pilot Mountain State Park, Surry and Yadkin Counties; 1968
 - (m) Carolina Beach State Park, New Hanover County; 1969
 - (n) Stone Mountain State Park, Alleghany and Wilkes Counties; 1969
- (o) Raven Rock State Park, Harnett County; 1970
 - (p) Crowders Mountain State Park, Gaston County; 1973
 - (q) Eno River State Park, Durham and Orange Counties; 1973
 - (r) Medoc Mountain State Park, Halifax County; 1973
 - (s) Merchants Millpond State Park, Gates County; 1973
 - (t) Dismal Swamp State Park, Camden County; 1974
 - (u) Goose Creek State Park, Beaufort County; 1974
 - (v) Jockeys Ridge State Park, Dare County; 1975
 - (w) New River State Park, Alleghany and Ashe Counties; 1975
 - (x) Lake Waccamaw State Park, Columbus County; 1976
 - (y) South Mountain State Park, Burke County; 1978
 - (z) Bay Tree Lake State Park, Bladen County; 1979
 - (aa) Lake James State Park, Mc Dowell and Burke Counties, 1987
 - (bb) Lumber River State Park, Scotland, Hoke, Robeson and Columbus Counties; 1989
 - (cc) Gorges State Park, Transylvania County; 1999
 - (dd) Elk Knob State Park, Watauga and Ashe Counties; 2002
 - (ee) Haw River State Park, Rockingham and Guilford Counties; 2003
 - (ff) Mayo River State Park, Rockingham County; 2003
 - (gg) Carvers Creek State Park, Cumberland County; 2005
 - (hh) Chimney Rock State Park, Rutherford, Polk, Buncombe and Henderson Counties; 2005
 - (ii) Grandfather Mountain State Park, Avery, Watauga and Caldwell Counties; 2009
- (4) state recreation areas:
- (a) Kerr Lake State Recreation Area, Vance and Warren Counties; 1952
 - (b) Jordan Lake State Recreation Area, Chatham County; 1981
 - (c) Falls Lake State Recreation Area, Wake and Durham Counties; 1982
 - (d) Fort Fisher State Recreation Area, New Hanover County; 1986
- (5) state lakes:
- (a) Bay Tree Lake, Bladen County; 1929
 - (b) Jones Lake, Bladen County; 1929
 - (c) Lake Phelps, Tyrrell and Washington Counties; 1929

- (d) Salters Lake, Bladen County; 1929
- (e) Singletary Lake, Bladen County; 1929
- (f) Lake Waccamaw, Columbus County; 1929
- (g) White Lake, Bladen County; 1929
- (6) state trails:
 - (a) French Broad River State Trail; 1987
 - (b) Yadkin River State Trail; 1987
 - (c) Mountains-to-Sea State Trail; 2000
 - (d) Deep River State Trail; 2007

Authority G.S. 113-35; 143B-311.

15A NCAC 12A .0105 DEFINITIONS

Whenever used in this Chapter:

- (1) "Division" means the Division of Parks and Recreation;
- (2) "Owner" means any person owning, leasing, or having the exclusive use of any property;
- (3) "Park" means ~~all designated parks, state lakes, recreation areas, parkways, nature preserves, and other areas on sites under the jurisdiction of the Department;~~
- (3) "Park" means any tract of land or body of water comprising part of the State Parks System under the State Parks Act, G.S. 113-44.7, including existing State Parks, State Natural Areas, State Recreation Areas, State Trails, State Rivers, and State Lakes under the jurisdiction of the Department. Within State Trails and State Rivers that travel lands of diverse ownership, these rules apply only to segments within and on property managed by the Division.
- (4) "Permits" means any written document issued by or under authority of the Department, permitting the performance of a specified act or acts;
- (5) "Person" means any natural person, corporation partnership, association, or governmental unit; and
- (6) "Secretary" means the Secretary of the Department;
- (7) "Department" means the North Carolina Department of Environment and Natural Resources.

Authority G.S. 113-8; 113-35.

SUBCHAPTER 12B - PARKS AND RECREATION AREAS

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 12B .0104 PERMITS

Applications for permits may be made by contacting individual Park and Recreation Area offices or ~~Superintendent of State Parks and Recreation, P.O. Box 27687, Raleigh, NC 27611. Chief of Operations, North Carolina Division of Parks and~~

Recreation, 1615 Mail Service Center, Raleigh NC 27699-1615. Violation of the terms and conditions of a permit issued in accordance with this Section is prohibited and may result in revocation of the permit.

Authority G.S. 113-35.

SECTION .0200 - PRESERVATION OF THE PARK

15A NCAC 12B .0201 NATURAL AND CULTURAL RESOURCE PROTECTION

~~A person shall not remove, disturb or injure any tree, flower, artifact, fern, shrub, rock or other plant or mineral in any park area.~~

~~A person shall not collect plants, animals, minerals or artifacts from any park area without first having obtained a collector's permit. Collecting permits shall be issued for scientific or educational purposes only and not for commercial purposes. Collectors shall make a written request for collecting permits and shall be subject to the conditions stated in the permit.~~

(a) A person shall not remove, possess, or disturb any plant, fungus, mineral, living or dead wild animal, or the products thereof, or any archeological or cultural resource or artifact in any park area except as otherwise provided in this Section.

(b) Harassing, or intentionally disturbing wildlife and their nesting, breeding or other activities is prohibited.

(c) The placement or distribution of agricultural products, natural or processed foods, or any other item for the purpose of attracting or feeding any wildlife is prohibited.

(d) A person shall not collect any natural or cultural resources or artifacts from any park area except as authorized by a research activity permit. A research activity permit for collections shall be issued only to an official representative of a scientific, educational institution, non-profit agency or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired and that the intended use of the specimens and their final disposal is in accordance with applicable law. Application for research activity permits shall be made as provided by Rule.0104 of this Subchapter. A research activity permit for personal or commercial purposes is prohibited.

Authority G.S. 113-35.

15A NCAC 12B .0203 METAL DETECTORS PROHIBITED

~~Metal detectors shall not be allowed in any park area except to locate lost personal property and must be accompanied by a park employee while searching for such property. as authorized by a special activity permit as provided by Rule .0104 of this Subchapter.~~

~~Sand beaches at ocean parks shall be exempt from this prohibition except during the months of June, July and August.~~

Authority G.S. 113-35.

15A NCAC 12B .0204 ROCK OR CLIFF CLIMBING AND RAPPELLING

~~(a) A person shall not engage in rock or cliff climbing or rappelling in any park area except at designated areas in designated parks and only after obtaining a special use permit from a park official. Application for permits may be made as provided by Rule .0104 of this Subchapter.~~

(a) Rock climbing, bouldering, cliff climbing or rappelling is prohibited except in specifically designated areas within certain designated parks. A climbing, rappelling and/or bouldering permit is required. Application for a climbing, rappelling and/or bouldering permit shall be made as provided by Rule .0104 of this Subchapter.

(b) The installation of permanent or fixed rock climbing anchors, such as pitons and expansion bolts, is prohibited in any climbing area unless the person has written permission from the Park Superintendent.

(c) The superintendent may designate a daily capacity limit for specific climbing routes and areas based on natural resource protection and public safety.

(d) Organized private or commercial groups shall obtain a special activity permit prior to the activity. Application for a special activity permit shall be made as provided by Rule .0104 and .1101 of this Subchapter.

(e) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the revocation of the climbing, rappelling and bouldering permit.

Authority G.S. 113-35.

SECTION .0300 - BATHING

15A NCAC 12B .0301 BATHING AND SWIMMING ACTIVITIES: WHERE PROHIBITED

~~A person shall not bathe, wade, or swim in any waters in any park area, except at such times and in such places as the Division may designate as swimming areas.~~

A person shall not bathe; wade; surf; dive; scuba dive or swim in any waters in any park area except at such times and in such places as the Division may designate as appropriate.

Authority G.S. 113-35.

SECTION .0400 - REFUSE AND RUBBISH

15A NCAC 12B .0401 DISPOSAL OF REFUSE: GARBAGE: ETC.

(a) It shall be illegal for anyone to dispose of their household or business refuse, garbage, etc., ~~department garbage container, in any park.~~

(b) The disposal of vegetable matter, fruits, meat products or other food substances in other than an authorized refuse receptacle is prohibited.

Authority G.S. 113-35.

SECTION .0500 - TRAFFIC AND PARKING

15A NCAC 12B .0501 VEHICLES: WHERE PROHIBITED

~~(a) A person shall not drive a vehicle including bicycles, wheeled or tracked powered devices, all terrain vehicles, motorcycles, mopeds or similar conveyances in any park within or upon a safety zone, walk, bridle trail, hiking trail, fire trail, service road or any part of any park area not designated or customarily used for such purpose. Operation of unlicensed for highway-use motor vehicles, motorcycles, golf carts, snow mobiles, utility vehicles, mini-bikes, ~~and~~ all terrain vehicles, powered go-carts and powered stand-upon scooters are prohibited within any park, park, including the Fort Fisher Recreation Area.~~

~~(b) Park employees, their agents, contractors and on duty emergency response personnel may use unlicensed vehicles including golf carts, utility vehicles and all terrain vehicles within park areas to carry out official duties.~~

~~(e)(b)~~ (b) A mobility-impaired person using a manual or motorized wheelchair is considered a pedestrian. This Rule is not intended to restrict the activities of such a person beyond the degree that the activities of a pedestrian are restricted by the same Rule, except where use of such wheelchairs constitutes a safety hazard or would damage fragile natural resources.

~~(d)(c)~~ (c) No person shall drive a vehicle, bicycle or other conveyance on areas with fragile natural resources that would be damaged by the vehicle, bicycle or other conveyance, or where the use of the vehicle, bicycle or other conveyance would be unsafe.

~~(e)(d)~~ (d) Not withstanding Paragraph (a) of this Rule, operation of licensed vehicles on the unpaved areas of the Fort Fisher Recreation Area is prohibited unless the operator has obtained a vehicle beach use permit.

(e) Not withstanding Paragraph (a) of this Rule, operation of motor vehicles upon the unpaved areas of Chestnut Mountain Road within Gorges State Park is prohibited unless the vehicle has four-wheel drive or all wheel drive capability.

Authority G.S. 113-35.

15A NCAC 12B .0502 PARKING

~~(a) A An owner or driver shall not ~~cause or permit~~ allow a vehicle to ~~stand~~ remain stationary anywhere in any park outside of designated parking spaces, in a "No Parking Zone", in front of a park gate, driveway or emergency vehicle access except for a reasonable time to receive or discharge ~~passengers, passengers~~ or load or unload supplies.~~

~~(b) A An owner or driver shall not ~~cause or permit~~ allow a vehicle to ~~stand~~ remain anywhere in any park unattended or abandoned for longer than 12 hours except by permit.~~

~~(c) A An owner or driver shall not leave a vehicle parked unattended or abandoned overnight except by permit.~~

(d) The Division may remove or tow any vehicle that is in violation of this Rule at the owner's expense.

Authority G.S. 113-35.

SECTION .0600 - BOATING AND CAMPING

15A NCAC 12B .0601 BOATING

- (a) Only park employees, their agents, and contractors on duty may use boats, rafts, surf boards, personal watercraft, and canoes or any other vessel in designated swimming areas.
- (b) The Department may limit boat motor horsepower or motor type or prohibit the use of gasoline powered motors on lakes completely contained within parks and recreation areas.
- (c) Private boats, rafts, ~~and~~ canoes, personal watercraft or other vessels may be launched or retrieved only at public boat ramps or designated launch sites.
- (d) The mooring of boats, personal watercraft or other vessels to a dock, wharf, pier, or boat launching facility in such a manner as to prevent, impede or inconvenience the use by another person of any dock, wharf, pier or launch or create a hazard to other water craft is prohibited and may be moved by park staff at the owners expense.
- (e) Except where facilities are provided, it is unlawful to use any boating access area for purposes other than the launching of boats and parking vehicles and boat trailers. All other uses including swimming, skiing, camping, building fires, loitering, operating concessions or other activities not directly involved with launching of boats are prohibited, except where authorized by a special activity permit.

Authority G.S. 113-35; 113-264.

15A NCAC 12B .0602 CAMPING

- (a) A person shall not camp in a state park or recreation area except:
 - (1) in a designated camping area; and
 - (2) under a valid camping permit.
- (b) All camping permits will be issued at the desired state park or recreation area by an authorized the Division representative no earlier than the first day of the desired period of continuous and actual occupancy.
- (c) Reservations for camping permits will only be accepted in accordance with the provisions of 15A NCAC 12B .1205, Reservations.
- (d) Payment of the camping permit fee, in full, is required at the time the camping permit is issued or if a reservation for a camping permit has been made at the time when the reservation is made.
- (e) The maximum period of consecutive overnight camping in any state park or recreation area is 14 days within any 30 day period. period beginning with the first night of stay. Multiple camping areas within an individual park or recreation area are considered as a single camping facility for determining the maximum period of overnight camping within any 30 day period. The maximum consecutive nights may be extended by the Park Superintendent, upon written request with reasons supporting the extension, if the Park Superintendent determines equitable public access, visitor services and staffing levels will not be affected. Any attempt to camp permanently or semi-permanently is prohibited.
- (f) No camper shall leave a set-up camp unattended for more than 12 hours. Camping equipment, tents, trailers, recreation vehicles and articles on a campsite left unattended for more than 12 hours are subject to removal at the owner's expense and use of the campsite.

- (g) At least one adult, 18 or older, shall accompany each camper group.
- (h) No campfires should be left unattended.
- (i) Tents shall only be used in areas delineated for such use.
- (j) Connecting to a utility system without payment of required fees is prohibited.
- (k) An authorized Division representative may designate portions of a park where food products, garbage, cosmetics, cleaning supplies and equipment used to cook or store food products are required to be kept in a Division supplied food locker, a vehicle, recreational vehicle or suspended at least 10 feet above the ground and four feet horizontally from a post, tree trunk, or other object. Food, garbage and cooking equipment shall not be stored except as specified in these designated areas. Food, products, garbage and cooking equipment being transported, consumed or being prepared for consumption is excluded.
- (l) Designated camping areas shall be for use by registered campers with a camping permit for that site and their guests only.
- (m) Violation of the terms and conditions of a camping permit issued in accordance with this Section is prohibited and may result in the suspension or revocation of the permit.
- (n) Group and family campsite checkout time is 3:00 PM on the day of departure.

Authority G.S. 113-35.

SECTION .0700 - SPORTS AND GAMES

15A NCAC 12B .0701 SPORTS AND GAMES: WHEN PERMITTED

- (a) Athletic contests, ~~contests shall not be allowed except in designated places.~~ sports and games are allowed in designated areas or by special activity permit only.
- (b) The use of skate boards, roller blades, roller skates and similar devices are prohibited on park roads, sidewalks, and pedestrian areas and on park infrastructure to include walls, railings and culverts.

Authority G.S. 113-35.

SECTION .0800 - HUNTING AND FISHING

15A NCAC 12B .0802 FISHING

- (a) A person may fish only in designated areas.
- (b) A park fee shall be required to fish in the "Fish for Fun" "Bullhead – Special Catch and Release Stream" ~~stream~~ at Stone Mountain State Park. Restrictions ~~beyond~~ in addition to state fishing laws ~~will be~~ are required.
- (c) Live specimens to be used for fishing bait shall not be collected within any state park.

Authority G.S. 113-35.

SECTION .1000 - DISORDERLY CONDUCT: PUBLIC NUISANCE: ETC.

15A NCAC 12B .1001 NOISE REGULATION

(a) The production or ~~emission~~ emission, in state parks or recreation areas by any persons, of noises, ~~amplified~~ speech, music or other sounds that a reasonable person would believe ~~is~~ annoying, disturb-disturbing or ~~frighten~~ frightening park users is prohibited.

(b) The operation of motorized equipment or machinery such as a generator, motor vehicle, motorized toy, or an audio device such as a radio, television set, tape deck or musical instrument, or other item that makes noise that is unreasonable between the hours of 10:00PM and 7:00AM is prohibited.

Authority G.S. 113-34; 113-35; 113-264(a).

15A NCAC 12B .1003 INTOXICATING LIQUORS: CONTROLLED SUBSTANCE OR BEVERAGES

~~(a) A person shall not possess or consume any beer, wine, whiskey, controlled substances or any other intoxicating substance within any state park or recreation area.~~

~~(b) A person shall not be or become intoxicated while within any state park or recreation area.~~

~~(c) A person shall not sell or attempt to sell any beer, wine, whiskey, controlled substance or any other intoxicating substance within any state park or recreation area.~~

(a) A person shall not possess or consume any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, within any state park or recreation area, except at the Chimney Rock Attraction and Chimney Rock Restaurant at the Chimney Rock State Park as permitted under a long term operating lease agreement and at the Summit Conference Center, Haw River State Park in specifically designated areas and only after obtaining a special use permit from the Director of the Division or his or her designee under Paragraphs (d) through (i) of this Rule. A person shall not possess or consume any other controlled substance or intoxicating substance within any state park or recreation area.

(b) A person shall not be or become intoxicated while within any state park or recreation area, including during events approved under a Special Use Permit.

(c) A person shall not sell or attempt to sell any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, within any state park or recreation area, except at specifically designated areas in designated parks pursuant to the terms and conditions of a long-term operating lease from the Division. A person shall not sell or attempt to sell any other controlled substance or intoxicating substance within any state park or recreation area.

(d) Applications for a Special Use Permit authorizing the possession or consumption of any malt beverage, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101, shall be made by a special use permit request to the Director of the Division or his or her designee, not less than 14 days prior to the date(s) of the intended use.

(e) The written request shall state the name of the individual, organization or group seeking permission to use any portion of any state park or recreational area for the possession or consumption of any malt beverage, fortified wine, unfortified wine or spirituous liquor and shall list the name and address of its president, vice president(s), secretary and treasurer or its

principal chief executive officer or officers, its directors, if any, and such other pertinent information as may be required by the Director of the Division, or his or her designee, sufficient to clearly identify the organization submitting the request and the individuals principally engaged in the conduct of its affairs.

(f) The written request shall clearly state the period of time and the area for which the use is requested the number of persons expected to be in attendance, and such other pertinent information as may be required by the Director of the Division or his or her designee. The Special Use Permit shall specify the hours of permitted use, type of malt beverage, fortified wine, unfortified wine or spirituous liquor, the total amounts to be brought into the Park, and the maximum number of attendees.

(g) In the event that the Director of the Division or his or her designee shall conclude that the requested use shall not hinder or impede any regularly established use of the Haw River State Park and Chimney Rock State Park and shall not adversely affect or threaten their care, protection or maintenance or create a nuisance by such use, he or she may grant permission to use the state park or recreation area specified in the request or long term operating lease submitted in accordance with this Rule. If the Director or his or her designee shall determine otherwise, he shall deny the request.

(h) The Director of the Division or his or her designee shall designate appropriate areas and occasions in the designated parks under this Rule, suitable for possession or consumption of malt beverages, fortified wine, unfortified wine or spirituous liquor as defined in G.S. 18B-101. Such areas and occasions will be limited so as not to interfere, or cause user conflicts, with other groups or individuals also visiting the state park but not requesting the Special Use Permit. Examples of appropriate areas include, but are not limited to meeting rooms, restaurants, cafeterias, lodging rooms and other similar areas in which user conflicts are minimized. Examples of permitted occasions include, but are not limited to receptions, weddings and retreats.

(i) The applicant for a Special Use Permit shall comply with all state or local laws, rules or ordinances related to the possession or consumption of any malt beverage, fortified wine or unfortified wine, as defined in G.S. 18B-101.

Authority G.S. 113-35.

15A NCAC 12B .1004 ANIMALS AT LARGE

(a) A person shall not cause or permit any animal owned by him, in his custody, or under his control, except an animal restrained by a leash not exceeding six feet in length, to enter any park area. Each animal found at large may be seized and disposed of as provided by local law covering disposal of stray animals on public property.

(b) Animals, with the exception of service animals, shall not be allowed in swimming areas, ~~bathhouse, bathhouses, restaurant, restaurants, visitor centers, park offices, community buildings~~ or cabin areas under any ~~circumstances, circumstances unless an area or facility is designated as pet friendly.~~

(c) Animals shall not be unattended at any time within any park area.

(d) Between 9:00 p.m. and 7:00 a.m., animals will be confined to owner's enclosed vehicle or tent.

(e) Any animal causing a nuisance within a park area shall be removed by the owner from the park area upon the request by a division official.

(f) Pack animals and goats shall not be allowed in any park except by Special Activity Permit.

Authority G.S. 113-35.

**SECTION .1100 - COMMERCIAL ENTERPRISES:
ADVERTISING; MEETINGS; EXHIBITIONS; ETC.**

15A NCAC 12B .1101 COMMERCIAL ENTERPRISES

(a) Only authorized park employees, contractors or their agents may engage in business or conduct commercial activity in ~~the parks; a park,~~ unless authorized by a special activity permit for a specific event.

(b) Craftsmen shall not be allowed to display their crafts in a park except when authorized for a special event under a special use activity permit. ~~permit to display their crafts at special events. Sales cannot be made but orders can be taken. Sales cannot be made except in conjunction with a park sponsored special event under permit.~~

(c) Applications for permits ~~may~~ shall be made as provided by rule .0104 of this Subchapter.

Authority G.S. 113-35.

**15A NCAC 12B .1105 PUBLIC ASSEMBLIES AND
MEETINGS; SPECIAL ACTIVITY PERMIT**

~~A person shall not hold any meetings, or exhibitions, perform any ceremony, or make any speech, unless he has a permit. Applications for permits may be made as provided in Rule .0104 of this Subchapter.~~

(a) Public assemblies, meetings, gatherings, demonstrations, events, religious activities and other public expressions of views (hereinafter "event or activity") protected under the First Amendment of the U.S. Constitution, including the distribution of non-commercial printed matter, are allowed within State Parks, so long as the requirements of this Section are met.

(b) Where the number of persons expected to attend or participate in the event or activity is 20 or less, no Special Activity Permit is required. If more than 20 persons are expected to attend or participate, approval under this Rule is required. The Park Superintendent or his or her designee shall also determine if a Special Activity Permit is required by groups that have concurrently reserved shelters, lodges or similar meeting places.

(c) An application for such a Special Activity Permit shall be made at least 14 days in advance of the event or activity; shall set forth the name, address and phone number of the applicant; the name of the organization (if any); the name, address and phone number of a contact person; the date, time, duration, nature and location of the proposed event or activity; the estimated number of persons expected to participate; the equipment and facilities to be used; and any other information required by the permit application form. The 14 day time frame may be waived if good cause is presented by the applicant. Special Activity Permit applications will be approved or denied within 10 business days.

(d) The Park Superintendent or his or her designee shall issue a Special Activity Permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made and has been or will be granted; and the activities for a permit for the same time and location has been made and has been or will be granted; and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular location; or

(2) It reasonably appears that the event or activity will threaten the health, safety and welfare of persons using the Park; or

(3) The event or activity is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to Park resources or facilities; impairment of the atmosphere of peace and tranquility in specially protected natural or historic areas; interference with interpretative programs, visitor services or other program activities, or the administrative activities of the Park; or impairment of public use facilities or services of Park concessionaires or contractors; or

(4) The event or activity would constitute a violation of an applicable law or regulation.

(e) The permit may contain such conditions as are reasonably consistent with protection and use of the Park for the purposes for which it is operated, including limitations on the time, location, number of participants, use and facilities, and number and types of equipment used, but not on the content or viewpoint of the message. Locations which may not be appropriate for Special Activity Permit events or activities include, but are not limited to: archaeological and interpretive program areas, historic structures; boat ramps; trails; sensitive or fragile natural areas; campgrounds; designated swimming beaches; scenic overlooks and the habitats of threatened or endangered species.

(f) No permit shall be issued for a period in excess of 48 hours, and the timing of activities are subject to normal Park operating hours. Permits may be extended for like periods, upon a new application, unless another applicant has requested use of that same location and multiple occupancy of that location is not reasonably possible.

(g) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(h) Regardless of whether a permit is required, participants in events or activities covered under this Section shall be subject to Park rules or directives, adherence to locations specified for their event or activity while partaking in such event or activity; shall be subject to usual fees for parking, admission or use; shall not place printed materials on Park signs, infrastructure, natural resources or vehicles; shall not obstruct or impede pedestrians or vehicles, or harass Park visitors with physical contact or persistent demands; and shall not threaten the health, safety and welfare of persons using the Park.

(i) The Park Superintendent shall designate, and maintain information on, locations not available for events or activities.

Locations may be designated as not available only if such activities would:

- (1) Cause injury or damage to park resources or facilities;
- (2) Unreasonably impair the atmosphere of peace and tranquility maintained in specially protected natural or historic areas;
- (3) Unreasonably interfere with interpretive programs, visitor services, or other program activities, or with the administrative activities of the Park;
- (4) Substantially impair the operation of public use facilities or services of Park concessioners or contractors;

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit by the Park Superintendent or his or her designee.

Authority G.S. 113-35.

SECTION .1200 - MISCELLANEOUS

15A NCAC 12B .1201 CLOSING AND OPENING HOURS; RESTRICTED AREAS

(a) ~~No person except authorized park employees, their agents and contractors, law enforcement officers and firemen shall be allowed within the park between posted closing and opening hours except under permit. Applications for permits may be made as provided by Rule .0104 of this Subchapter.~~

(b) General hours of operation are as follows:

Nov., Dec., Jan., & Feb.	8:00 a.m. - 6:00 p.m.
March, October	8:00 a.m. - 7:00 p.m.
April, May, September	8:00 a.m. - 8:00 p.m.
June, July, August	8:00 a.m. - 9:00 p.m.

Note: The hours of operation for natural areas and undeveloped parks may vary from the listed hours in this Rule and if the hours vary, are posted at such natural areas and undeveloped parks.

(c) The Division may prohibit or restrict public activity within environmentally sensitive areas, areas exceeding capacity levels, construction areas, storm damaged areas and other similar locations for natural resource protection and public safety.

Authority G.S. 113-35.

15A NCAC 12B .1205 RESERVATION PERIODS

(a) ~~Campers may make reservations~~ Reservations for camping permits, cabins, shelters, community buildings and other facilities will be made using the Division's central reservation system, in recreation areas by indicating to the Division representative at the desired location, the specific dates of the desired camping period either by letter or in person during regular office hours. Permits will be issued upon arrival at the park from a Division representative.

~~(b) With the exception of group camping permits, reservations~~ Reservations for park facilities camping permits in state parks will not be accepted. accepted up to a maximum of 11 months in advance of the requested arrival date with a minimum of 48 hours before arrival.

(c) Reservations for group camping permits are required prior to any group camping in a state park or recreation area. The provisions of 15A NCAC 12B .1205 will apply to reservations for group camping permits in state parks and recreation areas.

(d) ~~Reservations for camping permits in recreation areas will only be accepted for a minimum period of seven days and a maximum period of fourteen days.~~ Campsites can be reserved for a maximum of 14 consecutive nights within any 30 day period beginning with the first night of stay or as provided by 15A NCAC 12B .0602.

~~(e) Reservations for camping permits in recreation areas will not be accepted to reserve a specific campsite. Specific campsites will be assigned by the Division representative on a first come, first serve basis at the time the camping permit is issued.~~

~~(f)~~(e) Reservations for camping permits in recreation areas will be accepted, and payment of such camping permit fee is required, no later than seven days prior to the first day of the desired camping period. Payment for a reservation permit must be made at the time the reservation is made.

~~(g)~~(f) A refund of a camping permit fee, resulting from the cancellation of a reservation for a camping permit, will be made only upon written request made to and received by the park office of the desired location using the Division's central reservation system, no later than seven days prior to the first day of the reserved camping period. A service charge in an amount equal to a one day camping permit fee will be deducted from the sum to be refunded. Any changes or cancellations made prior to the scheduled arrival date will result in a ten dollar (\$10.00) or otherwise posted service charge. Cancellations made on the scheduled arrival date will be charged one night's camping for each reservation as well as the ten dollar (\$10.00) service charge. No refunds will be issued for no-shows, cancellations, or early departures after the date of arrival. Refunds will be made using the same method of the original transaction, (e.g. credit will refund credit, etc). This applies to all methods of payment, including credit card, gift card, check and cash payment.

Authority G.S. 113-35.

15A NCAC 12B .1206 FEES AND CHARGES

The following fee schedule shall apply at all state parks, state lakes, state recreation areas, and state natural areas under the stewardship of the Department, except for the N.C. Zoological Park. Payment of the appropriate fee shall be a prerequisite for the use of the public service facility or convenience provided. Unless otherwise provided in this Rule, the number of persons camping at a particular campsite may be limited by the park superintendent depending upon the size of the camping group and the size and nature of the campsite. Any senior citizen (person 62 or older) registering for a campsite shall receive the discounted senior citizens rate. A reservation service charge per day-use facility rental or overnight facility rental (on a per night rate) for use of the Central Reservation System is required and shall be added to the fees identified in this Rule for those

PROPOSED RULES

facilities and future facilities rented through the Central Reservation System.

(1)	TYPE OF FACILITY OR CONVENIENCE	FEE
	CAMPING	
(a)	Campsites with electrical hookups, picnic table, and grill. Water, restrooms, and shower facilities also available	\$ 20.00 <u>22.00</u> (per campsite daily) \$ 14.00 <u>16.00</u> (senior citizens daily, 62 or older)
(b)	Campsites with picnic table and grill. Water, restrooms, and shower facilities also available.	\$ 15.00 <u>17.00</u> (per campsite daily) \$ 10.00 <u>12.00</u> (senior citizens daily, 62 or older)
(c)	Primitive, unimproved campsites with pit privies. Fresh water also available.	\$ 9.00 <u>10.00</u> (per campsite, daily)
(d)	Primitive group tent camping, unimproved campsites with pit privies.	\$ 1.00 <u>2.00</u> (per person, with \$9.00 <u>\$10.00</u> minimum)
(e)	Improved Group Camping (water, restrooms and shower facilities available.	\$ 40.00 <u>45.00</u> (per day/maximum capacity 35) \$ 50.00 <u>55.00</u> (per day/maximum capacity 50) \$105.00 <u>115.00</u> (per day/maximum capacity 100)
(f)	Group Lodge William B. Umstead State Park	\$ 30.00 <u>35.00</u> (per day/maximum 25 people)
(g)	Group Camps	
	(i) William B. Umstead State Park	Daily April, May, Sept., Oct. \$ 30.00 <u>35.00</u> One Unit per day \$ 75.00 <u>85.00</u> Mess Hall per day
		Weekly Only June thru August \$ 375.00 <u>400.00</u> Camp Crabtree \$ 375.00 <u>400.00</u> Camp Whispering Pines \$ 425.00 <u>450.00</u> Camp Lapihio
	(ii) Singletary Lake State Park	Daily April, May, Sept. Oct. \$ 95.00 <u>110.00</u> Camp Ipecac, Camp Loblolly \$ 40.00 <u>45.00</u> Cabin Unit per day \$ 75.00 <u>85.00</u> Mess Hall per day
		Weekly Only June thru August \$ 390.00 <u>425.00</u> Camp Ipecac Camp Loblolly
		Nov. - March Camp Loblolly available at Weekly or daily rates.
(h)	Equestrian Facilities	Daily January - Dec. Per Campsite
	(i) Campsite with picnic table and grill	\$ 15.00 <u>22.00</u>
	(ii) Horse Stalls	\$ 7.00 <u>10.00</u> 5' X 10' Per Day \$ 10.00 <u>15.00</u> 10' X 10' Per Day
(2)	<u>CABINS (not available Dec.-Feb.) (reservation-by reservation only at Hanging Rock State Park and Morrow Mountain State Park) (Cabin rentals are restricted to seven consecutive nights in a calendar year at an individual park).</u>	\$ 500.00 <u>\$425.00</u> (per week only from June 1 st until Labor Day) \$ 520.00 <u>\$450.00</u> (per week only from June 1 st to Labor Day, with swimming privileges). \$ 100.00 <u>\$85.00</u> (per day rest of year) <u>Labor Day to May 31st per day</u> <u>with up to a maximum weekly rate</u>

PROPOSED RULES

		of \$425.00).
(3)	SWIMMING/BATHHOUSE	\$ 4.00 <u>5.00</u> (per adult, age 13 and over)
		\$ 3.00 <u>4.00</u> (per child, ages 3-12)
(4)	BOAT RAMPS	\$ 4.00 (per boat)
(5) (4)	ROWBOAT/CANOE RENTAL	\$ 5.00 (for first hour)
		\$ 3.00 (for each additional hour)
(6) (5)	PADDLE BOAT RENTAL	\$ 5.00 (for first hour)
		\$ 3.00 (for additional hour)
(7) (6)	PICNIC SHELTER RENTAL	\$ 25.00 <u>30.00</u> (1-2 tables)
	(By reservation only)	\$ 40.00 <u>45.00</u> (3-4 tables)
		\$ 60.00 <u>70.00</u> (5-8 tables)
		\$ 85.00 <u>95.00</u> (9-12 tables)
(8) (7)	ADMISSION-PARKING FEE (Kerr Lake, Jordan and Falls only)	\$ 5.00 <u>6.00</u> (per car)
		\$ 3.00 <u>4.00</u> (per car-senior citizens 62 or older)
		\$ 10.00 <u>15.00</u> (per bus)
		\$ 30.00 <u>40.00</u> (for 10 daily passes)
		\$ 40.00 <u>50.00</u> (for annual pass)
(9) (8)	HAMMOCKS BEACH FERRY	\$ 5.00 (per adult, age 13 and over)
		\$ 3.00 (Sr. Citizen and per child, ages 6-12)
	Annual Ferry Pass	\$ 50.00
(10) (9)	COMMUNITY BUILDINGS	\$ 175.00 <u>185.00</u>
(11) (10)	SPECIAL ACTIVITY PERMIT	\$ 30.00 <u>35.00</u> (permit fee plus any additional appropriate charges)
(12) (11)	CATCH AND RELEASE FISHING (Stone Mountain State Park)	\$ 15.00 <u>22.00</u> per day per section
(13) (12)	SLIP RENTAL AND OTHER FEES FOR THE CAROLINA BEACH STATE PARK MARINA (All slip rental fees shall be paid in full at the time the lease is executed.)	
	(a) Transient, overnight dockage (no longer than 14 days in any 30 day period.)	\$ 20.00 <u>30.00</u>
	(b) Slip Rental (Fees charged according to term of lease and vessel size.) One month lease	
	25 feet and smaller	\$ 175.00 <u>310.00</u>
	26 feet to 35 <u>30</u> feet	\$ 260.00 <u>335.00</u>
	36-31 feet to 42 <u>35</u> feet	\$ 305.00 <u>390.00</u>
	43-36 feet to 45 <u>40</u> feet	\$ 345.00 <u>495.00</u>
	(c) Six month lease (runs 183 days from date executed)	
	25 feet and smaller	\$ 830.00 <u>2035.00</u>
	26 feet to 35 <u>30</u> feet	\$ 1250.00 <u>2250.00</u>
	36-31 feet to 42 <u>35</u> feet	\$ 1460.00 <u>2450.00</u>
	43-36 feet to 45 <u>40</u> feet	\$ 1665.00 <u>3335.00</u>
	(d) Twelve month lease (runs 365 days from date executed)	
	25 feet and smaller	\$ 1250.00 <u>3510.00</u>
	26 feet to 35 <u>30</u> feet	\$ 1875.00 <u>3965.00</u>
	36-31 feet to 42 <u>35</u> feet	\$ 2185.00 <u>4570.00</u>
	43-36 feet to 45 <u>40</u> feet	\$ 2500.00 <u>5620.00</u>
	(e) Boat Launching Fee	\$ 5.00 <u>6.00</u>
	(f) Holding Tank Pump Out	\$ 12.00 <u>20.00</u>
	(g) Battery Charging Service	\$ 4.00 <u>5.00</u>
(14) (13)	Fort Fisher 4WD Beach Access Annual Permit	
	(a) Daily Permit	\$ 10.00 <u>12.00</u>
	(b) Annual Permit	\$ 40.00 <u>50.00</u>

Authority G.S. 113-35(b).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSION

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Dental Examiners intends to adopt the rules cited as 21 NCAC 16A .0201-.0202 and amend the rules cited as 21 NCAC 16C .0405; 16Q .0301-.0302.

Proposed Effective Date: March 1, 2010

Public Hearing:

Date: December 10, 2009

Time: 7:00 p.m.

Location: Offices of the State Board of Dental Examiners, 507 Airport Blvd, Suite 105, Morrisville, NC 27560

Reason for Proposed Action:

21 NCAC 16A .0201-.0202 – provide an extension of time to pay license or renewal fees and for a waiver of continuing education requirements for certain members of the Armed Forces, as required by Session Law 2009-458.

21 NCAC 16C .0405 – requires hygiene applicants who fail the clinical licensure examination to re-take the written examination, unless the applicant successfully passes the clinical examination within one year of passing the written examination.

21 NCAC 16Q .0301 – permits dentists who have successfully completed at least 100 moderate pediatric sedation cases between July 3, 2006 and July 3, 2009 to qualify for a moderate pediatric sedation permit.

21 NCAC 16Q .0302 – clarifies that CRNAs may administer moderate pediatric sedation with appropriate supervision of a dentist and that dentists who travel to the office of another dentist to administer sedation may only provide sedation at the level for which they hold a valid permit or a lower level of sedation.

Procedure by which a person can object to the agency on a proposed rule: Submit objections in writing to Bobby D. White, Chief Operations Officer, NC Board of Dental Examiners, 507 Airport Blvd., Suite 105, Morrisville, NC 27560.

Comments may be submitted to: Bobby D. White, 507 Airport Blvd., Suite 105, Morrisville, NC 27560

Comment period ends: January 15, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

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

SUBCHAPTER 16A – ORGANIZATION

21 NCAC 16A .0201 DEFINITIONS

The following definitions will apply only to this Section:

- (1) "Dental Board" -- the North Carolina State Board of Dental Examiners.
(2) "Eligible licensees" -- all dentists and hygienists currently licensed by and in good standing with the North Carolina State Board of Dental Examiners who are serving in the armed forces of the United States and who are eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.
(3) "Extension period" -- the time period disregarded pursuant to 26 U.S.C. 7508.
(4) "Good standing" -- a dentist or hygienist whose license is not suspended or revoked.

Authority G.S. 90-28; 93B-15.

21 NCAC 16A .0202 EXEMPTIONS GRANTED

- (a) Eligible licensees are hereby granted a waiver of their mandatory continuing education requirements.
(b) Eligible licensees are hereby granted an extension period in which to pay license renewal fees and comply with all other requirements imposed by the Dental Board as conditions for maintaining licensure and current sedation permits.

Authority G.S. 90-28; 93B-15.

SUBCHAPTER 16C - LICENSURE DENTAL HYGIENISTS

SECTION .0400 – LICENSURE BY EXAMINATION CONDUCTED BY THE BOARD

21 NCAC 16C .0405 REEXAMINATION

- (a) A complete application, except for official proof of graduation as required by G.S. 90-224(a) and National Board score, is required in case of reexamination.
(b) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination conducted by the Board must also re-take the written examination unless the applicant successfully passes the clinical examination within one year of passing the written

~~examination. need not retake the written portion of the examination upon subsequent reexamination during one calendar year.~~

(c) Any applicant who has passed the clinical portion of the examination conducted by the Board but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination upon the second reexamination, the applicant must retake both the written and clinical portions of the examination upon subsequent reexamination.

(d) Any applicant who has failed the written or clinical portions of the examination three times shall successfully complete an additional Board approved course of study in the area(s) of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for re-examination.

Authority G.S. 90-223; 90-224.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0300 - PARENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0301 CREDENTIALS AND PERMITS FOR MODERATE CONSCIOUS SEDATION, MODERATE PEDIATRIC CONSCIOUS SEDATION AND MODERATE CONSCIOUS SEDATION LIMITED TO ORAL ROUTES OF ADMINISTRATION AND NITROUS OXIDE

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist (CRNA) to administer moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes of administration and nitrous oxide to dental patients on an outpatient basis, the dentist shall obtain a permit from the Board by completing an application form provided by the Board and paying a fee of one hundred dollars (\$100.00). Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the facility of the permit holder.

(b) For a dentist to employ a certified registered nurse anesthetist to administer moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide or moderate pediatric conscious sedation, the dentist must demonstrate through the permitting process that he/she is capable of performing all duties and procedures to be delegated to the CRNA. The dentist must not delegate said CRNA to perform procedures outside of the scope of the technique and purpose of moderate conscious sedation, moderate pediatric conscious sedation or moderate conscious sedation limited to oral routes and nitrous oxide as defined in Rule .0101 of this Subchapter.

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

- (1) Satisfactory completion of a minimum of 60 hours of didactic training, including PALS, and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of a pre-doctoral dental or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (c)(1) of this Rule.

(d) Notwithstanding the foregoing, a dentist may also qualify for a permit to administer moderate pediatric conscious sedation by documenting, with patient names and dates of completion, at least 100 cases of moderate pediatric sedation procedures successfully completed between July 3, 2006 and July 3, 2009. A dentist who obtains a pediatric conscious sedation permit pursuant to this subsection may not administer sedation intravenously and such limitation shall be noted on the dentist's permit.

~~(e)~~ A dentist may modify his/her moderate conscious sedation permit to include the privilege of moderate pediatric conscious sedation by completing a Board approved pediatric dental degree or pediatric dental residency program or obtaining the equivalent hours of continuing education program in pediatric dental anesthesia. If said qualifications are satisfied, it shall be so designated on the dentist's moderate conscious sedation permit and will be subject to the renewal requirements stated in Rule .0501(d) of this Subchapter.

~~(f)~~ To be eligible for a moderate conscious sedation permit, moderate conscious sedation limited to oral routes and nitrous oxide inhalation permit or moderate pediatric conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, and is staffed with supervised auxiliary personnel for each procedure performed. The dentist shall ensure that auxiliary personnel document annual, successful completion of basic life support (BLS) training and are capable of assisting with procedures, problems and emergencies incident thereto.

~~(g)~~ Prior to issuance of a moderate conscious sedation permit, moderate conscious pediatric sedation permit or moderate conscious sedation permit limited to oral routes and nitrous oxide inhalation permit, the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

~~(h)~~ The evaluator shall assign a grade of pass or fail and shall report his recommendation to the Board, setting out the basis for

his conclusion. The Board is not bound by the evaluator's recommendation and shall make a final determination regarding whether the applicant has passed the evaluation. The applicant shall be notified of the Board's decision in writing.

~~(i)(4)~~ A dentist who holds a moderate conscious sedation, moderate conscious sedation limited to oral routes and nitrous oxide inhalation or moderate pediatric conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly and unintentionally.

~~(j)(4)~~ A dentist may obtain a moderate conscious sedation permit limited to oral routes of administration and nitrous oxide inhalation, including the ability to add supplemental dosing to the techniques set out in Rule .0101(23) of this Subchapter upon compliance with the following requirements:

- (1) successfully complete 24 hours of didactic training and manage at least 10 adult case experiences, including at least three live clinical dental experiences. The live clinical cases shall not be handled by groups with more than five student participants. The remaining cases may include simulations, video presentations or both, but must include one experience in returning/rescuing a patient from deep to moderate sedation; or
- (2) document, with patient names and dates of completion, at least 100 cases of oral moderate conscious sedation procedures successfully completed within one year preceding the effective date of these Rules; and
- (3) fulfill all the requirements listed in Rule .0401 of this Subchapter for minimal conscious sedation.

~~(k)(4)~~ A dentist who is qualified to administer general anesthesia, moderate conscious sedation or moderate pediatric conscious sedation and holds a general anesthesia, moderate conscious sedation permit or a moderate pediatric conscious sedation permit may administer minimal conscious sedation without obtaining a separate minimal conscious sedation permit.

~~(l)(4)~~ Any dentist who holds an active parenteral conscious sedation permit as of October 1, 2007 shall be deemed to hold an active moderate conscious sedation permit. Such permits shall be subject to the renewal requirements set out in Rule .0501 of this Subchapter.

Authority G.S. 90-28; 90-30.1.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation or supervising the administration of moderate conscious sedation or moderate pediatric conscious sedation by a certified registered nurse anesthetist shall ensure that the facility in which the sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to

permit effective emergency management;

- (B) A CPR Board or a dental chair without enhancements, suitable for providing emergency treatment;
 - (C) Lighting as necessary for specific procedures; and
 - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction.
- (2) The following equipment is maintained:
 - (A) Positive oxygen delivery system, including full face mask for adults and pediatric patients and back-up E-cylinder portable oxygen tank apart from the central system;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device;
 - (D) Pulse oximeter; and
 - (E) Automatic External Defibrillator (AED).
 - (3) The following emergency equipment is maintained:
 - (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
 - (B) Syringes as necessary for specific procedures; and
 - (C) Tourniquet and tape.
 - (4) The following drugs are maintained with a current shelf life and within easy access from the operatory and recovery area:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Narcotic antagonist;
 - (D) Antihistamine;
 - (E) Corticosteroid;
 - (F) Nitroglycerine;
 - (G) Bronchial dilator;
 - (H) Antiemetic;
 - (I) Benzodiazepine antagonist; and
 - (J) 50% Dextrose.
 - (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and
 - (6) The following records are maintained for at least 10 years:
 - (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Drugs administered during the procedure, including route of administration, dosage, strength, time and sequence of administration;
 - (C) A sedation record which shall include:
 - (i) blood pressure;

- (ii) pulse rate;
- (iii) respiration;
- (iv) duration of procedure;
- (v) documentation of complications or morbidity; and
- (vi) status of patient upon discharge.

(b) During an inspection or evaluation, the applicant or permit holder shall demonstrate the administration of moderate conscious sedation on a patient, or where applicable, moderate pediatric conscious sedation on a patient, including the deployment of an intravenous delivery system, while the evaluator observes. Practices limited to pediatric dentistry will not be required to demonstrate the deployment of an intravenous delivery system. Instead, they will orally describe to the evaluator the technique of their training in intravenous and intraosseous deployment. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression, if applicable;
- (4) Sterile technique;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;
- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering moderate conscious sedation or moderate pediatric conscious sedation shall ensure that the facility is staffed with sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of a moderate pediatric conscious sedation or moderate conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide sedation services at the level for which the traveling dentist holds a valid permit, as well as minimal sedation or moderate conscious sedation limited to oral routes ~~minimal~~

~~sedation, moderate conscious sedation or moderate pediatric conscious sedation services~~ for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the facility in which the sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication. Holders of moderate conscious sedation permits limited to oral routes and nitrous oxide inhalation may not provide sedation at the office of a licensed dentist who does not hold an appropriate sedation permit.

Authority G.S. 90-28; 90-30.1; 90-48.

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Massage and Bodywork Therapy intends to amend the rule cited as 21 NCAC 30 .0303.

Proposed Effective Date: April 1, 2010

Public Hearing:

Date: December 10, 2009

Time: 11:00 a.m.

Location: Wachovia Capitol Center, 13th Floor Conference Room, 150 Fayetteville St., Raleigh, NC

Reason for Proposed Action: This amendment is being submitted pursuant to Session Law 2009-458.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to this proposed amendment by submitting a written statement to Charles P. Wilkins at P.O. Box 2539, Raleigh, NC 27602 postmarked on or before January 15, 2010.

Comments may be submitted to: Charles P. Wilkins, P.O. Box 2539, Raleigh, NC 27602, phone (919) 833-2752, fax (919) 833-1059, and email cwilkins@bws-law.com

Comment period ends: January 15, 2009

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission

approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact:

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

SECTION .0300 - LICENSING

21 NCAC 30 .0303 LICENSE RENEWAL

- (a) Any licensee desiring the renewal of a license shall comply with all continuing education requirements, shall apply for renewal and shall submit the required fee.
- (b) A license that has not been renewed prior to its expiration date is considered expired. An expired license may be reinstated within the first 24 months. All required continuing education for license renewal must be completed before the license is reinstated.
- (c) Licenses expired in excess of 24 months are not renewable. Persons whose licenses have been expired for more than 24 months must apply for a new license.
- (d) Any person whose license has expired and who engages in any massage and bodywork therapy activities governed by the Practice Act will be subject to the penalties prescribed in G.S. 90-634 and G.S. 90-634.1.
- (e) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the license renewal fee and to complete the continuing education requirement prescribed in Rule 21 NCAC 30 .0700. A copy of military orders or the extension approval by the Internal Revenue Service must be furnished to the Board. If approved, continuing education acquired during this extended time period shall not be utilized for future renewal purposes.

Authority G.S. 90-626(3); 90-626(9); 90-631; 93b-15(B); 105-249.2.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rules cited as 23 NCAC 02C .0305 and 02D .0325 and adopt the rule cited as 23 NCAC 02D .0329.

Proposed Effective Date: April 1, 2010

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, Rulemaking Coordinator, NC Community College System, 200 West Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by emailing the demand to publiccomments@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.*

Reason for Proposed Action:

- 23 NCAC 02C .0305** – "Education Services for Minors" is proposed for amendment because the Legislature in G.S. 115D-1.2(b) directed the State Board of Community Colleges to adopt rules to implement the Learn and Earn Online program.
- 23 NCAC 02D .0325** – "Limitations in Reporting Student Membership Hours" is proposed for amendment because the proposed deletion is no longer consistent with the current law.
- 23 NCAC 02D .0329** – "Maintenance of Plant Flexibility" is proposed for adoption to comply with Session Law 2009-451.

Procedure by which a person can object to the agency on a proposed rule: *Written objections shall be addressed to President, NC Community College System Office, 5001 Mail Service Center, Raleigh, NC 27699-5001 within the comment period and must be postmarked by 11:59 p.m. on the last day of the comment period.*

Comments may be submitted to: *Q. Shanté Martin, Rulemaking Coordinator, 5001 Mail Service Center, Raleigh, NC 27699-5001; email publiccomments@nccommunitycolleges.edu*

Comment period ends: January 15, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review:

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

Fiscal Impact:

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

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0300 - STUDENTS

23 NCAC 02C .0305 EDUCATION SERVICES FOR MINORS

(a) The State Board shall encourage individuals to complete high school before seeking admission to a college.

(b) Drop-out. A minor, 16 years old or older, ~~may be considered a student with special needs and who is not currently enrolled in a public or private educational agency~~ may be admitted to ~~an appropriate~~ a Basic Skills or Continuing Education program at a college if the local public or private educational agency determines that admission to ~~the~~ a Basic Skills or Continuing Education program is the best educational option for the student and the admission of the student to ~~the~~ a Basic Skills or Continuing Education program is approved by the ~~college/college~~ under one of the following conditions: ~~This requirement may be waived if the student has been out of school at least six months and the application is supported by a notarized petition of the student's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.~~

(1) If the minor, 16 years old or older, has officially withdrawn from a public or private educational agency in less than six months, a college may admit the minor to a Basic Skills or Continuing Education program if the minor obtains a signed official withdrawal form from the local public or private educational agency and a notarized petition of the minor's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the minor's residence, date of birth, date of leaving school, name of last school attended, and the petitioner's legal relationship to the minor.

(2) If the minor, 16 years old or older, has officially withdrawn from a public or private educational agency for at least six months, a college may admit the minor to a Basic Skills or Continuing Education program without the release form from the public or private educational agency. However, the minor must obtain a notarized petition of the minor's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the minor's residence, date of birth, date of leaving school, name of last school attended, and the petitioner's legal relationship to the minor.

(3) If the minor is an emancipated minor, the requirement for the release form from the public or private educational agency and the requirement for the notarized petition are waived. The minor must provide legal documentation of emancipation. Admission

requirements for an emancipated minor shall be the same as for an applicant 18 years old or older.

(c) Concurrent Enrollment. A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to any curriculum course one hundred level and above or any continuing education course, except adult basic skills, concurrently under the following conditions:

- (1) Upon recommendation of the chief administrative school officer and approval of the president of the college;
- (2) Upon approval of the student's program by the chief administrative school officer and the president of the college; and
- (3) Upon certification by the Chief Administrative School Officer that the student is taking the equivalent of one-half of a full-time schedule and is making progress toward graduation.

(d) High school students, taking courses pursuant to ~~Paragraphs (b) and~~ Paragraph (c) of this Rule, shall not displace adults but may be admitted during any term on a space-available basis to any curriculum course one hundred level and above or any continuing education course, except adult basic skills. Once admitted, they shall be treated the same as all other students.

(e) Huskins. Local boards of trustees and local school boards may establish cooperative programs in areas they serve in order to provide college courses to high school students. College credits shall be awarded to those high school students upon successful completion of the courses. Cooperative programs shall be approved, prior to implementation, by the State Board or its designee.

(f) Learn and Earn Online Program:

(1) Definition of Credits. For the purposes of this section, credits mean curriculum courses 100 level or above. For the purposes of this section, credits do not include continuing education courses, cooperative education courses (COE), selected topics (SEL), or seminar topics (SEM).

(2) Definition of Disabilities. For the purposes of this section, disabilities shall mean "persons with disabilities" as defined in G.S. 168A-3(7a).

(3) Student Eligibility. A student shall be permitted to enroll in any online courses through North Carolina community colleges for college credit, regardless of the college service areas in which the student resides under the following conditions:

(A) The student must be enrolled in a North Carolina school or have completed all high school graduation requirements in a North Carolina school throughout the duration of the online course;

(B) The student must be enrolled in the 9th, 10th, 11th, or 12th grades;

- (C) The student's enrollment in an online course for college credit is subject to space availability;
- (D) The student must meet the prerequisites, co-requisites and course admission requirements as published in the college's catalog at the time the student seeks to enroll in the online course;
- (E) The student is encouraged to complete an online readiness assessment prior to beginning the online course; subject to college having an online readiness assessment;
- (F) A student enrolled in grades 9th, 10th, 11th, or 12th is participating in the Learn and Earn Online program by virtue of enrolling in a Learn and Earn Online course; and
- (G) High school students attending a nonpublic school may enroll in any Learn and Earn Online course with space available that has been offered to but not filled by any eligible public school student.
- (4) Course Eligibility.
- (A) Only online courses in the NCCCS Combined Course Library numbered 100 and above are eligible for Learn and Earn Online credits, excluding cooperative education courses (COE), selected topics (SEL), and seminar topics (SEM).
- (B) Only online courses that generate budget FTE are eligible for Learn and Earn Online credits.
- (C) To be eligible for course credit under the Learn and Earn Online Program, courses must be the same as those delivered to other adult college students.
- (5) Costs.
- (A) A student enrolled in Learn and Earn Online shall be exempt from tuition and calculated as budget FTE regardless of the term during which the instruction is provided.
- (B) North Carolina Community Colleges may seek reimbursement from the Department of Public Instruction for technology, course fees, and textbooks required for course participation.
- (C) A student participating in the Learn and Earn Online program is exempt from any additional college fees.
- (6) Coding. Enrollment in a Learn and Earn Online course shall be coded as T90920.
- (7) Program Completion. If students meet the curriculum program requirements effective at the time of enrollment, they are awarded a certificate, diploma and/or degree. Students shall meet the curriculum program requirements that are applicable to the college from which they are seeking to obtain a certificate, diploma, and/or degree.
- (8) Transfer of Learn and Earn Online courses. Learn and Earn Online courses listed in the North Carolina Comprehensive Articulation Agreement or listed in the North Carolina Independent Comprehensive Articulation Agreement shall be treated the same as all other courses listed in either Agreement.
- (9) Transfer degree. Learn and Earn Online students who obtain a degree listed in the North Carolina Comprehensive Articulation Agreement or listed in the North Carolina Independent Comprehensive Articulation Agreement shall be treated the same as all other students who have obtained a degree listed in either Agreement.
- (10) Persons with Disabilities. Learn and Earn Online students must abide by the college's disability eligibility standards, as set forth by the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, Chapter 1, Part 104, Subchapter E (34 C.F.R. 104.41 through 104.47).
- (~~f~~)(g) Intellectually Gifted and Mature Students. Students less than 16 years old who are mature enough to function well in an adult education setting and are intellectually gifted as evidenced by a score in the range from the 92nd percentile to the 99th percentile on an aptitude and an achievement test selected from a list of tests approved by the System Office may be admitted to community colleges. Tests included on the System Office approved list shall be selected from the Mental Measurements Year Book published by the ~~Buros~~ Buros Institute of Mental Measurements. The student shall be ranked by an official of the student's school in the top 10 percent on the following behavioral characteristics: mature, observant, inquisitive, persistent, innovative, analytical, adaptable, leadership, desire to achieve, self-confidence and communications skills. Students less than 16 years old shall not displace adults but may be admitted any term on a space-available basis to any curriculum course one hundred level and above. Students admitted to community colleges under this Paragraph shall pay the same tuition and fees as other curriculum students.
- (~~g~~)(h) Except as authorized by G.S. 115D-20(4), colleges shall not start classes, offer summer school courses, or offer regular high school courses for high school students.
- (~~h~~)(i) A college may make available to persons of any age non-credit, non-remedial, enrichment courses during the summer reporting period. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the college or high school.
- (~~i~~)(j) At the request of the director of a youth development center having custody of juveniles committed to the Department

of Juvenile Justice and Delinquency Prevention, a college may make available to these juveniles any course offered by that college if they meet the course admission requirements. The director's request shall include the director's approval for each juvenile to enroll in the course.

Authority G.S. 115D-1; 115D-5; 115D-20; S.L. 1995, c. 625.

**SUBCHAPTER 02D - COMMUNITY COLLEGES:
FISCAL AFFAIRS**

**SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL
MANAGEMENT**

**23 NCAC 02D .0325 LIMITATIONS IN REPORTING
STUDENT MEMBERSHIP HOURS**

(a) Student hours shall not be reported for budget/FTE which result from:

- (1) Conferences or visits.
- (2) Seminars or Meetings.
- (3) Programs of a service nature rather than instructional classes.
- (4) Enrollment of high school students not in compliance with 23 NCAC 02C .0301 and 02C .0305.
- (5) Unsupervised classes.
- (6) Proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students shall be registered in the class consistent with Paragraph (a) of Rules .0202 and .0203 of this Subchapter.
- (7) Homework assignments.
- (8) Inter-institutional or intramural sports activities including those of prison inmates.
- (9) Effective July 1, 1993, no budget/FTE shall be generated by occupational extension students after their first repetition of an occupational extension course. Students who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These students shall not generate budget/FTE. The funds collected from these students shall be used by the colleges to offer additional educational courses. This Subparagraph does not apply to fire, rescue, or law enforcement training courses taken by fire, rescue, or law enforcement personnel.

~~(10) Learn and Earn Online Courses.~~

(b) A statement on occupational extension course repetitions consistent with the requirements of this rule shall be included in college advertisements, schedules and catalogs. Students shall be notified during registration that they will be charged the full cost of courses which they have taken twice within a five-year period and in which they wish to enroll. Students shall be

primarily responsible for monitoring course repetitions; however, the colleges shall review records and charge students full cost for courses taken more than twice.

(c) Senior citizens who are legal residents of North Carolina and who wish to enroll in an occupational extension course, shall not be required to pay for taking the course twice. Senior citizens who take an occupational extension course more than twice within a five-year period shall pay their cost for the course based on the amount of funds generated by a student membership hour for occupational extension multiplied by the number of actual hours the class is to be taught. These senior citizens shall not generate budget/FTE. The funds collected from these senior citizens shall be used by the colleges to offer additional educational courses.

(d) Students may repeat occupational extension courses more than once if the repetitions are required for certification, licensure, or recertification. The colleges shall submit annual reports to the State Board of Community Colleges naming the students and the certification, licensure or recertification requirements that necessitated the repetition.

(e) Self-supporting classes shall not be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

(f) Occupational extension instruction shall not be offered in sheltered workshops and adult developmental activity centers (ADAP) except sheltered workshops and ADAP centers may contract with the community college to provide occupational extension courses on a self-supporting basis.

(g) Educational programs offered in a correctional department setting shall report full-time equivalent (FTE) student hours on the basis of contact hours.

Authority G.S. 115D-5.

**23 NCAC 02D .0329 MAINTENANCE OF PLANT
FLEXIBILITY**

(a) Notwithstanding any other provision of law, a community college that received State funds for maintenance of plant pursuant to G.S. 115D-31.2 for the 2008-2009 fiscal year may use non-instructional State funds allocated to it through the institutional support allotment for maintenance of plant for the 2009-2010 and 2010-2011 fiscal years.

(b) The amount of these funds used for the 2009-2010 fiscal year for maintenance of plant shall not exceed the total amount of maintenance of plant funds received for the 2008-2009 fiscal year. The amount of these funds used for the 2010-2011 fiscal year for maintenance of plant shall not exceed 50 percent of the amount of maintenance of plant funds received for the 2008-2009 fiscal year. This Section shall be effective for the 2009-2011 fiscal biennium.

Authority G.S. 115D-5; S.L. 2009-451, s. 8.17(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends

to amend the rules cited as 23 NCAC 03A .0101 and .0102 and adopt the rule cited as 23 NCAC 03A .0116.

Proposed Effective Date: July 1, 2010

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To demand a public hearing please send the written demand to Q. Shanté Martin, Rulemaking Coordinator, NC Community College System, 200 West Jones Street, 5001 Mail Service Center, Raleigh, NC 27699-5001 or by emailing the demand to publiccomments@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.

Reason for Proposed Action: To comply with the enactment of Session Law 2009-562 and G.S. 115D-95.1.

Procedure by which a person can object to the agency on a proposed rule: Written objections shall be addressed to President, NC Community College System Office, 5001 Mail Service Center, Raleigh, NC 27699-5001 within the comment period and must be postmarked by 11:59 p.m. on the last day of the comment period.

Comments may be submitted to: Q. Shanté Martin, Rulemaking Coordinator, 5001 Mail Service Center, Raleigh, NC 27699-5001; email publiccomments@nccommunitycolleges.edu

Comment period ends: January 15, 2010

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

Fiscal Impact:

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

CHAPTER 03 - MISCELLANEOUS PROGRAMS

SUBCHAPTER 03A - PROPRIETARY SCHOOLS

SECTION .0100 - BUSINESS, TRADE AND TECHNICAL SCHOOLS

23 NCAC 03A .0101 DEFINITIONS AND APPLICATION FOR INITIAL LICENSE

(a) Classes or schools conducted by employers for their own employees are exempt from the provisions of this Subchapter. Employers may contract with third party agencies to provide training for their employees. Schools or classes conducted by third party agencies for an employer to train his employees are exempt from the provisions of this Subchapter.

(a)(b) The following terms shall have the following meaning in this Subchapter unless the context of a specific rule requires a different interpretation.

- (1) "Proprietary school" means any proprietary business school, proprietary trade school, proprietary technical school, or correspondence school which:
(A) offers postsecondary education or training for profit or for a tuition charge or offers classes for the purpose of teaching, for profit or for a tuition charge, any program of study or teaching one or more of the courses or subjects needed to train and educate an individual for employment; and,
(B) has any physical presence within the State of North Carolina; and,
(C) is privately owned and operated by an owner, partnership or corporation.
(1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars (\$1,000,000).
(2) "Classes or schools" as stated in G.S. 115D-88(4a) means classes or schools, which are offered by the seller of the equipment or the seller's agent.
(3) "Equipment" as stated in G.S. 115D-88 includes software.
(4) "Classes or schools" conducted by employers for their own employees are exempt. Employers may contract with third party agencies to provide training for their employees. Schools or classes conducted by third party agencies for an employer to train his employees are exempt.
(4) "Five or fewer students" as stated in G.S. 115D-88(4b) means the total number of students at the time of maximum enrollment during any term.
(5) "Users" as defined in G.S. 115D-88(4a) means employees or agents of purchasers.
(5) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The fund cap amount is one million five hundred thousand dollars (\$1,500,000).

- ~~(6)~~ "Five or fewer students" as stated in G.S. 115D-88(4b) means total number of students at the time of maximum enrollment during any term.
 - (6) "Proprietary school" means any business school, trade school, technical school, or correspondence school which:
 - (A) offers postsecondary education or training for profit or for a tuition charge or offers classes for the purpose of teaching, for profit or for a tuition charge, any program of study or teaching one or more of the courses or subjects needed to train and educate an individual for employment; and
 - (B) has any physical presence within the State of North Carolina; and
 - (C) is privately owned and operated by an owner, partnership or corporation.
 - (7) "Remote sites" means approved instructional environments in the same county that do not have any administrative staff or administrative functions such as recruiting, accounting and record keeping taking place.
 - (8) "Reserve amount" means the difference between the catastrophic loss amount and the fund cap amount. Its purpose is to reduce the possibility of the Student Protection Fund being completely depleted. The reserve amount is five hundred thousand dollars (\$500,000).
 - (9) "Student Protection Fund" is a statewide fee-supported fund. The purpose of the Student Protection Fund is to compensate students enrolled in a proprietary school licensed under G.S. 115D-90 who have suffered a loss of tuition, fees, or any other instruction-related expenses paid to the school by reason of the failure of the school to offer or to complete student instruction, academic services, or other goods and services related to course enrollment. Students are eligible to be compensated under the Student Protection Fund only if the school ceases to operate for any reason, including, but not limited to the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.
 - (10) "Users" as stated in G.S. 115D-88(4a) means employees or agents of purchasers.
- ~~(b)~~(c) Application for an Initial License:
- (1) Any person or persons operating a proprietary school with an enrollment of more than five persons in a school in the State of North Carolina shall obtain a license from the North Carolina State Board of Community Colleges except as exempt by G.S. 115D-88.
 - (2) A preliminary application shall be submitted. Any person or persons seeking to operate a

proprietary school that requires licensure shall submit a preliminary application setting forth the proposed location of the school, the qualifications of the Chief Administrator of the school, a description of the facilities available, courses to be offered, and financial resources available to equip and maintain the school. Upon approval of the preliminary application, a final application may be submitted. ~~This~~ The final application shall be verified and accompanied by the following:

- (A) A certified check or money order for the initial license fee in the amount of two thousand five hundred dollars (\$2,500) made payable to the North Carolina State Treasurer;
- (B) A guaranty bond or alternative to a guaranty bond as set forth in G.S. 115D-95. Except as otherwise provided herein, the bond amount for a proprietary school shall be at least equal to the maximum amount of prepaid tuition held at any time during the fiscal year. During the initial year of operation, the ~~bond~~ guaranty bond amount or an alternative to a guaranty bond amount shall be based on the projected maximum amount of prepaid tuition that will be held at any time during that year. In any event, the minimum surety bond shall be ~~ten thousand dollars~~ (\$10,000); twenty five thousand dollars (\$25,000);
- (C) A certified check or money order for the Student Protection Fund in the amount of one thousand two hundred and fifty dollars (\$1,250) made payable to the North Carolina State Treasurer;
- ~~(C)~~(D) A copy of the school's catalog or bulletin. The catalog shall include a statement addressing each item listed in G.S. 115D-90(b)(7);
- ~~(D)~~(E) A financial statement showing capital investment, assets and liabilities, and the proposed operating budget which demonstrates financial stability or a financial statement and an accompanying opinion of the school's financial stability by either an accountant, using generally accepted accounting principles, or a lending institution;
- ~~(E)~~(F) A detail of ownership; (This must show stock distribution if the school is a corporation, or partnership agreement if the school will be operated as a partnership.)

- ~~(F)~~(G) Information on all administrative and instructor personnel who will be active in the operation of the school, either in full- or part-time capacity; (This information must be submitted on forms provided for this purpose.)
 - ~~(G)~~(H) Enrollment application or student contract form;
 - ~~(H)~~(I) School floor plan showing doors, windows, halls, and seating arrangement; also offices, rest rooms, and storage space; the size of each room and seating capacity shall be clearly marked for each classroom; lighting showing kind and intensity shall be indicated for each room; the type of heating and cooling system used for the space occupied shall be stated;
 - ~~(I)~~(J) Photostatic copies of inspection reports or letters from proper officials to show that the building is safe and sanitary and meets all local city, county, municipal, state, and federal regulations such as fire, building, and sanitation codes; and
 - ~~(J)~~(K) If the building is not owned by the school, a photostatic copy of the lease held by the school for the space occupied.
- (3) A person or persons purchasing a proprietary school already operating as a licensed school shall comply with all of the requirements for securing an initial license. A license is not transferable to a new owner. All application forms and other data shall be submitted in full. Such terms as "previously submitted" when referring to a former owner's file are not acceptable. If a proprietary school offers classes in more than one county, the school's operations in each such county constitutes a separate school requiring a separate license. Classes conducted by the school in separate locations shall be reported and approved prior to advertising and commencement of classes.
- (4) Remote sites shall not have any administrative staff or any administrative functions such as recruiting, accounting or record keeping. Each remote site shall be subject to an initial remote site fee of one thousand dollars (\$1,000) and an annual remote site renewal fee of seven hundred and fifty dollars (\$750.00) to be paid by a certified check or money order made payable to the North Carolina State Treasurer. Each remote site shall have an initial site visit and a visit during each annual audit.
- (5) Classes conducted at remote sites by licensed schools shall be approved prior to advertising and commencement of classes. Any course offered at a remote site shall be a part of an approved program of study for that licensed school.
- (6) Changes in application information presented for licensure or relicensure relating to mission, programs, location or stock distribution require prior approval and licensure amendment by the State Board of Community Colleges.
- (A) Program additions require curriculum reviews and program or course approvals prior to initiation. A certified check or money order in the amount of two hundred dollars (\$200.00) made payable to the North Carolina State Treasurer shall accompany each additional program approval request.
 - (B) Single course additions or revisions may be individually approved when schools submit a request for license amendment. Course additions or revisions requiring curriculum review, instructor evaluation, and equipment site assessment are subject to the curriculum review fee of two hundred dollars (\$200.00) to be paid by a certified check or money order made payable to the North Carolina State Treasurer.
 - (C) School relocations require site visits and approvals prior to use. A certified check or money order in the amount of four hundred dollars (\$400.00) made payable to the North Carolina State Treasurer shall accompany each site relocation approval request.
 - (D) Other site assessment visits, such as for program additions and revisions, shall require a certified check or money order made payable to the North Carolina State Treasurer in the amount of two hundred dollars (\$200.00).

Authority G.S. 115D-88; 115D-89; 115D-90; 115D-91;115D-92; 115D-95.1.

23 NCAC 03A .0102 APPLICATION FOR RENEWAL OF LICENSE

- (a) Schools shall be licensed annually, and the licensure shall extend from July 1 through June 30, inclusive.
- (b) Schools desiring the renewal of their license shall submit an application on or before April 1 of each year. The application shall be accompanied by the following:
 - (1) All information required of schools applying for an initial license that has not been previously submitted;

(2) For a school that has been licensed for one year but less than six years, verification that the guaranty bond or alternative to the guaranty bond is in an amount equal to the greatest amount of unearned paid tuition in the school's possession at any time during the prior fiscal year. This verification shall be in the form of quarterly reports to the President of the North Carolina Community College System evaluating the amount of the guaranty bond or alternative to the guaranty bond. Quarterly evaluation reports requiring an increase of five percent or more in the amount of the bond held by the school must show an immediate increase in the bond amount at the time of the evaluation. At the time of the school's annual license renewal, the guaranty bond or alternative to the guaranty bond shall be an amount equal to the greatest amount of unearned paid tuition in the school's possession at any time during the prior fiscal year;

	percent (.05%) of annual gross tuition revenue over \$2,000,000
--	--

(2)(3) Copy of current catalog containing all information required of schools applying for initial license; and

(3)(4) Any supplementary information necessary to bring information on the school up to date.

(2) In addition to the payments required under G.S. 115D-95.1, as a condition of license renewal for the 2010-2011 fiscal year, each proprietary school shall pay into the Student Protection Fund an amount based on its total enrollment for the previous calendar year as follows:

Number of Students	Amount of Assessment
0-49	\$500.00
50-99	\$1,000
100-499	\$2,000
500-999	\$3,000
1,000-1,499	\$4,000
More than 1,500	\$5,000

(3) "Total enrollment" means the number of students enrolled on January 1, 2009, plus new students enrolled during the calendar year plus students reentering from a period of nonattendance during the calendar year.

(4) The full and timely payment into the Student Protection Fund pursuant to this Chapter is a condition of licensure.

(5) The State Board of Community Colleges shall not refund any payment to the Student Protection Fund in the event that a school's license application is rejected or a school's license is suspended or revoked.

(c) A certified check or money order in the amount of one thousand two hundred and fifty dollars (\$1,250) plus fifty dollars (\$50.00) per program made payable to the North Carolina State Treasurer shall be received on or before April 1.

(d) Proprietary schools shall make payment to the Student Protection Fund as follows:

(1) When the amount in the Student Protection Fund is less than the cap established in G.S. 115D-95.1, a check to be deposited into the Student Protection Fund and made payable to the North Carolina State Treasurer shall be received on or before April 1 from the school based on the school's annual gross tuition revenue generated in North Carolina as follows:

(e) Proprietary schools shall make adjustments to the guaranty bond or alternative to the guaranty bond requirements of schools based on G.S. 115D-95. A guaranty bond or alternative to the guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:

Annual Gross Tuition Revenue	Amount of Assessment
\$1.00 – \$25,000	\$200.00
\$25,001 – \$50,000	\$250.00
\$50,001 – \$100,000	\$300.00
\$100,001 – \$200,000	\$400.00
\$200,001 – \$300,000	\$500.00
\$300,001 – \$400,000	\$600.00
\$400,001 – \$500,000	\$700.00
\$500,001 – \$750,000	\$1,000
\$750,001 – \$1,000,000	\$1,250
\$1,000,001 – \$1,500,000	\$1,500
\$1,500,001 – \$2,000,000	\$2,000
Greater than \$2,000,000	\$2,000 plus one-twentieth of one

(1) If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond or alternative to the guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year multiplied by the percentage amount the fund is deficient.

(2) If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any guaranty bond or alternative to a guaranty bond amount required by 23 NCAC 03A .0102(e)(1), the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous

fiscal year and the Student Protection Fund catastrophic loss amount.

(f) The State Board of Community Colleges, acting by and through the President of the Community College System, will tabulate the balance of the Student Protection Fund as of December 31 of each year and establish the percentage amounts identified in 23 NCAC 03A .0102(e)(1). The State Board of Community Colleges, acting by and through the President of the Community College System, will report these calculations to the Student Protection Fund Advisory Committee for its review on an annual basis.

Authority G.S. 115D-89; 115D-91; 115D-92; 115D-95.1.

23 NCAC 03A .0116 ADMINISTRATION OF THE STUDENT PROTECTION FUND

(a) The State Board of Community Colleges, acting by and through the President of the Community College System, shall administer the Student Protection Fund.

(b) If the Student Protection Fund balance is equal to or exceeds the Student Protection Fund cap amount, the State Board of Community Colleges shall suspend payments into the Student Protection Fund for schools that have been continuously licensed in North Carolina for more than eight years. The State Board of Community Colleges shall require schools to resume payments into the Student Protection Fund if the balance of the Student Protection Fund is less than the catastrophic loss amount.

(c) If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of Community Colleges may assess additional fees to compensate students qualified for repayment under the Student Protection Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by G.S. 115D-95.1. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board of Community Colleges shall allocate funds among claims proportional to the amount of student loss and the amount in the Student Protection Fund.

(d) A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instruction-related expenses paid to a proprietary school licensed under G.S. 115D-90 by reason of the school ceasing to operate for any reason, including, but not limited to the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure, may qualify for repayments under the Student Protection Fund. The State Board of Community Colleges must first issue repayment from the guaranty bonds and alternatives to the guaranty bond issued under G.S. 115D-95. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board of Community Colleges must allocate funds among claims proportional to the amount of student loss and the amount in the Student Protection Fund.

(e) The Student Protection Fund Advisory Committee shall meet once per year to review the Fund adjustments or as needed in order to respond to other matters related to the Fund.

Authority G.S. 115D-89; 115D-95.1.

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 adopt the rules cited as 25 NCAC 01E .1009-.1011 and repeal the rule cited as 25 NCAC 01E .1701.

Proposed Effective Date: *April 1, 2010*

Public Hearing:

Date: *January 13, 2010*

Time: *10:00 a.m.*

Location: *Office of State Personnel, Administration Building 3rd Floor, 121 West Jones St., Raleigh, NC 27603*

Reason for Proposed Action: *There are separate rules that cover the following types of leave: vacation, sick, adverse weather, civil, community service, communicable disease, educational employee transfer(relocating), military, workers' compensation, and special leave awards. In addition, there are other miscellaneous leaves that are authorized in various rules but for which there is not a separate category to account for them. We are proposing that these be consolidated under the heading of Other Management Approved Leave. 25 NCAC 01E .1701 is being repealed since it is included in the new rule.*

Procedure by which a person can object to the agency on a proposed rule: *A person may object to these proposed rules 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@osp.nc.gov; (3) a telephone call to Peggy Oliver at 919-807-4832.*

Comments may be submitted to: *Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4832, fax (919) 715-9750, and email peggy.oliver@osp.nc.gov*

Comment period ends: *January 15, 2009*

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

Fiscal Impact:

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

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .1700 - LEAVE: ADMINISTRATIVE

25 NCAC 01E .1701 SMALLPOX VACCINATION

~~When absence from work is due to an adverse medical reaction resulting from a smallpox vaccination, the absence shall be charged to administrative leave in accordance with the provisions of G.S. 126-8.4(a) and (b).~~

Authority G.S. 126-4; 126-8.4.

SECTION 1000 – MISCELLANEOUS LEAVE

25 NCAC 01E .1009 OTHER MANAGEMENT APPROVED LEAVE

(a) Other Management Approved Leave provides paid time off for miscellaneous reasons as set forth in this Rule. The rule applies to full-time and part-time (half-time or more) employees who have a permanent, probationary, time-limited permanent or trainee appointment;

(b) Employee shall request Other Management Approved Leave at least two weeks before the leave is needed, unless such notice is impractical; and

(c) If an employee's job responsibilities include attendance at the activity, it is not leave. It is a work assignment and will be included in hours worked for purposes of computing overtime for FLSA non-exempt employees.

Authority G.S. 126-4(5).

25 NCAC 01E .1010 NON-DISCRETIONARY TYPES OF OTHER MANAGEMENT APPROVED LEAVE

An appointing authority shall grant leave with pay to an employee for any of the following purposes:

- (1) to prepare for participation in his or her internal agency grievance or mediation procedure in accordance with 25 NCAC 01J .1208(a);
- (2) to participate in contested case hearings or other administrative hearings in accordance with 25 NCAC 01J .1208(b);

- (3) to place an employee on investigatory status as provided in 25 NCAC 01J .0615;
- (4) to locate and move to a new residence, within the limits allowed by policy, when a transfer is required by the agency in accordance with 25 NCAC 01E .1004;
- (5) to attend workers' compensation hearings;
- (6) to serve on state commissions, councils, boards and committees established by the General Assembly or other bodies established by the Governor and Council of State;
- (7) because of a smallpox vaccination in accordance with G.S. 126-8.4;
- (8) to train for and compete in Pan American, Olympic or international athletic competition in accordance with G.S. 126-8.1; and
- (9) to cover time that an agency is closed for emergencies in accordance with 25 NCAC 01E .1005 and the Adverse Weather and Emergency Closings Policy.

Authority G.S. 126-4(5).

25 NCAC 01E .1011 DISCRETIONARY TYPES OF OTHER MANAGEMENT APPROVED LEAVE

An appointing authority may grant leave with pay to an employee for any of the following purposes:

- (1) to participate in volunteer emergency and rescue services in accordance with 25 NCAC 01E .1607(a) and (b);
- (2) to participate in specialized disaster relief services with the American Red Cross in accordance with 166A-30-166A-32;
- (3) to donate blood and bone marrow in accordance with 25 NCAC 01E .1607(c);
- (4) to donate organs up to 30 days in accordance with 25 NCAC 01E .1607(c);
- (5) to reward an employee for a suggestion that is adopted under the NC Thinks Program or under the agency's Governor's Awards for Excellence Program in accordance with 25 NCAC 01E .0212; and
- (6) to attend conferences that are closely associated with an employee's work, but that are not required as a work assignment.

Authority G.S. 126-4(5).

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) 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 60th 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.

TITLE 04 – DEPARTMENT OF COMMERCE

Rule-making Agency: Department of Commerce

Rule Citation: 04 NCAC 01H .0401-.0404

Effective Date: October 30, 2009

Findings Reviewed and Approved by the Codifier: October 22, 2009

Reason for Action: Section 1401 of The American Reinvestment and Recovery Act ["ARRA"], enacted February 13, 2009, codified as Sections 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended, authorized the issuance of Recovery Zone Facility Bonds and Recovery Zone Economic Development Bonds by state and local governments to foster investment in economic development projects. Under ARRA, each state received an allocation of authority to issue such bonds during 2009 and 2010. If such bonds are not issued within short timelines mandated by federal requirements, the opportunity will be lost.

CHAPTER 01 - DEPARTMENTAL RULES

SUBCHAPTER 01H - PRIVATE ACTIVITY BOND VOLUME CAPACITY PROGRAM

SECTION .0400 - RECOVERY ZONE BONDS

04 NCAC 01H .0401 BACKGROUND

Section 1401 of The American Reinvestment and Recovery Act, enacted February 13, 2009, codified as Sections 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended authorized the issuance of Recovery Zone Facility Bonds and Recovery Zone Economic Development Bonds by state and local governments to foster investment in economic development projects. Under ARRA, each state received an allocation of authority to issue such bonds during 2009 and 2010. ARRA provided that the states were to allocate the issuing authority to large municipalities (defined in ARRA as cities with a population over 100,000) and counties based on the decline in employment between December 2007 and December 2008 relative to the decline in employment in the state for the same period. In Notice 2009-50, published June 12, 2009, the U.S. Treasury Department set out the allocations to the states, and also calculated the suballocations to large municipalities and the counties within each state. The Notice directs the states to reallocate issuing authority to the extent it is not used by a county or large municipality to which it was originally allocated, and provides that such reallocations are to be made by the state

in any reasonable manner as it shall determine in good faith in its discretion.

Session Law 2009-140 enacted by the North Carolina General Assembly on June 16, 2009, provides that the Committee will have responsibility for managing the allocation and reallocation of authorizations for issuance of Recovery Zone Bonds.

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009.

04 NCAC 01H .0402 DEFINITIONS

(a) "Allocation" means the initial authorization for the State or a unit of local government to issue Recovery Zone Facility Bonds or Recovery Zone Economic Development Bonds pursuant to ARRA. North Carolina received \$627,231,000 in Allocation for Recovery Zone Facility Bonds and \$418,154,000 in Allocation for Recovery Zone Economic Development Bonds for 2009 and 2010; the Allocations to counties and Large Municipalities in the State are found in the Notice.

(b) "ARRA" means the American Recovery and Reinvestment Act, H.R. 1, as amended.

(c) "Code" means the Internal Revenue Code of 1986, as amended.

(d) "Committee" means the North Carolina Federal Tax Reform Allocation Committee created by Executive Order No. 37.

(e) "Department" means the North Carolina Department of Commerce, which provides administrative support for the Committee.

(f) "Large Municipality" means any one of the cities of Cary, Charlotte, Durham, Fayetteville, Greensboro, High Point, Raleigh or Winston-Salem.

(g) "Notice" means Notice 2009-50, published by the U.S. Treasury Department on June 12, 2009.

(h) "Notice of Intent" means a notice of intent to issue Recovery Zone Facility Bonds or Recovery Zone Economic Development Bonds on a form provided by the Department, which shall include the following:

- (1) name of Recipient receiving Allocation
(2) name of unit of local government that will issue the Recovery Zone Bonds
(3) type of Recovery Zone Bonds to be issued
(4) description of area designated as Recovery Zone
(5) description of project to be financed
(6) dollar amount of the bond issue and amount of Allocation to be used and amount of Allocation (if any) remaining after such issuance
(7) any Reallocation requested by the Recipient for the project

- (8) if applicable, that the Recipient does not intend to use some or all of its Allocation, and is waiving such Allocation (or if less than all, the portion of Allocation being waived). In connection with any such waiver, the Recipient may designate a project being undertaken by another unit of local government using Recovery Zone Bonds, and request that the Committee reallocate the waived Allocation to such unit of local government in connection with such project.
- (9) such other information as may be prescribed by the Department.

(i) "Reallocation" means authorization for the State or a unit of local government to issue Recovery Zone Facility or Recovery Zone Economic Development Bonds received as a result of action by the Committee to reallocate original Allocation.

(j) "Recipient" means any county or Large Municipality that received an Allocation.

(k) "Recovery Zone" means any area within the jurisdiction of the Recipient, designated as a "recovery zone" in accordance with Code Section 1400U-1(b).

(l) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

(m) "Recovery Zone Economic Development Bonds" means Recovery Zone Economic Development Bonds issued pursuant to Code Section 1400U-2, which in general are governmental bonds issued by a qualified issuer for economic development purposes (as defined in Section 1400U-2) that provide for a refundable tax credit paid to the issuer of the bonds in an amount equal to 45% of the taxable interest payable to investors in such bonds.

(n) "Recovery Zone Facility Bonds" means Recovery Zone Facility Bonds issued pursuant to Code Section 1400U-3, which in general are a type of private activity, exempt facility bond that permit financing of any trade or business other than certain prohibited businesses enumerated in Section 1400U-3(c)(2).

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009.

04 NCAC 01H .0403 PROCEDURES

(a) Under ARRA and the Notice, most (but not all) large municipalities and counties received an Allocation. To the extent a Recipient does not utilize such Allocation, the Committee is authorized to reallocate that Allocation to the State or to a unit of local government in any reasonable manner as it shall determine in good faith in its discretion.

(b) Each Recipient that wishes to use its Allocation must indicate its intention to use its Allocation in one of the following ways:

- (1) On or before December 15, 2009, the Recipient (or the unit of local government designated as the issuer of such bonds) must either:
 - (A) issue the Recovery Zone Bond, or
 - (B) file a Notice of Intent with the Department, Attention: Commerce

Finance Center, by hand or overnight delivery at 301 N. Wilmington Street, 4th Floor, Education Building, Raleigh, North Carolina 27603, or by U.S. mail to 4318 Mail Service Center, Raleigh, North Carolina 27699-4318, accompanied by one or more resolutions from the governing body of the Recipient (A) designating the Recovery Zone, (B) designating the unit of local government that will issue the Recovery Zone Bonds, if different from the Recipient, (C) identifying the type of Recovery Zone Bonds to be issued and (D) identifying the project or projects to be financed with the Recovery Zone Bonds and the principal amount of bonds to be issued.

(2) Any Recovery Zone Bond for which a Notice of Intent has been filed shall either be issued or have made substantial progress towards issuance no later than April 15, 2010. "Substantial progress toward issuance" means such issue of bonds has been approved by the Local Government Commission or placed on the agenda of the Local Government Commission for approval at a meeting in May, 2010.

(3) A Recipient may at any time file a Notice of Intent (i) waiving its Allocation (which may include a designation of a project in another jurisdiction) or (ii) requesting a Reallocation.

(4) In the event that any Recipient fails either to issue Recovery Zone Bonds or to file a Notice of Intent on or before December 15, 2009, the Recipient's Allocation (or portion thereof) for which Recovery Zone Bonds were not issued or no Notice of Intent filed shall be deemed waived. Furthermore, if any Recipient files a Notice of Intent as required by section (b)(1) of this Paragraph but such bonds are not issued or the unit of government fails to make substantial progress towards issuance of such bonds by the dates indicated in Subparagraph (b)(2) of this Rule, the Allocation represented by such bonds shall be deemed waived.

(5) Following the issuance of any Recovery Zone Bond, the issuer of such bond shall promptly deliver a copy of the report required to be filed with the Internal Revenue Service (e.g. the form 8038 for Recovery Zone Facility Bonds and the form 8038G for Recovery Zone Economic Development Bonds) to the address indicated in (b)(1)(B) above, and the Department will maintain a list of all Recovery Bonds issued and all Allocations used, waived, and available for full or partial Reallocation.

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. October 30, 2009.

04 NCAC 01H .0404 REALLOCATION

The Committee is directed to reallocate to another unit of local government (which is not required to be a Recipient) all or any part of any Allocation waived or deemed waived by Recipient in any reasonable manner as it shall determine in good faith in its discretion. In making such Reallocations, the Committee will consider the following in addition to other facts it deems reasonable and appropriate, in good faith, in its discretion:

- (1) The overall good of the State and the people of North Carolina.
- (2) Relative economic need and benefit to the unit of local government and the area or region affected by the following:
 - (a) Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;
 - (b) Whether the availability of the Reallocation is a crucial part of attracting a new company or keeping an existing company in place;
 - (c) Whether the requested Reallocation will benefit a project for which a Recipient or other unit of local government is already issuing Recovery Zone Bonds;
 - (d) Whether the requested Reallocation will benefit a project that was designated by a Recipient in connection with a previous waiver of its Allocation pursuant to 04 NCAC 01H .0402(h)(8).
- (3) The ability of the unit of local government or company benefiting from the Recovery Zone Bond to obtain financing and close the issue in a timely manner, including demonstration of a commitment from a bank or other financial institution to purchase or underwrite the Recovery Zone Bonds.

History Note: Authority G.S. 143-433.6(c); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475. Emergency Adoption Eff. October 30, 2009.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Division of Vocational Rehabilitation Services*

Rule Citation: *10A NCAC 89C .0205*

Effective Date: *October 27, 2009*

Findings Reviewed and Approved by the Codifier: *October 19, 2009*

Reason for Action: *With a passage of the American Recovery and Reinvestment Act, P.L. 111.5 on February 17, 2009, the Division received federal funds for the specific purpose to expand services that would assist consumers to achieve successful employment. The Division intends to remove certain services from the requirement of meeting financial need, so mire individuals would be eligible to receive these services. Under the SL 2009-475 (S 960) the Division has the authority to request an emergency rule change for the purpose of expending ARRA funds.*

CHAPTER 89 - VOCATIONAL REHABILITATION**SUBCHAPTER 89C - PROGRAM RULES****SECTION .0200 - ELIGIBILITY****10A NCAC 89C .0205 SERVICES COVERED BY OR EXEMPT FROM FINANCIAL NEEDS TEST**

(a) The financial need of a client, as determined by the financial needs test specified in Rule .0206 of this Section, shall apply as a condition for furnishing the following vocational rehabilitation services to clients eligible for services or to clients eligible for extended evaluation or trial work experiences:

- (1) physical and mental restoration;
- (2) maintenance;
- (3) transportation;
- (4) occupational license;
- (5) tools, equipment, and initial stock (including livestock), supplies and necessary shelters in connection with these items;
- (6) services to members of the individual's family necessary to the adjustment or rehabilitation of the individual with disabilities;
- (7) rehabilitation technology including vehicular, home modifications, telecommunications, sensory, and other technological aids and devices;
- (8) post-employment services provided subsequent to the achievement of an employment outcome necessary to assist individuals with disabilities in maintaining employment (other than those services in Paragraph (d)(1) of this Rule which are provided without regard to financial need);
- (9) vocational and other training services, books, tools, and other training materials;
- (10) other goods and services expected to benefit an individual with disabilities in obtaining employment or achieving the individual's independent living goals;
- (11) non-assessment services for eligible individuals receiving vocational rehabilitation services through trial work experiences or extended evaluation; and

- (12) personal and vocational adjustment training and On-the Job Training that does not conflict with Federal and State wage and hour laws.
- (b) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing) as noted in Paragraph (a)(9) of this Rule shall be paid for with vocational rehabilitation funds until maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or part from other resources to pay for training and such assistance is applied to the cost of training.
- (c) Physical and mental restoration as noted in Paragraph (a)(1) of this Rule shall only be provided to the extent that financial support is not available from a source other than the designated state unit such as through health insurance or a comparable service or benefit as defined in 34 CFR 361.6(b)(10).
- (d) The financial needs test shall not apply as a condition for furnishing the following:
- (1) services exempt from the financial needs test under 34 C.F.R. 361.54;
 - (2) foreign language interpreter/translator services for individuals who are unable to understand either verbal or written information presented by the Division;
 - (3) any vocational rehabilitation service to individuals determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act; and
 - (4) all services and equipment provided by staff of the Division.
 - (5) time-limited Division-sponsored internships with employers as a part of an individualized plan for employment made available to eligible individuals served through the NC Division of Vocational Rehabilitation Services Program. Division sponsorship for an

internship described within this paragraph will allow a rate of pay of at least minimum wage and will not exceed a period of four months unless an exception is granted by the Division's Chief of Policy based on the applicable policy. Pending available funding, Division sponsorship of these internships for clients as described in this Subparagraph is provided as a part of the ARRA plan and will expire on or before September 30, 2011, as determined by the Division Director.

(e) The Division shall grant an exception to the rate for tuition for post-secondary education specified in Rule .0119 of this Section when accommodations for the special training needs of individuals with significant disabilities are included in the tuition rate.

(f) Notwithstanding Paragraph (a) of this Rule, the following services are not subject to the financial needs test specified in Rule .0206 of this Subchapter for individuals being served through the NC Division of Vocational Rehabilitation Services Program:

- (1) Personal and Vocational Adjustment Training and On-the-Job Training that does not conflict with Federal and State wage and hour laws.

This Paragraph expires September 30, 2011.

History Note: Authority G.S. 143-545.1; 143-546.1; 150B-21.1B; 34 C.F.R. 361.40; 34 C.F.R. 361.41; 34 C.F.R. 361.47; 34 C.F.R. 364.59; P.L. 111.5;

Eff. February 1, 1976;

Amended Eff. February 1, 1996; October 1, 1994; March 1, 1990;

Temporary Amendment Eff. January 26, 2003; May 1, 2002;

Amended Eff. August 1, 2004;

Emergency Amendment Eff. October 27, 2009.

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 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th 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*

Rule Citation: *13 NCAC 14 .0303, .0309, .0508, .0901*

Effective Date: *October 29, 2009*

Date Approved by the Rules Review Commission: *October 15, 2009*

Reason for Action: *On August 5, 2009, the NC General Assembly enacted SL 2009-451, which reduced funding to the NC Department of Labor's Apprenticeship Bureau by twenty-five percent (25%). SL 2009-451 was signed by the Governor on August 7, 2009. In order to supplement this large budgetary loss and to avoid an operating expense shortfall by the Bureau, Section 12.1 of SL 2009-451 creates a new section of Chapter 94, NC General Statute 94-12, to establish a fee for new and current apprenticeships. Effective August 15, 2009, this new statute imposed fees in the total amount of fifty dollars (\$50.00) on each apprentice who is covered by a written apprenticeship agreement under Chapter 94. Emergency rules clarifying NC General Statute 94-12 were filed by the NC Department of Labor and became effective August 27, 2009. The attached temporary rules are substantially the same as the approved emergency rules with certain changes made to clarify certain ambiguities and correct citations to authorities.*

CHAPTER 14 – APPRENTICESHIP AND TRAINING DIVISION

SECTION .0300 - APPRENTICESHIP REGISTRATION

13 NCAC 14 .0303 REGISTRATION OF APPRENTICE AND AGREEMENT

(a) A sponsor or an individual, or a person or organization on behalf of the individual, shall request that an apprenticeship agreement between the individual and his sponsor be registered by submitting to the director a copy of the apprenticeship agreement.

(b) If the director finds that:

- (1) The agreement is complete and applies to a registered apprenticeship program;
- (2) The agreement meets the requirements of Rule .0205 of this Chapter; and
- (3) The individual meets the minimum qualifications for an apprentice; then

The director shall approve the apprenticeship agreement and cause it to be recorded by the division, which constitutes registration of the agreement.

(c) If the director approves the apprenticeship agreement, he shall also and simultaneously cause the name of the individual who is to be trained under the agreement to be recorded by the division, which constitutes registration of the individual.

(d) The sponsor shall submit to the director the apprenticeship agreement of a probationary apprentice, although the agreement will not be registered.

(e) All apprenticeship registrations [submitted after August 15, 2009, and all active apprenticeships registered prior to August 15, 2009, shall be] are subject to a registration fee and an annual fee in accordance with G.S. 94-12 and Rule .0901 of this Chapter.

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-8; 94-12; Eff. February 1, 1984; Emergency Amendment Eff. August 27, 2009; Temporary Amendment Eff. October 29, 2009.

13 NCAC 14 .0309 CERTIFICATE OF COMPLETION

(a) Upon notification from a sponsor that an individual has completed his apprenticeship in the sponsor's registered apprenticeship program, the director shall issue to the individual, or to the sponsor for the individual, a certificate of completion or other written indicia signifying that the individual has completed his training and instruction in a registered apprenticeship program in a certain, identified trade and the date the training was completed.

(b) Notwithstanding Paragraph (a) of this Rule, the director shall not issue the certificate of completion if he decides upon satisfactory evidence that the apprentice is not fully trained because he did not complete the apprenticeship or because the apprenticeship program did not comply with the rules of this Chapter. In addition, the director shall not issue the certificate of completion if he determines that the fees authorized by G.S. 94-12 and Rule .0901 of this Chapter have not been paid. The director shall promptly give written notification to the sponsor and individual of his decision not to issue the certificate of completion and the reason(s) therefor.

(c) The sponsor or individual may appeal the director's decision within 30 days or receipt of notification in accordance with ~~Chapter 150B of the North Carolina General Statutes and 13 NCAC 14B. Article 3 of Chapter 150B of the NC General Statutes.~~

(d) Upon request of a sponsor, the director may issue an honorary certificate of completion to recognize an individual who by training and experience was fully qualified as a

journeyman prior to the registration of the sponsor's apprenticeship program.

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-12; Eff. February 1, 1984; Emergency Amendment Eff. August 27, 2009; Temporary Amendment Eff. October 29, 2009.

SECTION .0500 – DE-REGISTRATION OR WITHDRAWAL OF APPROVAL

13 NCAC 14 .0508 DE-REGISTRATION OR CANCELLATION OF AGREEMENT

(a) The director may de-register an apprenticeship agreement or cancel the recordation of an OJT agreement only as follows:

- (1) During a probationary period, upon request of either party to the agreement;
- (2) After the probationary period:
 - (A) Upon mutual consent of the parties;
 - (B) Upon written request of the apprentice or trainee; or
 - (C) Upon a unilateral request of the sponsor for good and sufficient reason(s), as provided in Paragraphs (c) and (d) of this Rule; or
- (3) At any time when the apprenticeship or OJT program in which the apprentice or trainee is to be trained has been de-registered or had its approval withdrawn in accordance with the rules of this Chapter. Chapter; or
- (4) At any time for failure to pay the registration fee or annual fee in accordance with G.S. 94-12 and Rule .0901 of this Chapter.

(b) Whenever an apprenticeship agreement is de-registered or recordation of an OJT agreement is cancelled, the director shall:

- (1) Cause the de-registration to be recorded with the division or cause the cancellation to be indicated in the records of the division;
- (2) In addition and simultaneously de-register the individual by causing the individual's de-registration to be recorded with the division, in the case of an apprenticeship agreement; and
- (3) Promptly notify the parties to the agreement that the apprenticeship agreement and apprentice have been de-registered or that recordation of the trainee's OJT agreement has been cancelled and the effective date thereof, except when the sponsor has notified the apprentice or trainee as a result of the de-registration of or withdrawal of approval from the sponsor's program.

(c) After the probationary period, a sponsor shall give due notice to an apprentice or trainee of reasons why the apprentice's agreement should be de-registered or the recordation of the trainee's agreement should be cancelled, and the sponsor shall provide the apprentice or trainee a reasonable opportunity to take corrective action, unless the offer of the opportunity would be futile.

(d) After the apprentice or trainee has been given due notice and a reasonable opportunity to take corrective action, unless the offer of the opportunity would be futile, the sponsor may unilaterally request de-registration of the apprentice's agreement or cancellation of the recordation of the trainee's agreement. The director shall de-register or cancel recordation of the agreement upon written request of the sponsor unless the apprentice or trainee initiates a complaint as provided in either Section .0600 or .0800 of this Chapter, as applicable, within the time therein allowed. The sponsor shall have the burden of proof in any administrative hearing to show that there is good cause for de-registration or cancellation and to show that a reasonable opportunity for corrective action was provided or would have been futile.

(e) The effective date of de-registration or cancellation shall be the date of receipt by the director of the sponsor's request, although the notation will not be made in the division's records until after the period has run during which the apprentice or trainee may initiate a complaint or until resolution of the complaint when the apprentice or trainee has initiated a complaint.

(f) Prior to taking any action pursuant to Subparagraph (a)(4) of this Rule, the director shall notify the sponsor and the apprentice in writing of his intent to de-register or cancel an apprenticeship agreement for failure to pay the registration fee or annual fee. If the sponsor or apprentice fails to either pay the fee or request a review of such decision within 15 days, the director shall de-register or cancel the apprenticeship agreement and notify them of the availability of an administrative hearing and of judicial review in accordance with Article 3 of Chapter 150B of the NC General Statutes.

History Note: Authority G.S. 94-1; 94-2; 94-4; 94-12; Eff. February 1, 1984; Emergency Amendment Eff. August 27, 2009; Temporary Amendment Eff. October 29, 2009.

SECTION .0900 - APPRENTICESHIP FEES

13 NCAC 14 .0901 APPRENTICESHIP REGISTRATION AND ANNUAL FEES

~~(a) Except as provided in Paragraph (d) of this Rule, all apprenticeship registrations submitted after August 15, 2009, shall be subject to a registration fee of fifty dollars (\$50.00). The sponsor will receive an invoice for the registration fee after~~ For all new apprenticeship registrations, the director shall send an invoice for the registration fee required by G.S. 94-12 to the sponsor after the agreement is approved by the director in accordance with Rule .0303 of this Chapter. The registration fee may be payable as thirty dollars (\$30.00) by the sponsor and twenty dollars (\$20.00) by the apprentice. In subsequent years, an annual fee of fifty dollars (\$50.00) the annual fee required by G.S. 94-12 shall be paid to the Department in accordance with Paragraph (b) of this Rule.

~~(b) Except as provided in Paragraph (d) of this Rule, all active apprenticeships registered prior to August 15, 2009, shall be subject to an annual fee of fifty dollars (\$50.00). The initial annual fee shall be paid by the sponsor on or before September 30, 2009. Thereafter, the~~ The annual fee required by G.S. 94-12

shall be submitted on or before September 30th of each subsequent year until the apprenticeship is completed or the agreement is de-registered or cancelled in accordance with the Rules of this Chapter, whichever is earlier. ~~The annual fee may be payable as thirty dollars (\$30.00) by the sponsor and twenty dollars (\$20.00) by the apprentice.~~

(c) Failure to pay the fees ~~described in Paragraphs (a) or (b) of this Rule~~ required by G.S. 94-12 shall result in the de-registration or cancellation of the apprenticeship agreement in accordance with Rule .0508 of this Chapter. In addition, a certificate of completion ~~[will]~~ shall not be issued pursuant to

Rule .0309 of this Chapter if the fees ~~described in Paragraphs (a) or (b) of this Rule~~ required by G.S. 94-12 have not been paid.

~~(d) The provisions of this Rule shall not apply to the State, a department or agency of the State, or any political subdivision of the State or an apprentice of the State, a department or agency of the State, or any political subdivision of the State.~~

*History Note: Authority G.S. 94-1; 94-2; 94-4; 94-12;
Emergency Adoption Eff. August 27, 2009;
Temporary Adoption Eff. October 29, 2009.*

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC Alcoholic Beverage Control Commission v. Ciro Maya Maya, T/A Carolina Sports Arena	08 ABC 2411	Overby	06/29/09	
N.C. Alcoholic Beverage Control Commission v. Du Cong Phan T/A Good Food Market	09 ABC 0565	May	05/18/09	
North Carolina Alcoholic Beverage Control Commission v. Mayra Leticia Rodriguez, T/A La Perla Del Pacifico	09 ABC 0975	Gray	07/28/09	
N.C. Alcoholic Beverage Control Commission v. Roberta White Bridges T/A Christina Restaurant and Catering	09 ABC 1899	May	07/28/09	
<u>CRIME VICTIMS COMPENSATION</u>				
Mary D. Malone v. State of North Carolina, Department of Crime Control., Victims Compensations Services	08 CPS 2463	Gray	07/09/09	
Ricky F. Smith v. Crime Control and Public Safety	08 CPS 2582	May	08/06/09	
Robert Melvin v. Janice Carmichael, NC Crime Victim Compensation	08 CPS 2634	Elkins	06/01/09	
B-Red Enterprises, Inc., Linda Parrish v. Secretary of Crime Control and Public Safety	08 CPS 3043	Webster	06/23/09	
Allen Bender, AB's Gravel Driveways, LLC v. North Carolina State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1259	Gray	06/29/09	
Cape Romain Contractors, Inc., Andrew Dupre v. North Carolina Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	09 CPS 1599	Gray	07/02/09	
John Emiliani, Jr., v. N.C. Division of Motor Vehicles	09 CPS 1604	Brooks	06/15/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2087	Brooks	05/19/09	
George Allen Cook (Case #08-35780), v. N.C. Department of Crime Control and Public Safety, Victim Compensation Services Division	09 CPS 2391	May	07/29/09	
Cynthia K. Shreve v. Victims Compensation Program	09 CPS 2404	May	06/23/09	
Allen Robinson v. NCSHP	09 CPS 2449	Overby	06/17/09	
Jeffrey Andrew Kennedy v. NC State Highway Patrol, Citation and Notice of Assessment	09 CPS 2511	May	07/09/09	
Rowland L. Simmons v. North Carolina State Highway Patrol	09 CPS 2885	May	06/11/09	
A list of Child Support Decisions may be obtained by accessing the OAH Website: http://www.ncoah.com/hearings/decisions/				
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Patricia L. Tiller v. NC Dept. of Health & Human Ser., Health Care	07 DHR 0302	Lassiter	07/14/09	

CONTESTED CASE DECISIONS

Personnel Registry Sec

Envisions of Life LLC v. Hearing Office – 05 Division of Medical Assistance	08 DHR 0967	Lassiter	07/01/09	
Cynthia Curtis v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1485	Brooks	05/07/09	24:07 NCR 408
Choices Group Home Inc., Victor Vega v. N.C. Department of Health and Human Service Regulation	08 DHR 2404	Gray	07/16/09	
Choices Group Home Inc, Victor Vega v. Office of Administrative Hearings, Department of Health and Human Services	08 DHR 2512	Gray	07/16/09	
Pepper Dawn Kirk-McLendon Peppermint Daycare v. N.C. Department of Health and Human Services, Division of Child Development	08 DHR 2571	Mann	07/07/09	24:07 NCR 416
Abundant Life Child Care Center, Tiffany D. Monroe v. Division of Child Development, June Locklear, Brenda Faircloth	08 DHR 2954	Elkins	06/03/09	
Amy G. Poteat v. Health Care Personnel Registry	08 DHR 3489	May	06/03/09	
Victoria Martin v. Surry County Dept of Health and Human Services AFDC/Work First	09 DHR 1533	May	06/04/09	
Michael Parks Fresh Start Residential Services Inc. v. NC DHHS Division of Health Service Regulation Mental Health Licensure Certification	09 DHR 1474	Overby	06/17/09	
Spring House Residential Facility v. N.C. Dept. of Health and Human Services DHSR MHLIC	09 DHR 1482	May	06/19/09	
Yolanda Portillo v. N.C. Department of Health and Human Services	09 DHR 1558	Webster	07/17/09	
Regina T. Jones v. N.C. Department of Health and Human Services	09 DHR 1859	Webster	06/23/09	
Sharay C. Vinson v. North Carolina Department of Health and Human Services, Division of Health Service Regulation	09 DHR 1884	Brooks	07/10/09	
Jason M. Paris (petitioner, Christine O. Jacobs (representing petitioner) v. N.C. Department of Health and Human Services (DHHS)	09 DHR 2296	May	07/10/09	
Contour Service, Inc., (MHL #090-101) v. Department of Health Services, Division of Health Service Regulation	09 DHR 2350	May	07/21/09	
Helen Webb v. Department of Health and Human Dept. of Child Dept	09 DHR 2589	Webster	07/17/09	
Lanika Ortega v. North Carolina Department of Health and Human Services	09 DHR 2637	Lassiter	07/27/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 2654	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 2655	Webster	07/17/09	
John Okoroma v. Mecklenburg County Dept. of Social Services	09 DHR 2710	May	07/24/09	
Angela Conner Tawes, Conner's Cape Hatteras Supermarket, Inc v. North Carolina Department of Health and Human Services,	09 DHR 2717	Gray	06/15/09	
Sharon M. Hill v. NC Department of Health and Human Services, Division of Health Services and Regulation	09 DHR 2809	Lassiter	07/27/09	
Division of Public Health, Women's and Children's Health Section	09 DHR 2829	Brooks	07/10/09	
Trinia E. McCorkle v. North Carolina Department of Health and Human Services, Division of Medical Assistance				
Kasina L. Davis v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Personnel Registry Section	09 DHR 2832	Gray	07/01/09	
Brenda V. Patterson v. N.C. State Department of Social Services	09 DHR 2836	Webster	07/17/09	
Brenda Patterson v. Division of Child Development	09 DHR 2837	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 2838	Webster	07/17/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 2839	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 2841	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3002	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3003	Webster	07/17/09	
Brenda V. Patterson v. State Department of Social Services	09 DHR 3004	Webster	07/17/09	
Mary's House, Inc., MHL #041-288, Craig Thomas, Executive Director v. Ms. Emery Milliken, General Counsel, Department of Health and Human Services, Office of Legal Affairs	09 DHR 3008	Mann	07/22/09	
Edward A. Patterson v. Division of Child Development	09 DHR 3113	Webster	07/17/09	
Brenda V. Patterson v. Division of Child Development	09 DHR 3114	Webster	07/17/09	
Edward A. Patterson v. Division of Child Development	09 DHR 3503	Webster	07/17/09	

DEPARTMENT OF ADMINISTRATION

Meherrin Tribe of North Carolina by and through Douglas Patterson v. North Carolina Commission of Indian Affairs	09 DOA 2367	Morrison	06/15/09	
--	-------------	----------	----------	--

DEPARTMENT OF CORRECTION

Rufus Thomas Blackwell, III, v. (N.C. Department of Correction) Department of Payroll & Overpayment Manager	09 DOC 1296	Overby	07/08/09	
Robert Allen Sartori v. K Dufault, C. Bray WCI Mail, Staff Department of Correction	09 DOC 3121	Gray	07/01/09	

CONTESTED CASE DECISIONS

DEPARTMENT OF JUSTICE

Tamika Richardson v. North Carolina Sheriff's Education and Training Standards Commission	08 DOJ 2403	Elkins	05/07/09	24:07 NCR 437
Jackie Marie Daniels v. N.C. Criminal Justice Education and Training Standards Commission	09 DOJ 0218	Elkins	07/24/09	
Tyrone Scott v. North Carolina Private Protective Services Board	09 DOJ 0658	Gray	05/28/09	
Jaime Patrick Clayborne v. Department of Justice Company Police Program	09 DOJ 1949	Webster	05/27/09	
William Marquis Davis v. North Carolina Private Protective Services Board	09 DOJ 2506	Morrison	06/04/09	
Ross Patton Gilmore v. North Carolina Alarm Licensing Board	09 DOJ 2452	Morrison	06/04/09	
Edward A. Patterson v. Attorney General Office	09 DOJ 2840	Webster	07/17/09	

DEPARTMENT OF TRANSPORTATION

Alvin J. Smith v. NC Div of Motor Vehicles, Driver Ass't Branch	09 DOT 2616	Brooks	06/09/09	
---	-------------	--------	----------	--

DEPARTMENT OF STATE TREASURER

Donna F. Levi v. Department of State Treasurer	09 DST 0161	Gray	07/17/09	
Hilda Harris Member ID: 1725605 v. Department of State Treasurer Retirement Systems Division	09 DST 1290	Overby	05/27/09	

EDUCATION, STATE BOARD OF

Courtney M. Sears, Petitioner v. Department of Public Instruction Licensure Section	08 EDC 3644	Morrison	06/08/09	
Jennifer Satinsky v. North Carolina State Board of Education	08 EDC 3650	Morrison	06/05/09	
Lindsey Forde-Smith v. North Carolina State Board of Education	09 EDC 1848	Gray	07/09/09	

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

Old Mill Forestry, LLC v. N.C. Department of Environment and Natural Resources, Division of Water Quality	08 EHR 1806	Lassiter	05/08/09	
Cherokee County Health Department James Pann(managing member, Creek Ridge Holdings, LLC) v. N.C. Department of Environment and Natural Resources	08 EHR 2986	Gray	05/27/09	
John C Campbell Folk School, John M Clarke, Bldgs & Ground Mgr v. NCDENR Public Water Supply Section	09 EHR 1852	Overby	06/03/09	

DEPARTMENT OF INSURANCE

Barbara A Evans v. State Health Plan	09 INS 3067	Lassiter	07/27/09	
--------------------------------------	-------------	----------	----------	--

MISCELLANEOUS

Rodney Dale v. Judge Angela Hoyle	09 MIS 2704	May	06/09/09	
-----------------------------------	-------------	-----	----------	--

OFFICE OF STATE PERSONNEL

Alvita C. Byers v. Elizabeth Cox, The office of Human Resources and The North Carolina School of the Arts	07 OSP 1514	Brooks	05/20/09	24:07 NCR 396
Julie Norris Watson v. NC DPI	08 OSP 0541	Brooks	05/22/09	
Sharon Annette Mercer v. N.C. Division of Motor Vehicles	08 OSP 2293	Webster	08/14/09	24:07 NCR 447
Jody Lynn Hinson v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	08 OSP 2409	Overby	06/03/09	
Denise Vee v. Cumberland County Department of Public Health	08 OSP 2955	Elkins	07/22/09	24:07 NCR 465
Timothy Strong v. Central Regional Hospital, NC DHHS	09 OSP 2401	Elkins	05/27/09	
Benjamin Hicks v. Central Regional Hospital, NC DHHS	09 OSP 2399	Elkins	05/27/09	
Thomas E. Freeman, Jr. v. NC DHHS/Central Regional Hospital And Whitaker School	09 OSP 2826	Webster	07/17/09	
Cecil L. Glaze v. UNC Charlotte	09 OSP 2884	Mann	07/29/09	
Vicky Williams Herring, NC Employment Security Commission	09 OSP 3501	Elkins	07/30/09	
Hope C. Freeman v. Bladen County Department of, Social Services	09 OSP 3504	Elkins	07/24/09	

OFFICE OF SECRETARY OF STATE

Sarah D. Larson v. N.C. Department of the Secretary of State	08 SOS 1200	Overby	06/04/09	24:07 NCR 478
Robert Lee Evans v. NC Office of Administrative Hearings	09 SOS 2300	Lassiter	06/03/09	
Asali J. Howard v. North Carolina Department of The Secretary Of State	09 SOS 2707	May	07/16/09	

CONTESTED CASE DECISIONS

UNC HOSPITALS

Carlos A Perez-Sanchez v. UNC Hospitals	09 UNC 1294	Overby	06/03/09
Bobbie Perlow v. UNC Hospitals	09 UNC 1606	Brooks	07/15/09
Nicole Bryant v. UNC Hospitals	09 UNC 2022	Lassiter	06/16/09
Cynthia K. Yellock v. UNC Hospitals	09 UNC 2298	Mann	07/21/09
Jennifer Jacobs v. UNC Hospitals	09 UNC 2409	Mann	07/21/09
Ryan Rockey v. UNC Hospitals	09 UNC 2587	May	07/15/09
Mary Ann Strickland v. UNC Hospitals	09 UNC 2712	Overby	06/04/09
John C. Presley v. UNC Hospitals	09 UNC 4020	Gray	07/21/09